

M.P. Ramesh and Others Vs. State of Karnataka

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Court : Karnataka

Decided On : Jul-16-1990

Reported in : 1991CriLJ1298; ILR1990KAR3846

Judge : K.B. Navadgi, J.

Appeal No. : Criminal Petition No. 278 of 1990

Appellant : M.P. Ramesh and Others

Respondent : State of Karnataka

Advocate for Def. : K.H.N. Kuranga, State Public Prosecutor

Advocate for Pet/Ap. : B. Kumar for Sri Tomy Sebastian, Adv.

Judgement :

ORDER

1. This is a petition for bail. The Respondent-State, on being noticed of the petition opposing the grant of prayer, has filed a detailed statement of objections. It has also filed supplement by way of additional statement of objections.
2. The record is perused. The matter is heard.
3. The facts :

M. P. Ramesh (petitioner No. 1), M. S. Prakash (petitioner No. 2), and Yogesha (petitioner No. 3) are arraigned as accused Nos. 1, 2 and 3 respectively in two cases registered in Crimes Nos. 893/89 and 894/89 in the Police Station at Upparpet, Bangalore City, for the offences punishable under sections 143, 147, 148, 149, 427 and 307 read with S. 149 of the Indian Penal Code and Sections 3, 4 and 5 of the Explosive Substances Act, 1908.

Petitioner No. 1 is the younger brother of one M. P. Jayaraj, arraigned as accused No. 17 in the cases. Petitioners Nos. 2 and 3 are full brothers. They are the sons of the sister of the said M. P. Jayaraj.

There is a recreation club called 'Padma Recreation Club', run by one B. C. Chinnappa. It is located in the First Floor of the Building bearing No. 130/1, Srinivasa Mandir Road, Balepet, Bangalore. In the Ground Floor of the said building, there is a shop called 'Meena Trading Company', dealing in suit-cases. There are in all 8 shops in the said building. The building is surrounded by number of shopping premises and lodgings. It is situated just opposite to the building in which the jurisdictional Police Station is housed.

About a fortnight prior to 18-9-1989, persons arraigned as A-12 to A-14, visited the Padma Recreation Club and demanded from B. C. Chinnappa, the owner, Mamul. B. C. Chinnappa refused to oblige A-12 to A-14. A-12 to A-14 left the Club stating that they were demanding the Mamul at the behest of M. P. Jayaraj, accused No. 17, who was then in Judicial Custody; that collection of Mamul was done earlier also at the instance of M. P. Jayaraj and that one Narayanappa, the former owner of the club was acceding to the demand for Mamul.

On 18-9-1989 at about 6 p.m., it is the case of the prosecution, that persons arraigned as A-4 to A-8 in the cases, proceeded to the Bar and Restaurant called 'Bhavani Bar and Restaurant' housed in the building in which the Padma Recreation Club and the Meena Trading Company are housed enjoyed drinking bouts, took food and went away without paying the bills. According to the prosecution, on the same day at about 6-40 p.m., the petitioners went to Padma Recreation Club to extract money. B. C. Chinnappa was present there. Petitioners Nos. 1 to 3 enquired with the Watchman of the Club as to where one Naveen

Kumar had gone. As a matter of fact, there was no person with the name Naveen Kumar working in the Club. Petitioners Nos. 1 to 3 thereafter joined persons arraigned as A-4 to A-8, who were present in Bhavani Bar and Restaurant, taking drinks. The fact of petitioners Nos. 1 to 3 having joined A-4 to A-8 when A-4 to A-8 were in the Bhavani Bar is spoken to by Veeraiah and Nagaraj, the Suppliers. It was Nagaraj who actually supplied liquor and food to the petitioners and A-4 to A-8.

At about 7-20 p.m., the petitioners and their companions, arraigned as A-4 to A-8 and A-12 to A-14, went near the Meena Trading Company and threw country made hand bombs into the kitchen area of the Padma Recreation Club. They also threw country made hand bombs towards the Meena Trading Company. Of the four country-made hand bombs so thrown, three exploded and one which, had been thrown into the Padma Recreation Club, did not explode. A cloud of smoke emitted from the premises of Padma Recreation Club and Meena Trading Company as a result of the explosion of the three of the four country-made made hand bombs thrown by the petitioners and their companions. The inmates of the Padma Recreation Club and Meena Trading Company and the members of the public became scared and started running helter-skelter. The shops in the vicinity and proximity of that Padma Recreation Club and Meena Trading Company were closed. The traffic came to a dead halt. The members of the public present in the vicinity started running in a bid to save their lives.

