

Court No. - 42

Case :- CRIMINAL APPEAL U/S 374 CR.P.C. No. - 4072 of 2005

Petitioner :- Chandrama @ Magram Yadav And Another

Respondent :- State Of U.P.

Petitioner Counsel :- Babu Ram Yadav, Amit Mishra K.P.S. Yadav, Lav Srivastava, Shamimul Hasnain

Respondent Counsel :- Govt. Advocate, H.K. Yadav, Shamimul Hasnain, Subhash Chandra

Hon'ble Dharnidhar Jha,J.

Hon'ble Ashok Pal Singh,J.

1. We have heard Sri K.N. Bajpai, the learned A.G.A.
2. In pursuance of our order dated 30th August 2012, the Superintendent, Central Jail, Shivpur, Varanasi has appeared and has filed his affidavit containing the causes which were required to be shown by him on account of non-execution of the release order by him which was issued to him in pursuance to our order dated 8th August 2012.
3. It has been contended that in the light of court's circular letter no. 114/VIIb-47 Admin.(G) dated 7th October 1978, the Superintendent was asking for the details regarding the case number or sections along with quantum of sentences to be incorporated in the release order. It has also been submitted that the U.P. State Jail Manual, Para 99 also requires the Superintendent not to release any prisoner unless such a release order contains full particulars with regard to a prisoner to be released and had been sent by the court as far as possible through court peon after having been duly entered in the peon book. Not only that, the above paragraph of the Jail Manual further required him to act with care only after having wholly scrutinised that the release order was bearing the genuine seal of the

court and signature of the Presiding Officer and in case of doubt, he was required to make a reference to the court concerned before carrying out the order in respect of release of a prisoner. As illustration in support of the above contention some documents have been annexed to the affidavit which appear at pages 37, 42, 51, 66, etc. of the affidavit.

4. We have considered the two standing orders, one in the form of circular orders issued by this Court on 7th October 1978 which appears at page 11 of the present affidavit and the other appearing at page 10 which is para 99 of the Jail Manual. Para 99 of the Jail Manual requires full particulars in respect of the prisoner to be put down in the release order and nothing further is required by that particular paragraph except to be assured about the genuine signature of the Presiding Judge or the Presiding Officer of the court as well as about the seal of the court.

5. So far as circular letter of the court dated 7th October 1978 is concerned it states that the order for release should generally contain the case number, name of police station, father's name and residential address of the prisoner. It further requires that the description of the offence with crime number and section may also be put down in the release order as should be the case also while issuing the warrant of intermediary custody.

6. We further find that the Court has also issued certain circular letters in respect of forged release order which might have been received by certain subordinate courts purporting to be issued either by

the High Court or the Supreme Court and those circular letters are bearing no. 124 dated 24th October 1979 and circular letter no.73 dated 18th November 1982. But in none of these circular orders there is any mention of the fact that the section under which a particular accused has been found guilty and sentenced, must also be mentioned along with the quantum of fine as was required by the Superintendent, Central Jail, Varanasi to be incorporated in different release orders issued by various courts by his letters which we have just referred to as appearing as annexures at page 51 and onwards.

7. In the above connection we have consulted the drafts of Form Nos. 45 and 46 as provided in schedule 2 of the Code of Criminal Procedure. We find that for all purposes Form No. 45 is the prescribed form under which any custody has to be authorised to any officer of the Jail either during investigation or after conclusion of the trial. It is not elaborately stated in that particular Form but mention of some of the provision of the Cr.P.C as a reference provision, just below the heading of the form, makes a reference clearly to the furnishing of bail bonds under section 441 of the Cr.P.C. and the release order which is contained in Form no. 46, refers to section 442 of the Cr.P.C.

8. It is true that the warrant of authorising the detention of a prisoner does require the name of the court alongwith the charge or the offences under which the accused was charged or had, in the alternative, been found guilty to be incorporated. But, in the release order there is no such

requirement to be complied with. However, because in the authorisation order, i.e., the custody warrant, be it pre-trial or post-trial in the form of the post conviction custody warrant, the offences under which a particular accused could have been convicted, are incorporated we suppose and presume that same should be incorporated generally in the release orders also.

9. But the question is, should these details be furnished by a prisoner who is serving out the sentence on account of the finality of trial or should these informations come from the office of the court which has authorised the detention of such a prisoner after conclusion of trial and which has subsequently issued the release order.

