P L D 1985 Karachi 594

Before Abdur Razzak A. Thahim, J

SALIM UDDIN-Petitioner

versus

THE STATE-Respondent

Criminal Bail Application No. 313 of 1985, decided on 9th April, 1985.

(a) Criminal Procedure Code (V of 1898)-

-- S. 466-Accused suffering from unsound mental condition and requiring treatment-Accused released pending of trial.

Link

(b) Criminal Procedure Code (V of 1898)-

- . Ss. 464, 465, 566 & 561-A-Accused reported to be of unsound mind-Trial Court without examining doctor passing an order that accused was a fit person to defend himself-Older of trial Court set aside and a direction issued to Court to examine doctor before deciding mode of trial.

Link 1

Link 2

P L D 1963 Azad J K 41 and P L D 1960 Pesh. 66 rel.

Abdul Hafeez Lakho for Petitioner.

M. 1. Memon, A. A.-G. for the State.

ORDER

The applicant Salimuddin is being tried for the offences under section 3/4 Prohibition (E. O. H.) Order, 1979.

The bail is prayed on the sole ground of sickness of the applicant. The plea taken before the trial Court was that applicant is of unsound mind and sick. In support of the contentions certificate of Dr. Captain Akbar Khowja, Neuro Physician of Jinnah Post Graduate Medical Centre, Karachi, was produced before the trial Court. But learned Additional Sessions Judge rejected his bail and declared that Salimuddin is fit person to be tried. At the suggestion of the learned Additional AdvocateGeneral, Dr. Akbar Khowja, was summoned and today he appeared alongwith history of the. applicant. He has stated that applicant is unsound mind and needs treatment.

In these circumstances Mr. M. I. Memon, learned A. A.-G. has no objection if applicant is granted bail.

I admit the applicant to bail under section 466, Cr. P. C. and direct his father Hakeemuddin to furnish surety in the sum of Rs. 25,000 and A P. R. bond in the like amount to the satisfaction of the Nazir of this Court. Surety is further directed that he should take care of the applicant so that he may not be able to cause injury to himself or to any other person. However, applicant should appear before the trial Court.

The trial Court has passed an order on 21-3-1985 in which it has been observed that applicant is fit person to defend himself. This order has also been challenged. In my view the order is contrary to the provisions of sections 464, 465 and 466 of Cr. P. C. and learned A. A.-G. also submits that order of 21-3-1985 be set aside.

Mr. Lakho has relied on the cases reported in P L D 1963 Azad J & K, 41 where it has been held that doctor is to be cross-examined on the point,C of *he unsound mind of the applicant. The case reported in P L D 1960 Pesh. 66 also supports the contention raised by the learned counsel for the applicant.

In these circumstances, in exercise of my power under section 561-A Cr. P. C., I set aside the order dated 21-3-1985 of the Vth Additional Sessions Judge and direct that before deciding the mode of trial, the doctor should be examined and accused be given chance to cross-examine him and then only the learned Judge should decide the matter as to how the case should proceed.

M. Y. H. Bail granted.

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