Petitioners Nos. 1 to 3 and accused Nos. 4 to 8 and 12 to 14 immediately after the occurrence ran from the spot in different directions. Accused Nos. 12 to 14 went on a motor-cycle bearing Registration No. CTO 805 towards the Tank Bund Road. Nagaraja (C.S.W.-6), the Supplier in the Bhavani Bar; Sridhar (C.S.W.-4), the Watchman of the Padma Recreation Club; Nagaraja (C.S.W-11), the Sub-Inspector of Police (Traffic), Upparpet Police Station; Puttaswamy (C.S.W-12), the Head Constable; Padmaraja (C.S.W-8), the Owner of Padma Xerox Shop; Subbaraya (C.S.W-5), the Supplier in Padma Recreation Club; and Mohan (C.S.W-3), the Supervisor of Padma Recreation Club saw accused Nos. 12 to 14 proceeding towards the Tank Bund Road on a motor cycle. They have spoken to this fact in their statements recorded by the Police.

The statements of M. P. Nagaraja (C.S.W-13), a Police Constable; Ganganna (C.S.W.-14), another Police Constable; Sridhar; (C.S.W-4); Subbaraya (C.S.W-5); Padmaraja (C.S.W.-8); and Nagaraja (C.S.W-6) show that they saw the petitioners and A-4 to A-8 and A-12 to A-14 having run away in different directions after the explosion of the bombs thrown by them.

Soon after the occurrence, Sudarshana, the Partner of Meena Trading Company, went to Upparpet Police Station and there lodged his complaint with regard to the occurrence in his shop. On the strength of the complaint of Sudarshana, a case came to be registered in No. 893/89 for the offences punishable under section 3 and 4 of the Act and S. 427 read with S. 34 of the Indian Penal Code. The case was registered at 7-40 p.m.

B. T. Raju, the Receptionist of the Padma Recreation Club, went to the Police Station and lodged his written complaint in respect of the occurrence that happened in his club. It was on the basis of this complaint filed by B. T. Raju that a case was registered in Crime No. 894/89 for the offences punishable for which Crime No. 893/89 had been registered.

At the time of occurrence, the incidence of throwing bombs at various places in the Metropolitan City were on the increase. With a view to combat the menace and to bring to book the culprits responsible for the occurrence in question, the Police constituted a Special Squad consisting of the Assistant Commissioners of Police, Chickpet Division; Kengerigate Division; and Ulsoorgate Division. The investigation of the two cases was entrusted to them.

During the course of investigation of the two cases, the Sub-Inspector of Police (Law and Order) attached to Ulsoor Police Station, received credible information at about 9 a.m. on 4-10-1989 that some of the culprits involved in the cases were likely to move on Bangalore-Mysore Road. To verify the information and to apprehend the culprits, if found, the Sub-Inspector proceeded to Mysore Road and stayed there keeping a watch. He noticed a car bearing Registration No. MEG 229 moving on the road, carrying about six persons. He stopped the car and noticed six persons therein. They were petitioners Nos. 1 and 2 and persons arraigned as A-6, A-7, G-13 and A-16. He could apprehend only petitioner No. 2 and A-6 and A-

7. Petitioner Nos. 1 A-13 and A-16 made good their escape. A search of the car revealed two country-made hand bombs, two swords, two choppers and three clubs. The Sub-Inspector seized them in the presence of panchas under a mahazar.

On the same day, i.e., on 4-10-1989, at about 10 p.m., the Sub-Inspector of Police with the help and assistance of his staff arrested petitioner No. 3 and accused No. 8 while they were moving on a Luna bearing Registration No. CKP 2964 at 3rd Cross, Wilson Garden, Bangalore City. A personal search of petitioner No. 3 disclosed the possession of two country-made hand bombs and a chopper. The Sub-Inspector seized them under a panchanama in the presence of panchas. On 5-10-1989, petitioner No. 1 was arrested near Electrical Crematorium, Wilson Garden while he was moving on a motor-cycle bearing Registration No. CNU 1727. The Sub-Inspector of Police of Chickpet Police Station, who apprehended and arrested petitioner No. 1, searched his person. Petitioner No. 1 was found in possession of a country-made. 22 Revolver and 25 cartridges. Seven out of twenty-five were found loaded in the Revolver.

According to the prosecution, as a result of the information furnished by petitioner No. 2, two country-made bombs, a sword and two choppers were recovered on 5-10-1989 from the residence of M. P. Jayaraj at Wilson Garden. The prosecution case is, petitioner No. 2 was residing, at the material time, in the house of M. P. Jayaraj.

Petitioner No. 1 furnished information and recovered three country-made hand bombs on 5-10-1989 from the residence of one of the wives of M. P. Jayaraj by name Asha Jayaraj at Lakkasandra Extension. Petitioner No. 3 gave information on 12-10-1989 to produce a sword and two choppers. The information led to the recovery of a sword and two choppers from the house of one Sharada at No. 5, 5th Cross, Laljinagar.

