

Babul Yadav Vs. the State of Bihar

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Court : Patna

Decided On : Feb-17-1999

Judge : M.Y. Eqbal, J.

Appeal No. : Criminal Revision No. 804 of 1998

Appellant : Babul Yadav

Respondent : The State of Bihar

Disposition : Application Allowed

Judgement :

M.Y. Eqbal, J.

1. In this application, the petitioner has originally prayed for grant of regular bail in connection with Dinara P.S. case No. 102 of 1998 under Sections 147, 148, 149 and 302 of the Indian Penal Code and Section 27 of the Arms Act. However, by order dated 13.11.1998 this Court permitted the petitioner to convert the bail application into Cr. Revision as the petitioner intended to challenge the order dated 8.10.1998 passed by the Sub-divisional Judicial Magistrate, Bikramgnaj in Case No. 102 of 1998 whereby he refused to release the petitioner on bail under the provision of Section 167(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code').

2. The prosecution case, in brief, is that on 4.7.1998 the informant saw 8 to 10 persons coming with fire-arms and one of them fired at his father who fell down. It is alleged that the culprits came near him who concealed his face and told him that he is Pandit and fled away. The informant alleged to have identified the accused persons in the light of moon and torch-light. The petitioner surrendered in the Court of the Sub-divisional Judicial Magistrate on 9.7.1998 and he was remanded to custody. He remained in custody till 7.10.1998 which was the 90th day and an application for bail was filed on his behalf. The application for bail was moved on 8.10.1998 for his release on bail under Section 167(2) of the Code on the ground that till 7.10.1998 no charge-sheet was submitted by the police. The Sub-divisional Judicial Magistrate, however, rejected the prayer of the petitioner for bail on the ground that on 8.10.1998 i.e. on 91 days when the petitioner was moved charge-sheet was submitted and hence, the petitioner was not entitled to be released on bail under Section 167(2) of the Code.

3. Mr. P.N. Pandey, learned Senior Advocate appearing for the petitioner assailed the impugned order passed by the Sub-divisional Judicial Magistrate as being illegal and wholly without jurisdiction. Learned Counsel submitted that on the 90th day when the prosecution failed to submit charge-sheet, the petitioner filed an application showing his readiness to furnish bail bond to the concerned Court and, therefore, on the expiry of 90th day, i.e. 7.10.1998 the petitioner become entitled to be released on bail. Learned Counsel further submitted that when the petitioner was ready and willing to furnish bail bond on the 90th day, the right of the accused cannot be defeated on the ground that charge-sheet was submitted beyond the period of 90 days. In this connection, learned Counsel for the petitioner relied upon a decision of Supreme Court in the case of Mohammed Iqbal Madar Sheikh and Ors. v. State of Maharashtra : [1996]1SCR183 . On the other hand, learned Additional Public Prosecutor, although not disputed the fact that the charge-sheet was submitted after 90th day, has contended that after the submission of charge-sheet, the accused is not entitled to get benefit of Section 167(2) of the Code.

4. From bare reading of the proviso to Sub-section (2) of Section 167 of the Code, it is manifest that the proviso casts a mandate on the ground to release the accused on bail on the expiry of 90 days where the investigation relates to an

offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. If the charge-sheet is not submitted within the said period it is well settled that the right to bail under Section 167(2) of the Code is absolute and, in fact, the Magistrate has no power to remand the accused person beyond the stipulated period of 90/60 days. In the instant case, question falls for consideration is whether after the expiry of 90 days the petitioner is entitled to be released on bail if the charge-sheet is submitted by the police after 90th day. Exactly, a similar question arose in the case of Rajnikant Jivianlal and Anr. v. Intelligence Officer : 1990 CriLJ62 . The fact of that case was that on 23rd March, 1988, the petitioners were arrested by the officers of the Narcotic Control Bureau, Bombay and on 29th March, 1988 they were remanded to jail custody till 12th April, 1988 and remand order was subsequently renewed from time to time. On 20th May, 1988 the petitioners moved the Chief Metropolitan Magistrate for bail. When that petition was pending consideration, the prosecution submitted charge-sheet on 23.6.1988 and the petitioners filed application for bail on 22nd July, 1988 under Section 167(2) of the Code on the ground that the charge-sheet was filed after expiry of 90 days. The Magistrate enlarged the petitioners on bail under the provision of Section 167(2) of the Code. As the efforts of the prosecution to have the bail cancelled could not succeed before the learned Magistrate, they moved the Delhi High Court under Section 439(2) and Section 482 of the Code. In that application nature of the offence committed, the part played by the accused and gravity of the offence, etc. were all set up. The Delhi High Court cancelled the bail of the petitioners by passing the following order:

