



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Case Comment: State of Haryana vs Dinesh Kumar

Mukul Vats^a

^aDelhi University, Delhi, India

Received 18 November 2021; *Accepted* 06 December 2021; *Published* 09 December 2021

INTRODUCTION

The case *State of Haryana v. Dinesh Kumar*¹ is one of the landmark cases, where the Supreme Court provided more clarity about what constitutes arrest and custody. A person is in custody when the police arrest him, bring him before a Magistrate, and remand him to judicial or other custody. When he surrenders before the court and follows its directions, he is said to be in judicial custody.² In this instance, the High Court erred in concluding that the accused had never been arrested because he had voluntarily appeared before the magistrate and been immediately given bail.

FACTS

Two appeals had the same issue but were judged differently by two coordinate benches of the same High Court, resulting in a legal question of great public interest. The question is what, in the context of criminal proceedings, constitutes arrest and custody. There were applications (by Dinesh Kumar and Lalit Kumar) for the post of Constable Drivers with the Haryana Police

¹ *State of Haryana v Dinesh Kumar* (2008) 3 SCC 222

² *Ibid*

Department and the application form included these two questions: (1) Have you ever been arrested? (2) Have you ever been convicted of a crime in a court of law? During the verification of the candidates' character and antecedents, it was discovered that certain candidates had not appropriately provided these details for the post in question. As a result, no appointment was offered to these candidates. These candidates then objected to their appointment being rejected.

CANDIDATES' CONTENTIONS

The candidate stated in the first petition (by Dinesh Kumar) that he had not surrendered to the police but had voluntarily appeared before the Magistrate with his lawyer and pleaded for bail, after which he was immediately released on bail. So, according to his understanding, he was never taken into custody or arrested. In the second petition (by Lalit Kumar and Bhupinder), the candidates claimed that they had gone before the magistrate and were released on bail bonds without being detained or jailed. The key argument is that because they were never apprehended and the case against them was discharged, it must be considered that no case had ever been lodged against them, and thus they had not hidden any information by replying no to the questions above.³

STATE'S CONTENTIONS

The candidates knowingly lied from the selection committee and failed to appropriately fill out the information on the application form for the position in question. The candidates must be considered to have submitted to the custody of the court when they appeared before the magistrates and sought bail. The fact that the accused candidates willingly appeared before the Magistrate and sought bail constituted an arrest of their movements because they were then constrained to the court and no longer had the right to leave the judicial complex of their own volition.

³ *Ibid*

HIGH COURT'S DECISION

In the first petition, a High Court bench found that because he was absolved of the criminal case in the issue, he had truthfully answered the question, claiming that he had never been found guilty of a crime by any court and that he was never arrested before getting bail. In the second instance, a separate bench of the same High Court reached a different conclusion, concluding that the candidates' refusal to disclose vital information disqualified them from being appointed since it demonstrated that they could not be believed to carry out their duties truthfully.⁴

LEGAL ISSUES

(1) Is it possible that they were arrested for the investigation the moment they came before the Judge and were freed without being placed in formal custody?

(2) Whether a person's mere detention by an authority with the power to arrest that person constitutes an arrest, and whether the words arrest and custody are interchangeable?

SUPREME COURT'S OBSERVATIONS

In the first petition, a high court bench concluded that the accused could not be considered arrested because he had not surrendered or been taken to jail. But in the other petition, a distinct bench of the same high court determined that they withheld crucial information regarding their criminal proceedings, even if they were ultimately acquitted, and thus were not qualified for the appointment, regardless of whether they were arrested or not.⁵ To settle the issue, it will be important to study the concept of arrest and custody in the context of a criminal case. Many High Courts have questioned the definition of what constitutes arrest and detention. The Criminal Procedure Code, the Indian Penal Code, and any other law dealing

⁴ *Ibid*

⁵ *Ibid*

with criminal offences do not define the term "arrest." The only indication of what constitutes an arrest may be found in sections 46(1)⁶ and (2)⁷ of the law.

Section 46(1) and (2) state clearly that to make an arrest, the Police Officer or other person conducting the arrest must touch or restrict the person to be arrested.⁸ When the term "arrest" is used in its most basic sense, it refers to the legal restriction of a person's mobility. If a person's liberty to go where he wants has been taken away, he is considered to be under arrest. In the legal sense, an arrest is when a law enforcement officer takes another person into custody to hold or detain him to answer a criminal charge or prevent the commission of a criminal offence. While the accused's appearance before the magistrate may represent submission to judicial custody, no attempt to restrict the accused's movements had been made, leading him to believe he had never been arrested. The candidates' claim on the application form that they had never been arrested in connection with any criminal offence was based on a layperson's understanding of the concepts of arrest and custody