Sri D'Souza, one of the members of the Squad the C.P.I. of Vijayanagar Sub-Division, arrested five persons, namely, Raja alias Chola Raja, Paramesha, Yogaraj, Ranganatha Naidu alias Ranga and Srinivasamurthy on 3-10-1989 at Kamalanagar. Bomb, detonators and gelatine sticks were seized from their

possession. Sri D'Souza arrested Jaderahalli Krishna A-12 at 7-30 a.m. on 4-10-1989 at Kaggadasapura. He was found in possession of a .22 Revolver loaded with six cartridges. There were four cartridges and a sword below the pillow he was using. A-12 came to be arrested while he was sleeping in his house. There were gelatine sticks, detonators, fire-arm, ammunition and components of bombs in his house. A personal search of A-12 brought out a letter written in Kannada Language, containing directions purported to have been issued by M. P. Jayaraj, the leader of the group.

The prosecution case is, in respect of the found in the possession of A-12, a case to be registered in the Police Station at Basaveshwaranagar in Crime No. 389/89 under sections 3, 4 and 5 of the Act against A-12, M. P. Jayaraj and others and the investigation has resulted in the submission of a charge-sheet against them.

On 5-10-1989, the Sub-Inspector of Police, Madivala Police Station, arrested A-14 at Hongasandra. A-14 had a bomb, two gelatine sticks and four detonators. The Sub-Inspector of Police registered a case in respect of the property found with A-14 in Crime No. 451/89 against A-14 and others.

The prosecution case is that a case has been registered in Crime No. 425/89 for the offence punishable under section 395 of the Indian Penal Code in Kalasipalyam Police Station on the complaint of one Subbarao. According to it, during the course of investigation of the said case, a motor-cycle belonging to the complainant stolen away as a result of dacoity, has been recovered on the information furnished by Ranganatha Naidu, one of the associates of A-12. The prosecution case is, A-12 and A-14 were participants in the crime of dacoity; that they ran away from the scene taking the motor-cycle; that they changed its Number Plate and Colour; and that the investigation in the aforesaid case is under progress.

It is the case of the prosecution that petitioners Nos. 1 to 3 and their companions acted in a concert at different point of time under the orders of M. P. Jayaraj and committed the offences at different places in the Metropolitan Area by exploding bombs with a view to threaten and terrorise the business community and the members of the public. The motive, according to the prosecution, was to extract

money and valuable property.

The prosecution alleges that petitioners Nos. 1 to 3 and their companions are a source of menace to the law and order situation in the Metropolitan Area and they posed a threat to the peaceful life of innocent persons living in different parts of the Metropolitan Area.

According to the prosecution, the bombs recovered either from the possession of the petitioners and their companions or at their instance had been sent to the forensic Science Laboratory; that the analysis has shown that they are constituents of explosive substance; that they could be used for making country-made hand bombs and that the explosion of such bombs is dangerous to human life and property and is likely to cause injuries and death.

According to the prosecution, petitioners Nos. 1 to 3 had been prosecuted under section 110(e) and (g) of the order of Criminal Procedure (the Code for short) and that petitioners Nos. 1 and 2 are rowdy-sheeted persons in Wilson Garden Police Station. The prosecution has contended that the evidence collected during the course of investigation has shown that the petitioners and their companions are prone to indulge in the commission of the offences of the kind registered against them in the two crime numbers and other offences with a prior concert, in a planned manner.

It also alleges that they are in the habit of indulging in violence irrespective of the places and unmindful of the consequences. According to it, when the petitioners were sent to Mysore Jail with a view to obviate any untoward incident involving them and one Kittu alias Krishnoji Rao, their arch rival who has been lodged in the Central Prison, Bangalore City, they conspired to commit offences either in the Jail or outside if released on bail. Because of this conspiracy, they had to be sent to Mangalore Jail.

According to the prosecution, on 6-11-1989 the petitioners were brought to Bangalore City from Mangalore Jail for purposes of being produced before the Committal Magistrate; that after the Court proceedings were over, they were taken to the Central Prison, Bangalore, by escort party and that there at 5 p.m. these

petitioners and others including A-12 acquired dangerous weapons like razor, knife, dagger and iron-rod stealthily from some other under-trial prisoners detained in the Central Jail, who were their associates and of their acquaintance and with the weapons so acquired, attacked Kittu alias Krishnoji Rao and his associates and committed offences of rioting and attempt to commit murder. In the occurrence, 9 persons lodged in the Prison as under-trial prisoners were injured. One among them was seriously injured. A case came to be registered in the Upparpet Police Station in Crime No. 1031/89 under sections 120-B, 143, 147, 148 and 307 read with S. 149 of the Indian Penal Code in respect of the occurrence in the Prison premises and the investigation was taken up. The investigation is in progress.

4. In the cases under consideration, the Police, on completion of investigation, have charge-sheeted the petitioners and fourteen others for the offences under sections 143, 147, 148, 427 and 307 read with Sections 109 and 149 of the Indian Penal Code; S. 5 of the Act; and Sections 3 and 25 of the Indian Arms Act.

