

**Mohan Kumar @ Double Meter Mohan Vs. State By**

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**Court :** Karnataka

**Decided On :** Oct-31-2018

**Judge :** P.S.Dinesh Kumar

**Appeal No. :** WP 36563/2018

**Appellant :** Mohan Kumar @ Double Meter Mohan

**Respondent :** State By

**Judgement :**

1 WP.NO.36563/2018 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE31T DAY OF OCTOBER, 2018 BEFORE THE HONBLE MR. JUSTICE P.S. DINESH KUMAR WRIT PETITION NO.36563 OF2018(GM-RES)

BETWEEN :

1. MOHAN KUMAR @ DOUBLE METER MOHAN S/O LATE VENKATESH MURTHY AGED ABOUT30YEARS R/O KUTTI COLONY MAHIM HOUSE ROAD NEAR GANESH COLONY SIDDAPUR BANGALORE560066 2.

3. NAGARAJU @ WILSON GARDEN NAGA S/O JAIRAJ AGED ABOUT30YEARS R/AT NO.165, 1ST MAIN4H CROSS, VINAYAK NAGAR WILSON GARDEN BANGALORE560027 SUNIL KUMAR @ SILENT SUNIL S/O KRISHNAPPA AGED ABOUT36YEARS R/AT NO.S-4, FORTUNE ICON APARTMENT JODIDAR ASHWATHAPPA FARM SAHAKAR NAGAR

BANGALORE560092 PETITIONERS (BY SHRI ANEES ALI KHAN, ADVOCATE)

AND:

2 WP.NO.36563/2018 STATE BY YELAHANKA POLICE STATION BANGALORE560064 REPRESENTED BY THE STATE PUBLIC PROSECUTOR HIGH COURT OF KARNATAKA HIGH COURT BUILDINGS BANGALORE560001 (BY SHRI S. RACHAIAH, HCGP) RESPONDENT THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF CONSTITUTION OF INDIA READ WITH SECTION482OF CR.P.C., PRAYING TO QUASH THE ORDER DATED1205.2017 LEARNED CITY CIVIL AND SESSIONS IN CRIME NO.58/2017 (SPL.C.C.NO.414/2017) OF YELAHANKA P.S., VIDE ANNEXURE F AND ETC., (CCH-1) AT BENGALURU PASSED BY THE JUDGE THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

"ORDER This petition is filed by accused No.1, 2 and 12 in FIR No.58/2017 registered in Yelahanka Police Station challenging the order dated 12.05.2017 passed by the learned Sessions Judge, rejecting their application (I.A. No.3) to enlarge them on bail under section 167(2) Cr.P.C. 3 WP.NO.36563/2018 2. Heard Shri Anees Ali Khan, learned advocate for the petitioners and Shri S. Rachaiah, learned HCGP for the State.

3. Brief facts of the case are, on 20.02.2017, FIR No.58/2017 was registered in Yelahanka Police Station against nine persons for offences punishable under sections 399 & 402 of IPC; and sections 27 & 30 of Arms Act, 1959.

... Petitioner

s No.1 and 2 were arrested and produced before the Court on 20.02.2017 and petitioner No.3 was produced on 01.03.2017. They were remanded to police custody by the jurisdictional Magistrate. After investigation, police filed the charge sheet on 10.05.2017. Subsequently, on 02.08.2017, the Commissioner of Police, Bengaluru has accorded approval to invoke the provisions of the Karnataka Control of Organized Crime Act, 2000 (KCOCA for short).

4. A batch of five applications were filed by the accused in the crime to enlarge them on bail under section 167(2) Cr.P.C.

... Petitioner

s application was registered as 4 WP.NO.36563/2018 I.A.No.3. All applications have been disposed of by the learned Sessions Judge by the common impugned order.

5. Shri. Anees Ali, learned Advocate for the petitioners urged that charge sheet was not filed by the police within 60 days from the date of remand. Therefore, petitioners are entitled for grant of bail under section 167(2) Cr.P.C.

6. He placed reliance on the decisions in the case of State of Maharashtra v. Mrs. Bharati Chandmal Varma alias Ayesha Khan<sup>1</sup> and Achpal v. State of Rajasthan<sup>2</sup>.