10. In our opinion, asking a convicted person who is in prison, to put down these details in the release order which is to be issued by the Court, could be too much to expect from him. As soon as the court is required by Form no. 45 to put down the details of conviction of a particular person for any particular offence, then the duty lies with that particular court, in all eventualities to furnish those details also in the release order. However, that duty which is cast upon the court which has authorised the detention of a convicted person to any authority of a jail, does not require it to incorporate the quantum of sentence either substantive or by way of fine in release orders issued by it after accepting the bonds. The court is simply required to mention the offences under which the custody of the accused had been authorised through the custody warrant.

11. If we were to accept the contention of the Superintendent, Central Jail, Shivpur, Varanasi that the release order was required to be amended by incorporating the quantum of sentence along with the provisions under which the sentences had been passed, then we could be simply adding up something which is not incorporated in the Court's circular orders, we have just referred to. Thus, what we find is that the Superintendent, Central Jail is asking us to modify the circular order dated 7th October 1978, 24th October 1979 and 18th November 1982.

12. No external agency should call upon this Court, in any view of the matter, to amend its circular orders. It is out and out the concern of this Court to do so and this Court does anything only to ensure transparency as also to create simple procedures so that furnishing of information is not utilised as an impediment in restoring liberties to a person who has been duly authorised to be detained under the orders of a court. We, as such, do not find ourselves persuaded to accept that particular part of the contention that the release orders were defective in as much as those orders were not containing the sections of penal law or quantum of sentence with which a particular convict had been sentenced. We reject that contention of the Superintendent. However, considering that the appellant has been released and considering also that we have passed this order after considering all the materials, circular letters or provisions of the Jail Manual, we deem it not to proceed further in the matter and to drop the proceedings by discharging the Superintendent, Central Jail, Shivpur, Varanasi from the

rule.

13. We, however, wish to point out to the officers of the judiciary who man the trial courts that they have always to abide by the circular letters or executive orders of the court, but the obligation of abiding by those circular letters could never be passed on to pairokar of a prisoner who is in prison or the prisoner himself if it is not expressly or impliedly required to be done. If the custody warrant requires incorporation of certain details as we have pointed out by referring to Form no. 45, then the necessary logical corollary is that the release order must also contain those very details for reference and proper identification purposes when being sent to the Jail Superintendent. The bail bonds filed by the prisoners may not be containing those details, but that does not absolve the office of the subordinate courts to put those details in the release order.

14. We, as such, direct henceforth, all the courts of the State which are issuing the release orders or which are likely to issue release orders that they must incorporate all details as per circular letter no.114 dated 7th October 1978, circular letter no. 124 dated 24th October 1979 and circular letter no. 73 dated 18th November 1982 in all relevant cases of those classes as are detailed in those circular letters so that no hardship is faced by the prisoner or their pairokars.

15. We close the proceedings which we had initiated by issuing notice to show cause and we require that the present order be circulated by the Court amongst all subordinate courts for necessary guidance.

16. Before parting we would also like to express our anguish over the disturbing fact coming to our notice through correction applications which are being filed in this Court that some subordinate courts are insisting the paikars of prisoners to get full description of offences, crime number and Section of Indian Penal code and other Acts incorporated in the bail orders which are being passed by this Court in spite of there being a Case No. or S.T. No. of the trial court mentioned in them for proper reference and identification. They are refusing to accept the bail bonds on this pretext which are being tendered to them and such insistence in turn is compelling those prisoners to move correction applications before this Court for making correction in its bail orders which is not only increasing an unnecessary work load upon this Court but also adding miseries to the suffering of those prisoners. If there is sufficient reference of the concerned case or S.T. Number in which Bail is being granted by this Court any insistence on the part of courts below for getting other details also incorporated in the bail order cannot be held to be justified. From the reference of the Case/ ST number other details can be ascertained by the subordinate courts from their own record which normally remains available with them and in case any uncertainty still exists in the mind of any Presiding Officer he may ask for any other information to be furnished by the applicant instead of rejecting his application for want of those details in the bail order of this Court and forcing him to get the same corrected. Such a misdemeanour may be dealt with seriously by this Court. However,

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it is once again made clear that release orders whenever being issued must contain all relevant details.

Order Date :- 12.9.2012
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