5. The case of the petitioners and their associates is pending in the Committal Court (the III Metropolitan Magistrate, Bangalore City) awaiting its commitment to the Trial Court.

6. The fact of the petitioners and their companions throwing bombs into the Padma Recreation Club and towards the Meena Trading Company has been spoken to by Sridhar, the Watchman of the Padma Recreation Club; Padmaraja, the owner of Padma Xerox Shop; Nagaraja, the Supplier in Bhavani Bar; and Sudarshana, the owner of Meena Trading Company.

7. Petitioner No. 2 was arrested along with A-6 and A-7 on 4-10-1989. Petitioner No. 3 was arrested along with A-8 on the same day. Petitioner No. 1 was arrested on 5-10-1989.

8. It appears from the record and the submissions made at the Bar that the Investigating Agency sought the authorisation of the detention of the petitioners in Police Custody; that the learned jurisdictional Magistrate acceded to the request and that when they were no more required for purposes of interrogation and

investigation, they were remanded to Judicial Custody.

9. The petitioners sought their admission to bail in both the cases making applications to the jurisdictional Magistrate. That when the cases were under investigation.

10. The learned Magistrate rejected the applications for bail filed by the petitioners. The petitioners then filed Criminal Miscellaneous petitions Nos. 988/89 and 990/89 before the Court of Sessions, Metropolitan Area, seeking their enlargement on bail. The learned VII Additional Sessions Judge, Metropolitan Area, Bangalore City, who heard the applications, by the order dated 2-12-1989, rejected the applications.

11. The petitioners came before this Court in Criminal Petitions Nos. 1311/89 and 1312/89, seeking liberty.

12. When the aforesaid Criminal Petitions were pending disposal before this Court, the period of 90 days stated in S. 167(2)(a)(i) of the Code expired. The petitioners, therefore, acquired a right to be released on bail. They, therefore, sought bail by making necessary applications. The learned Magistrate, by the order dated 12-1-1990, granted bail to the petitioners and their companions, on each of them furnishing a personal bond for Rs. 5000/- with a surety for Rs. 3000/- and a cash security of Rs. 2000/-.

13. The Investigating Agency, on completion of the investigation, submitted charge-sheets against the petitioners and their companions in the two cases on 16-1-1990. The charge-sheet submitted in respect of the case registered in Crime No. 894/89 was numbered as C.C. No. 134/90.

14. On submission of the charge-sheets C.C. No. 134/90, the Respondent-State filed an application under section 437(5) of the Code with a prayer to cancel the bail granted to the petitioners under Proviso (a) to Sub-s. (2) of S. 167 of the Code and commit them to custody. That was on 20-1-1990.

15. The learned Magistrate, on consideration of the application for cancellation of bail filed by the Respondent-State, and after hearing both the sides, took the view

that a prima facie case had been made out from the material produced before him in the form of charge-sheet and the documents and statements produced along with it against the petitioners for the offence punishable with imprisonment for life. In other words, he held that there were reasonable grounds to believe that the petitioners had committed the offence punishable with imprisonment for life. He considered it necessary to grant the prayer made by the Respondent-State. He, therefore, by the order dated 30-1-1990, cancelled the bail granted to the petitioners in the exercise of the discretionary jurisdiction vested in him under section 437(5) of the Code.

16. The petitioners have challenged the correctness and legality of the order dated 30-1-1990 in this petition. They have also sought bail on merits.

17. The learned counsel for the petitioners submitted that the learned Magistrate committed a serious error in reviewing his earlier order granting bail to the petitioners under Proviso (a) to S. 167(2) of the Code merely on the basis of the submission of the charge-sheet by the Investigating Agency. He also submitted that even if it is held that the order dated 30-1-1990 made by the learned Magistrate withdrawing the liberty granted to the petitioners in recognition of their right on account of the failure on the part of the Investigating agency to submit the charge-sheet within 90 days is correct and legal, the petitioners are entitled to bail.

18. As against this, the learned State Public Prosecutor contended that the discretion exercised by the learned Magistrate in withdrawing the concession granted to the petitioners is legal and correct justifying no interference. With regard to the request made by the petitioners for bail on merits, he contended that the petitioners are not entitled to bail in view of the facts and circumstances of the case and that their pre-trial detention is necessary in the interests of justice.

19. In view of the contentions urged, the questions that arise for consideration and determination in this petition are these :

(1) Whether the order dated 30-1-1990 made by the learned Magistrate cancelling the bail granted to the petitioners under the Proviso to S. 167(2) of the Code is

legal

(2) Whether the petitioners are entitled to bail

20. My answers to the above questions are as under :

(1) In the affirmative

(2) In the negative

21. The reasons are these :

Right to life and liberty is a fundamental right guaranteed by Article 21 of the Constitution. Art. 21 lays down that no person shall be deprived of his life and personal liberty except according to the procedure established by law.