In the present cases, no doubt an order was passed granting bail because the charge-sheet was not filed within the statutory period of 90 days but it was filed on 92 days. There is no doubt that the charge against the respondents is very serious in nature because they are alleged to have entered into a conspiracy to export heroin out of India. The minimum punishment prescribed in such offence is a sentence of 10 years rigorous imprisonment, and a fine of Rs. 1 lakh. I am, therefore, of the view that the authority referred above is fully applicable to the facts of the present case. Respondents are further alleged to have procured services of one H.S. Gala and a lady carrier Manjula Ben who carried 3 KG. heroin from India to USA in November, 1987. Therefore, it was on the basis of the

statements made by those persons in the USA that the respondents were arrested in India.

I am, therefore, of the view that it is a fit case where order of bail should be cancelled.

5. The petitioners moved the Supreme Court assailing the discretion exercised by the High Court in cancelling the bail of the petitioners. Apex Court held as under:

An order for release on bail under proviso (a) to Section 167(2) may appropriately be termed as an order-on-default. Indeed, it is a release on bail on the default of the prosecution in filing charge-sheet within the prescribed period. The right to bail under Section 167(2) proviso (a) thereto is absolute. It is a legislative command and not Court's discretion. If the Investigating Agency fails to file charge-sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. But at that stage, merits of the the case are not to be examined. Not at all. In fact, the Magistrate has no power to remand a person beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds.

6. However, the Hon'ble Supreme Court after examining the materials on record and taking into consideration the offence alleged are so serious in nature declined to interfere with the order of the High Court.

7. Recently in the case of Mohammed Iqbal Madar Sheikh v. State of Maharashtra (supra), Apex Court has observed as follows:

It was then submitted that in the present case, the appellants have been denied the benefit of proviso (a) to Section 167(2) of the Code of Criminal Procedure (hereinafter referred to as the 'Code') of their being released on ground of default in submission of the charge-sheet within the statutory period specified. Sub-section (4) of Section 20 of TADA makes the proviso of Section 167 of the Code applicable in respect of offences under TADA except that the periods prescribed for the authorised detention in respect of such offence during which the investigation should be completed are different. After the expiry of periods, which

have been specified in Section 20(4)(b) and Section 20(4)(bb), the accused for an offence under TADA requires the right to be released on bail in terms of proviso (a) of Section 167(2) of the Code. It need not be pointed out or impressed that in view of series of judgment of this Court, this right cannot be deceased by any Court, if the accused concerned in prepared and does furnish bail bonds to the satisfaction of the Court concerned. Any accused released on bail under proviso (a) to Section 167(2) of the Code read with Section 20(4)(b) or Section 20(4)(bb), because of the default on the part of the Investigating Agency to conclude the investigation, within the period prescribed, in view of proviso (a) to Section 167(2) itself, shall be deemed to have been so released under the provision of Chapter XXXIII of the Code. It cannot be held that an accused charged of any offence, including offences under TADA, if released on bail because of the default in completion of the investigation, then no sooner the charge-sheet is filed, the order granting bail to such accused is to be cancelled. The bail of such accused who has been released because of the default on the part of the Investigating Officer to complete the investigation, can be cancelled, but not only on the ground that after the release, charge-sheet has been submitted against such accused for an offence under TADA.

8. Having regard to the principles laid down by the Supreme Court, it is, therefore, clear that the petitioner was entitled to be released on bail on expiry of the statutory period of default of the concerned investigating agency in the submission of charge-sheet. Learned Magistrate could not have rejected the bail petition on the ground that the charge-sheet was submitted after expiry of 90 days and pending hearing of the bail petition. The prosecution, however, is not debarred from making any action for cancellation of bail on the settled principle of law with regard to the cancellation of bail.

9. Having regard to the discussions made above, this application is allowed and the impugned order of the Sub-divisional Judicial Magistrate, Bikramgunj, passed in Case No. 102/98 is hereby set aside. The petitioner is, therefore, entitled to be released on bail 167(2) under Section of the Code on furnishing such security as may be ordered by the learned Sub-divisional Judicial Magistrate, Bikramganj.