They backed up their claim by a Decisions Taken by the Madras High Court in the case of Roshan Beevi vs the Government of Tamil Nadu⁹ (1984). The court, in this case,¹⁰ decided that summoning someone during a customs investigation did not constitute an arrest under Article 22(2) of the Indian Constitution.¹¹ The Full Bench concluded that a person who is taken into custody by a Customs officer for inquiry, interrogation, or investigation is not presumed to have been arrested from the moment he is taken into custody.¹² The Supreme Court disapproved of the Madras High Court's Full Bench's decision, noting that it was made under Sections 107¹³ and 108¹⁴ of the Customs Act, 1962. These rules allow a customs officer to summon someone to appear in front of him and produce or deliver papers that are relevant to the investigation. The Madras High Court's Full Bench ruled in this case that custody and

⁶ Criminal Procedure Code 1973, s 46(1)

⁷ Criminal Procedure Code 1973, s 46(2)

⁸ *Ibid*

⁹ *Roshan Beevi v Government of Tamil Nadu* 1981 Mad LW (Cri) 158

¹⁰ *Ibid*

¹¹ Constitution of India, art 22(2)

¹² *Ibid*

¹³ Customs Act 1962, s 107

¹⁴ Customs Act 1962, s 108

arrest are not the same things and that while there is custody with every arrest, the opposite is not true. Custody can sometimes lead to arrest, but this is not always the case.¹⁵

The situation is different in terms of judicial proceedings relating to probes under the IPC and other criminal statutes. Before being granted bail in the latter category, an accused must surrender to the custody of the court or police authorities. The Court upheld the decision in *Niranjan Singh vs Prabhakar*¹⁶ (1980), which defined the concept of arrest and custody correctly. According to Section 439 of the Criminal Procedure Code, when is a person in custody? The Court points out that when he is under duress, it is either because he is being held by the investigative agency or allied authority, or because he is under the supervision of the court after being remanded by judicial order.¹⁷ To come to the reasonable conclusion that he who is under the control of the court or is in the bodily custody of an officer with coercive power is in custody for Section 439¹⁸, no lexical dexterity or precedent profusion is required. This word has a wide range of meanings, but its primary meaning is that the law has gained control of the individual.¹⁹

In the context of Section 439, custody means actual control or at the very least physical presence of the accused in court, as well as compliance to the court's authority and orders. He can be held in custody not just when the police arrest him, take him to court, and remand him to judicial or other custody. When he surrenders to the court and complies with its orders, he is said to be under judicial custody. When a person who is not in custody approaches a police officer and provides information that leads to the discovery of a fact that could be used against him, he is considered to have surrendered to the investigating agency's authority.²⁰

¹⁵ *Ibid*

¹⁶ *Niranjan Singh v Prabhakar* 1980 SCR (3)

¹⁷ *Ibid*

¹⁸ Criminal Procedure Code 1973, s 439

¹⁹ *Ibid*

²⁰ *Ibid*

DECISION

It is undeniably true that the accused persons in the instant case appeared before the concerned Magistrates with their attorneys and applied for bail without being taken into formal custody, which appears to have swayed one of the Punjab and Haryana High Court benches to take a liberal view and hold that no arrest had occurred. The aforementioned viewpoint is wrong since it contradicts Sections 46²¹ and 439 of the Code. When the issue of what constitutes an arrest has attracted the attention of various high courts, including this court, it is not unreasonable to expect a layperson to believe that he was never arrested when he appeared in court and was immediately given bail. If the person in question had not been freed on bond, the situation would have been very different. We would give the candidates the benefit of the doubt in these circumstances. The candidates will be considered appointed, but only from the date of this judgement onwards will they be paid.²²

ANALYSIS

In this case, the Supreme Court ruled that unless a person charged with a crime is in custody, he cannot apply for bail under Section 439 of the Criminal Procedure Code, which enables any person accused of a crime who is in jail awaiting trial to be granted bail. Before a person who is accused can seek bail, he must first be in detention and have his movements restricted. When a person surrenders to the court and complies with its orders, he is said to be in judicial custody. This rule is being followed in India since then. Therefore, the interpretation of the provisions arrest and custody are more clearly understood now.

CONCLUSION

Therefore, someone who is in the custody of the Court or the physical custody of an official is in custody under Section 439. The term 'custody' has several connotations, but the most common one is that the law has taken control of the individual. According to Section 439, custody requires the accused's control or, at the very least, physical presence in the courtroom,

²¹ Criminal Procedure Code 1973, s 46

²² *Ibid*

as well as compliance with the court's authority and directives. So, the case clarifies the doubt between what constitutes arrest and custody and what doesn't.