22. It is well settled by the law laid down by the Supreme Court that personal liberty deprived when bail is refused is too precious a value of our constitutional system recognised under Art. 21, that the crucial power to negate it is a great trust and confidence to be exercised, not casually or cursorily but judicially, with great care and circumspection in accordance with the established principles of justice displaying a lively and serious concern of the consequences of the refusal of bail to the individual concerned and the community. The significance and sweep of Art. 21 of the Constitution make the deprivation of liberty a matter of grave concern. The deprivation of liberty would be permissible only when the law authorising and sanctioning it is reasonable, even-handed and geared to the obtainment and accomplishment of the good of the community.

23. Deprivation of liberty by refusing to grant bail is not as a measure of punishment or for punitive purposes, but for the interests of justice to the individual concerned and to the society affected.

24. In the case on hand, the petitioners were directed to be released on bail under the Proviso (a) to S. 167(2) of the Code for the default of the prosecution in not completing the investigation within 90 days.

25. There was no provision corresponding to the proviso to S. 167(2) in the Code of Criminal Procedure 1898. The proviso was introduced for the first time in the Code.

26. The reason that persuaded the Legislature for the introduction of the proviso, as stated in the Statement of Objects and Reasons, was :

'At present S. 167 enables the Magistrate to authorise detention of an accused in custody for a term not exceeding 15 days on the whole. There is a complaint that this provision is honoured more in the breach than in the observance and that the police investigation takes a much longer period in practice. The practice of doubtful legality has grown whereby the police file a 'preliminary' or incomplete charge-sheet and move the Court for a remand under section 344 which is not intended to apply to the stage of investigation. While in some cases, the delay in the investigation may be due to the fault of the police, it cannot be denied that there may be genuine cases where it may not be practicable to complete investigation in 15 days. The Commission recommended that the period should be extended to 60 days, but if this is done, 60 days would become the rule and there is no guarantee that the illegal practice referred to above would no continue. It is considered that the most satisfactory solution to the problem would be to extend the period of detention beyond 15 days whenever he is satisfied that adequate grounds exist for granting such detention.'

27. S. 344 of the Code of Criminal Procedure 1898 corresponded to S. 309 of the Code. The proviso, as substituted by Act No. 45 of 1978, S. 13(a), reads as follows :

Provided that -

(a) The Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused persons in custody under this paragraph for a total period exceedings. -

(i) ninety 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;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter.

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him.

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.'

28. Explanation I was substituted by the said Act and original Explanation, as it stood prior to the substitution of the proviso by Act No. 45 of 1978, was numbered as Explanation II by the said Act.

29. The effect of the proviso, as substituted by Act No. 45 of 1978, is to entitle an accused person to be released on bail if the Investigating Agency fails to complete the investigation within 90 days where the investigation relates to an offence punishable with death, punishable with imprisonment for life or imprisonment for a term not less than 10 years, and within 60 days where the investigation relates to any other offence. Every person released on bail under Section 167(2) of the Code is deemed to be so released under the provisions of Chapter XXXIII of the Code for the purposes of that Chapter.

30. In *Natabar Parida v. State of Orissa*, : AIR 1975 SC1465 , explaining the mandatory and imperative character of the requirement of the Proviso to S. 167(2), as it stood before its substitution by Act No. 45 of 1978, that an accused person is entitled to be released on bail if the investigation is not completed within 60 days, the Supreme Court observed at page 1469 of AIR :

'But then the command of the Legislature in proviso (a) is that the accused person has got to be released on bail if he is prepared to and does furnish bail and cannot

be kept in detention beyond the period of 60 days even if the investigation may still be proceeding. In serious offences of criminal conspiracy-murders, dacoities, robberies by inter-State gangs or the like it may not be possible for the police, in the circumstances as they do exist in the various parts of our country, to complete the investigation within the period of 60 days. Yet the intention of the Legislature seems to be to grant no discretion to the Court and to make it obligatory for it to release the accused on bail. Of course, it has been provided in proviso (a) that the accused released on bail under section 167 will be deemed to be so released under the provisions of Chapter XXXIII and for the purposes of that Chapter. That may empower the Court releasing him on bail, if it considers necessary so to do to direct that such person be arrested and committed to custody as provided in sub-s. (5) of S. 437 occurring in Chapter XXXIII. It is also clear that after the taking of the cognizance the power of remand is to be exercised under section 309 of new Code. But if it is not possible to complete the investigation within a period of 60 days then even in serious and ghastly types of crimes the accused will be entitled to be released on bail. Such a law may be 'paradise for the criminals,' but surely it would not be so, as sometimes it is supposed to be because of the Courts. It would be so under the command of the Legislature.'