7. Learned HCGP, in his usual fairness, submits that the charge sheet has been filed after expiry of 60 days.

8. I have carefully considered the submissions of learned advocates and perused the records. 1 AIR 2002 SUPREME COURT 2852 2018 SCC OnLine SC16385 WP.NO.36563/2018 9. Indubitably, as on the date of filing of the charge sheet on 10.05.2017, petitioners No.1 and 2 had remained in custody for 77 days and petitioner No.3 had remained in custody for 69 days. On the expiry of 60 days reckoned from the date of arrest, there were no papers or charge sheet before the learned Magistrate in terms of Section 173 Cr.P.C. to assess the situation whether on merits the accused were required to be remanded to further custody.

10. The Supreme Court of India in Achpal (supra)<sup>2</sup>, extracting a passage therefrom, has recorded that principles laid down in Uday Mohanlal Acharya v. State of Maharashtra<sup>3</sup> have been consistently followed. The relevant paragraphs read as follows:

11. The law on the point as to the rights of an accused who is in custody pending investigation and where the investigation is not completed within the period prescribed under Section 167(2) of the Code, is crystallized in the judgment of this Court in Uday Mohanlal Acharya v. State of Maharashtra. This case took into

account the decision of this Court in Hitendra 3 (2001) 5 SCC4536 WP.NO.36563/2018 Vishnu Thakur v. State of Maharashtra, Sanjay Dutt v. State through C.B.I., Bombay (II) and Bipin Shantilal Panchal v. State of Gujarat Justice Pattanaik (as the learned Chief Justice then was) speaking for the majority recorded conclusions in para 13 of his judgment. For the present purposes, we may extract conclusions 3 and 4 as under:

3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated. 7 WP.NO.36563/2018 .

12. The principles laid down in Uday Mohanlal Acharya (supra) have been consistently followed by this Court namely in State of W.B. v. Dinesh Dalmia; Sanjay Kumar Kedia v. Intelligence Officer, Narcotics Control Bureau; Union of India v. Nirala Yadav<sup>7</sup> and in Ranbeer Shokeen v. State (NCT of Delhi). It must therefore be taken to be well settled that in terms of 3rd conclusion as recorded in Uday Mohanlal Acharya (supra), on the expiry of the period stipulated, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the

investigation within the period stipulated and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate. (emphasis supplied) 11. The learned trial Judge has dismissed I.A.No.3 on the premise that the provisions of KCOCA were invoked and the police had 90 days time to file the charge sheet. Therefore, the provisions of Section 167(2) Cr.P.C, are not applicable to the facts of the Case.

12. Records disclose that the Commissioner of Police, Bengaluru, has accorded approval to invoke the 8 WP.NO.36563/2018 provisions of KCOCA on 2.8.2017. Hence, it is indisputable that on the expiry of 60th day, the learned Magistrate did not have any papers or charge sheet before him.

13. In Achpal (supra)2, following Rakesh Kumar Paul v. State of Assam4, the Supreme Court of India has held that there would be no prohibition for arrest or re-arrest of the accused on cogent grounds and in such an eventuality, accused would be entitled to apply for regular bail.

14. Following the authority in Achpal (supra)2, I am of the view that, the petitioners are entitled for grant of bail under Section 167(2) of Cr.P.C.

15. Resultantly, this petition merits consideration and hence, the following order: Petition is allowed; (i) (ii) Order dated 12.5.2017 passed in FIR No.58/2017 (Spl.C.C.No.414/2017) on the file 4 (2017) 15 SCC679 WP.NO.36563/2018 of City Civil and Sessions Judge (CCH-1), Bengaluru, is set aside; (iii) Application, I.A.No.3 filed by the petitioners is allowed and petitioners shall be released on bail on the following conditions, if not required in any other case: (a)

... Petitioner

s shall be released on bail in FIR No.58/2017 registered in Yelahanka Police Station, upon their executing self bonds for a sum of Rs.1,00,000/- each with two sureties for the likesum to the satisfaction of the jurisdictional Court; (b)

... Petitioner

s shall not tamper with the prosecution witnesses; (c)

... Petitioner

s shall not directly or indirectly make any inducement, threat or promise to prosecution witness or any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court or investigating officer; (d)

... Petitioner

s shall not involve themselves in any criminal activities; and (e) If the petitioners violate any one of the conditions, the prosecution shall be at liberty to seek cancellation of bail. It is made clear that, this order would not prohibit or otherwise prevent the arrest or re-arrest of the petitioners 10 WP.NO.36563/2018 on cogent grounds and in such an eventuality, petitioners shall be entitled to apply for regular bail. No costs. AV Sd/- JUDGE

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