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P.K. SHAJI @ THAMMANAM SHAJI

v.

STATE OF KERALA

OCTOBER 27, 2005

B

[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

Code of Criminal Procedure, 1973:

C

Section 439—Bail granted by Court of Session—Cancellation of by Magistrate—Held, since order granting bail empowered the Magistrate to pass appropriate orders on failure of accused to comply with the directions, order of Magistrate is legal and valid.

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In a case registered against the appellant under Sections 120B and 307 IPC, he was granted bail by the Court of Session with the conditions, *inter alia*, that he would make himself available for interrogation before the Investigating Officer on the specified time and days, failing which the Magistrate would take appropriate action as if the conditions were imposed by the Magistrate himself. Subsequently the Investigating Officer reported to the Magistrate that the accused did not comply with the conditions. The Magistrate issued notice to the accused and not being satisfied by his reply cancelled the bail. Revision of the accused was dismissed by the High Court.

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In the appeal filed by the accused, it was contended that since the bail was granted by the Court of Session, that Court or High Court had power to cancel the bail and not the Magistrate.

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Dismissing the appeal, the Court

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HELD: The bail was granted by the Court of Session under Section 439 of the Code of Criminal Procedure, 1973. The order shows that the Magistrate has been empowered to consider the question of violation of any of the conditions imposed therein and to pass appropriate orders. The superior court can always give directions of this nature. When there is a specific direction to pass appropriate orders as if the conditions for granting bail had been imposed by the Magistrate himself, the impugned order is legal and valid.

[842-D; 843-B, C]

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Gurdev Singh and Anr. v. State of Bihar and Anr., (2000) 4 Crimes 103 AIR (2000) SC 3556, cited. A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1476 of 2005.

From the Judgment and Order dated 26.2.2003 of the Kerala High Court in CrI.A. No. 210 of 2003. B

Haris Beeran for M/s. Lawyer's Knit & Co. for the Appellant.

Ramesh Babu M.R. for the Respondent.

The Judgment of the Court was delivered by C

K.G. BALAKRISHNAN, J. Leave granted.

The appellant challenges the order passed by a learned Single Judge of the High Court of Kerala. The appellant was involved in a case registered by the Thrikkakara Police Station for the offences under Section 120B and 307 IPC. He was granted bail by the Sessions Court subject to certain conditions, one of which was that he should execute a bond for Rs. 50,000/- with two solvent sureties. He was also directed to make himself available for interrogation before the Investigating Officer on all Mondays and Fridays between 10 a.m. to 12.00 noon and was further directed that except for this purpose he shall not enter the sessions division of Ernakulam until further orders without prior permission of the learned Magistrate. Lastly, the Sessions Court directed that the Investigating Officer shall scrupulously ensure that the appellant complied with all the conditions imposed therein and shall report to the Magistrate in case of any breach of conditions and the Magistrate shall take appropriate action as if the conditions have been imposed by the Magistrate himself. D E F

Subsequent to the passing of the bail order, the appellant herein executed bail bonds before the Magistrate and was released on bail. The Investigating Officer filed a report before the learned Magistrate alleging that the appellant herein did not comply with the conditions as he had failed to report before the Investigating Officer on all Mondays and Fridays. Pursuant to this report, learned Magistrate issued a notice and the learned Counsel entered appearance and submitted that the appellant apprehended assault at the hands of the police and, therefore, he did not report before the Investigating Officer. The learned Magistrate was not satisfied with the explanation given by the learned Counsel for the appellant and he cancelled the bail granted to the appellant. G H

A Aggrieved by the same, the appellant preferred a revision before the High Court and the same was dismissed by the impugned Order.

B It is contended by the appellant's learned Counsel that in cases where bail is granted by the court in bailable offences under Section 436 of the Cr. P.C., the very same court is given power to cancel the bail if the conditions of the bail bond, as regards the time and place of attendance, are not complied with; so also when bail is granted by a court other than the High Court or Sessions Court for non-bailable offences under Section 437 Cr.P.C. Under sub-Section 5 of Section 437 Cr.P.C., the court is given power to cancel the bail and direct that the person released on bail be arrested and committed to custody.

C In the instant case, the bail was granted by the Sessions Court under Section 439 Cr.P.C. Sub-Section 2 of Section 439 Cr.P.C. specifically says that a High Court or the Sessions Court may direct that any person who has been released on bail be arrested and committed to custody. The power of the High Court or the Sessions Court under sub-Section 2 of Section 439 Cr.P.C. is very wide and it specifically says that the Sessions Court or the High Court has got power to cancel the bail granted by any of the subordinate courts under Chapter 33 of the Criminal Procedure Code.

D The plea of the appellant's learned Counsel is that if the Sessions Court had granted bail, the order of cancellation of such bail should also have been passed by the Sessions Court or by any superior Court and not by the learned Magistrate who is not empowered to cancel it. As a general proposition, the plea raised by the appellant is correct. It is equally true that the accused who is on bail, should be heard before an order of cancellation of bail is passed by the Court. This Court in *Gurdev Singh and Anr. v. State of Bihar and Anr.*, (2000) 4 Crimes 103 AIR (2000) SC 3556 held that the accused must be given notice and opportunity of hearing before the bail granted to him is cancelled.

E In the present case, the last condition stated in the Bail Order was to the following effect:-

F "The investigating officer shall scrupulously ensure that the Petitioner complies with all conditions hereby imposed and shall report breach of conditions, if any promptly to the learned Magistrate who on receipt of such report shall take appropriate action as if the conditions have been imposed and the Petitioner released on bail by the learned

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Magistrate himself.”

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The order of the Sessions Court shows that the learned Magistrate has been empowered to consider the question of violation of any of the conditions imposed by the Sessions Court and was given powers to pass appropriate orders. The plea raised by the appellant's learned Counsel is that when the learned Magistrate had no such power, the Sessions Court was not empowered to invest that power in the Magistrate. We do not find any force in this contention. The superior court can always give directions of this nature and authorise the subordinate court to pass appropriate orders and the trial Magistrate would be the competent authority to decide whether any condition had been violated by the person who had been released on bail. When there is a specific direction to pass appropriate orders as if the conditions for granting bail had been imposed by the learned Magistrate himself, the impugned Order is legal and valid.

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The contention of learned Counsel for the appellant that the appellant was in prison in connection with another case and that is why he could not appear before the Investigating Officer, does not appear to be true as such a plea was not raised before the learned Magistrate. The learned Counsel for the appellant only contended before the learned Magistrate that he apprehended assault at the hands of the police and, therefore, he refrained from making himself available before the investigating officer. The learned Magistrate rightly rejected this plea. The Order passed by the learned Magistrate was correct and the High Court has rightly rejected the Revision filed by the appellant.

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We see no reason to interfere with the impugned judgment and the appeal is accordingly dismissed .

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R.P.

Appeal dismissed.