31. In *Raghubir Singh, v. State of Bihar*, and *Simranjit Singh Mann, v. State of Bihar*, : 1987 CriLJ157 , the Supreme Court, referring to its decision in *Natabar Parida's case* : (1975 Cri LJ 1212) held that an order directing the release of an accused person on bail under the Proviso to S. 167(2) is not defeated by lapse of time, the filing of the charge-sheet or by remand to custody under section 309(2) of the Code.

32. In *Bashir v. State of Haryana*, : 1978 CriLJ173 , the decision depended upon by the learned counsel for the petitioners, the question that fell for consideration before the Supreme Court was, whether a person, who has been released under the Proviso to S. 167(2), could later be committed to custody merely because a challan was subsequently filed. The Supreme Court held that he could not be so committed to custody and that the bail could be cancelled under section 437(5) if the Court came to the conclusion that there were sufficient grounds after the filing of the challan to believe that the accused had committed a non-bailable offence

and that it was necessary to arrest him and commit him to custody. The Court observed at page 57 of AIR :

'Sub-s. (2) of S. 167 and proviso (a) thereto make it clear that no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days. On the expiry of sixty days the accused person shall be released on bail if he is prepared to and does furnish bail. So far there is no controversy. The question arises as to what is the position of the person so released when a challan is subsequently filed by the police.

xx xx xx xx xx xx at page 58

'Sub-s. (5) to S. 437 is important. It provides that any Court which has released a person on bail under sub-s. (1) or sub-s. (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody. As under section 167(2) a person who has been released on the ground that he had been in custody for a period of over sixty days is deemed to be released under the provisions of Chapter XXXIII, his release should be considered as one under section 437(1) or (2). S. 437(5) empowers the Court to direct that the person so released may be arrested if it considers it necessary to do so. The power of the Court to cancel bail if it considers it necessary is preserved in cases where a person has been released on bail under section 437(1) or (2) and these provisions are applicable to a person who has been released under section 167(2). Under Section 437(2) when a person is released pending inquiry the ground that there are not sufficient grounds to believe that he has committed a non-bailable offence may be committed to custody by Court which released him on bail if it is satisfied that there are sufficient grounds for so doing after inquiry is completed. As the provisions of S. 437(1), (2) and (5) are applicable to a person who has been released under section 167(2) the mere fact that subsequent to his release a challan has been filed, is not sufficient to commit him to custody. In this case the bail was cancelled and the appellants were ordered to be arrested and committed to custody on the ground that subsequently a charge-sheet had been filed and that before the appellants were directed to be released under S. 167(2) their bail petitions were dismissed on merits by the Sessions Court and the High Court. The fact that

before an order was passed under section 167(2) the bail petitions of the accused were dismissed on merits is not relevant for the purpose of taking action under section 437(5). Neither is it a valid ground that subsequent to release of the appellants a challan was filed by the Police. The Court before directing the arrest of the accused and committing them to custody should consider it necessary to do so under section 437(5). This may be done by the Court coming to the conclusion that after the challan had been filed there are sufficient grounds that the accused had committed a non-bailable offence and that it is necessary that he should be arrested and committed to custody. It may also order arrest and committal to custody on other grounds such as tampering of the evidence or that his being at large is not in the interests of justice. But it is necessary that the Court should proceed on the basis that he has been deemed to have been released under section 437(1) and (2).'

33. In my considered view, the law laid down by the Supreme Court in Bashir's case, : 1978 CriLJ173 does not go to the help of the petitioners in substantiating their contention that the learned Magistrate committed a serious error in cancelling the concession on the submission of charge-sheet. A careful reading of the order made by the learned Magistrate would make it abundantly clear that on submission of the charge-sheet, the Respondent-State made a motion for cancellation of bail under section 437 of the Code; and that the learned Magistrate after giving both the petitioners and the Respondent-State opportunity of being heard, following the law laid down by the Supreme Court in Rajnikant Jivanlal Patel v. Intelligence officer, Narcotic Control Bureau, New Delhi, : 1990 CriLJ62 , presumably after applying his his judicial mind to the material collected against the petitioners and their associates to establish their involvement and culpability in the offences alleged against them in the case, reaching the conclusion that there was a prima facie case made out against the petitioners for the offence punishable with imprisonment for life, in the exercise of the jurisdiction and power vested in him under section 437(5) of the Code, cancelled the bail. If he had cancelled the bail granted to the petitioners solely on the ground that the order for release on bail made by him came to an end with the passage of time on the filing of the final report, the dictum laid down by the Supreme Court in Bashir's case, : 1978 CriLJ173 would have come to the assistance of the petitioners to contend that the

order made by the learned Magistrate is illegal. A reading of the order would show that it is not vitiated in any manner in the matter of the exercise of jurisdiction by the learned Magistrate.

34. The conclusion reached by him that the material placed before him was sufficient to show a prima facie case against the petitioners for the offence punishable with imprisonment for life having regard to the evidence collected by the Investigating Agency appears to be sound and correct.

35. Thus, to conclude, there appears to be no infirmity whatsoever either in the exercise of jurisdiction under section 437(5) of the Code or in exercising it against the petitioners.

36. The petitioners were directed to be released on bail under the Proviso to S. 167(2). By virtue of the legal fiction introduced in the proviso, they have to be deemed to be so directed to be released on bail under the provisions of Chapter XXXIII of the Code. In the case of Raghbir Singh, : 1987 CriLJ157 dealing with the question as to whether a bail granted to an accused person under the proviso to S. 167(2) of the Code can be cancelled, if so, under what sections and what grounds, the Supreme Court observed at page 161 of AIR :-

'22. The result of our discussion and the case law is this : An order for release on bail made under the proviso to S. 167(2) is not defeated by lapse of time, the filing of the charge-sheet or by remand to custody under section 309(2). The order for release on bail may however be cancelled under Section 437(5) or S. 439(2). Generally the grounds for cancellation of bail, broadly, are, interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him. The due administration of justice may be interfered with by intimidating or suborning witnesses, by interfering with investigation, by creating or causing disappearance of evidence etc. The course of justice may be evaded or attempted to be evaded by leaving the country or going underground or otherwise placing himself beyond the reach of the sureties. He may abuse the liberty granted to him by indulging in similar or other unlawful acts. Where bail has been granted under the proviso to S. 167(2) for the default of the prosecution in not completing the investigation in sixty

days, after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case, one would expect very strong grounds indeed.'

37. Indeed, it is true that the release on bail on the default of the prosecution in filing charge-sheet within the prescribed period is absolute in its terms. It is a release by virtue of the Legislative Command incorporated in the proviso and not as a result of the exercise of the discretionary power by the Court. If there is failure on the part of the Investigating Agency to file charge-sheet before the expiry of 90/60 days, as the case may be, the accused in the custody gets a right to be released on bail. After the expiry of 90/60 days the Magistrate loses his power to remand a person. He has to pass an order of bail and communicate the same to the accused intimating him to furnish the requisite bail bonds. But there is no gain saying of the fact that it is an order on default and it does not vest the person released on bail to remain on bail till the conclusion of the trial.

38. In view of the deeming provision in the proviso to S. 167(2) of the Code, the only way by which the bail granted to an accused under the Proviso(a) may be canceled is to proceed under section 437(5) or S. 439(2) of the Code. This position has clearly emerged as a result of the decisions of the Supreme Court in Bashir's case, (1978 Cri LJ 173) supra; in Raghubir Singh's case, 1987 Cri LJ 157 supra; and in the case of Rajnikant Jivanlal Patel (1990 Cri LJ 62) supra.

39. In the case on hand, the Respondent-State approached the learned Magistrate, who had granted bail to the petitioners under the Proviso to S. 167(2) of the Code, with its application for cancellation of bail. S. 437(5) provides :

'437(1) to (4)

(5) Any Court which has released a person on bail u/sub-s. (1) or sub-s. (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.'

40. The Respondent-State sought the relief of the ground that there are reasonable grounds to believe that the petitioners have committed a non-bailable offences punishable with imprisonment for life and that it is necessary to arrest them and commit them to custody.

41. Of course, very strong grounds would be required when the Respondent-State makes a motion for cancellation of bail on the aforesaid ground.

42. In the case on hand, in view of the facts and circumstances, I cannot escape the impression that the Respondent-State urged very strong grounds for cancellation of bail.

43. The offences alleged against the petitioners and their associates are of a serious nature. The conclusion of the learned Magistrate that a prima facie case exists against the petitioners for the offence punishable with imprisonment for life does not suffer from any error of infirmity. In the case of *Rajnikant Jivanlal Patel*, (1990 Cri LJ 62) the Supreme Court has held that if the investigation reveals commission of serious offences, the bail granted to an accused under the proviso to S. 167(2) of the Code can be cancelled either under section 437(5) or S. 439(2) of the Code.

44. For the reasons aforesaid, I hold that the order dated 30-1-1990 made by the learned Magistrate withdrawing the liberty granted to the petitioners in free from the taint of illegality and that the discretion exercised by him does not call for interference.

45. In view of the facts of the case, it is not necessary to refer to the principles that govern the exercise of discretion in the matter of cancellation of bail when the cancellation is sought on the ground that the persons released on bail are interfering or attempting to interfere with the due course of administration of justice or evading or attempting to evade the course of justice or abusing or attempting to abuse the liberty granted to them. It is also not necessary, in view of the facts of the case, to refer to the nature of proof required in an application for cancellation of bail when the cancellation is sought on the ground that the witnesses who had turned hostile during the course of the trial had been won over by the accused on

bail. It has to be remembered that the learned Magistrate chose to cancel the bail granted to the petitioners solely on the ground that the material placed before him was sufficient to show a prima facie case against the petitioners for an offence punishable with imprisonment for life.

46. In the result for all the reasons aforesaid, I hold that the order dated 30-1-1990 made by the learned Magistrate cancelling the bail granted to the petitioners under the Proviso to S. 167(2) of the Code is legal.

47. The question that survives for consideration is, whether the petitioners are entitled to bail.

48. Broadly stated, the matters that require investigation and consideration in an application for bail are (i) whether there is or is not a reasonable ground for believing that the applicant has committed the offence alleged against him; (ii) the nature and gravity of the charge; (iii) the severity of the punishment which might fall in the particular circumstances in case on a conviction; (iv) the likelihood of the applicant's absconding if released on bail; (v) the character and means and standing and status of the applicant; (vi) the likelihood of the offence being continued or repeated on the assumption that the accused is guilty of having committed that offence in the past; (vii) the likelihood of the witnesses being tampered with; (viii) opportunity of the applicant to prepare his defence on merits; and (ix) the fact that the applicant has already been in custody and that the trial is not likely to conclude for some time which can be characterised as unreasonable.

49. The two expressions 'reasonable grounds for believing' and 'evidence' are not inter-changeable. The Legislature has advisedly used the words 'reasonable grounds for believing' instead of 'evidence'.

50. In the instant case, there are reasonable grounds to believe that the petitioners have committed the offence alleged against them. The material is sufficient to hold that there is prima facie evidence in support of the charges. It may be beyond the scope of these proceedings to examine whether the prima facie evidence in support of the charges. It may be beyond the scope of these proceedings to examine whether the prima facie evidence would be sufficient to establish the guilt

of the petitioners beyond reasonable doubt. All that can be said from the material is that there are sufficient reasonable grounds for believing that the petitioners have committed the offence punishable with imprisonment for life.

51. The punishment prescribed for the offence of attempt to murder is imprisonment of either description for a term which may extend to 10 years and fine. If hurt is caused to any person by the act, the punishment prescribed is either imprisonment for life or imprisonment of either description for a term which may extend to 10 years and fine.

52. The punishment prescribed for the offence under section 3 of the Act is imprisonment for life or any shorter term to which a fine may be added or imprisonment for a term which may extend to 10 years to which fine may be added. The punishment provide for the offence under section 4 of the Act is imprisonment for a term which may extend to 20 years to which fine may be added or imprisonment for a term which may extend to 7 years to which fine may be added. The offence under section 5 of the Act is punishable with imprisonment for a term which may extend to 14 years to which fine may be added or imprisonment for a term which may extend to 5 years to which fine may be added.

53. The offences alleged against the petitioners are grave and serious in nature. The character of the evidence collected to connect them with the offence the origin and genesis of the occurrence, the circumstances in which the petitioners and their associates are shown to have committed the offence and the circumstances which are peculiar to the petitioners dissuade the Court from exercising the discretionary jurisdiction in their favour.

54. The Respondent-State has contended that in view of the nature of the material collected during the course of investigation, the nature and seriousness of the offences committed by the petitioners, there is every possibility of the petitioners fleeing from justice, repeating the offences and tampering with the prosecution evidence.

55. The apprehensions of the Respondent-State have a basis and foundation. They cannot be dismissed as either illusory or imaginary. They appear to be grave

and real.

56. The likelihood of the petitioners fleeing from justice, of repeating the offences and of jeopardising their own life being faced with a grim prospect of possible conviction in the case cannot be ruled out. The history of the case as well as of the investigation show that there is every likelihood of the petitioners tampering with the prosecution witnesses.

57. Thus, the two paramount consideration, viz., likelihood of the petitioners fleeing from justice and they tampering with the prosecution evidence which relate to ensuring a fair trial of the case in a Court of Justice have to be given due and proper weight. After bestowing my anxious consideration on these two factors apart from others, I cannot but hold that these two paramount considerations operate against the petitioners.

58. In conclusion, having regard, to the nature and seriousness of the offences alleged against the accused petitioners, the character of the evidence collected against them to establish their connection with the crimes, the circumstances in which they are alleged to have committed the offences, the circumstances which are peculiar to them, the existence of a reasonable possibility of their presence not being secured at the trial, the existence of a reasonable apprehension of witness being tampered with, the existence of the possibility of they repeating the offence and in view of the large interest of the State and the members of the public, I hold that the petitioners are not entitled to bail.

59. It is true, under section 439 of the Code, the powers of this Court in the matter of granting bail are very wide, even so where the offences alleged are non-bailable, considerations mentioned above have to be taken into account before deciding as to whether bail should be granted or refused in a non-bailable offence.

60. In the result, for the reasons aforesaid, I take the view that this is not a fit case to grant liberty to the petitioners in the pre-trial stage of the case. The petition is, therefore, dismissed.

61. Petition dismissed.

