

Dinesh Kumar Jain Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-02-2001

Reported in : 2001CriLJ2847

Judge : U.S. Tripathi, J.

Acts : Terrorist and Disruptive Activities Act - Sections 20(4); Code of Criminal Procedure (CrPC) , 1974 - Sections 167(2); Indian Penal Code (IPC) - Sections 34, 302 and 364

Appeal No. : Cri. Misc. IInd Bail Appln. No. 3018 of 2001

Appellant : Dinesh Kumar Jain

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Ashok Kumar Mishra and ;Ram Shiromani Shukla, Advs.

Disposition : Application allowed

Judgement :

U.S. Tripathi, J.

1. This is second bail application. The first bail application was disposed of on 19-2-2001 with a direction to move fresh bail applicant before learned Sessions Judge

on the ground of proviso to Section 167(2), Cr.P.C.

2. The applicant involved in case crime No. 820 of 2000 under Sections 364/302/34, I P C, P.S. Loni, District Ghaziabad, moved bail application before Chief Judicial Magistrate concerned, who rejected the same and thereafter he moved bail application before the Sessions Judge. The Sessions Judge, Ghaziabad, rejected his bail application on 3-11-2000 on merit.

3. Thereafter, the applicant moved another bail application before Chief Judicial Magistrate concerned on 12-12-2000 on the ground that charge sheet in the case was not submitted within 90 days from the date of first remand to judicial custody. The learned Chief Judicial Magistrate rejected the above application, vide his order dated 14-12-2000 on the ground that first remand by the Court was granted on 21-9-2000 and therefore period of 90 days did not complete on 12-12-2000, when the bail application was moved under proviso to Section 167(2), Cr.P.C. Thereafter first bail application was moved before this Court on 18-1-2001. The above bail application was disposed of with a direction to move bail application before Sessions Judge concerned on the ground of proviso to Section 167(2), Cr.P.C. as this point was not raised before the Sessions Judge after rejection of the bail application on the above ground by Chief Judicial Magistrate.

4. The applicant, accordingly, moved bail application before the Sessions Judge, who rejected the same on 7-2-2001. Therefore, this bail application.

5. Heard the learned counsel for the applicant and the learned A.G.A. and perused the record.

6. It is not disputed that initially report of the occurrence was lodged at P.S. Sahadara, district North East Delhi by Sub-Inspector Guru Sewak Singh and the applicant was also arrested by the police of P.S. Sahadara on 7-9-2000. The applicant was remanded to judicial custody till 22-9-2000 on 8-9-2000 by A.C.M.M., Delhi. It is not disputed that charge-sheet in this case was submitted on 13-12-2000 and the applicant moved bail application under proviso to Section 167(2), Cr. P.C. on 12-12-2000. The learned Sessions Judge has also observed that first remand was given on 8-9-2000 and 90th day expired on 7-12-2000 and

charge-sheet was submitted on 13-12-2000. The learned Sessions Judge rejected the bail application on the ground that since charge-sheet was submitted on 13-12-2000 and, therefore after the submission of charge-sheet right of bail could not have been enforced. He also relied on Apex Court decision in Mohammed Iqbal Madar Shekh v. State of Maharashtra 1996 (33) ACC 136. On the availability of right to be released on bail under proviso to Section 167(2), Cr. P.C. the Apex Court has held in the case of Sanjay Dutt v. State through C.B.I., Bombay (2) 1994 (31) ACC 702 (SC) as follows :-

The 'indefeasible right' of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which enures to and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail application at that stage.

7. Thus, the settled position is that the right to be released on bail in accordance with Section 167(2), Cr. P.C. in default of completion of investigation and filing of the challan within the allowed enures to and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on challan being filed. In the case of Mohammed Iqbal Madar Sheikh (supra) though the charge-sheet was submitted beyond the statutory period of Section 20(4)(b) of TADA Act, there was nothing on record to show that provisions of Section 20(4)(bb) of TADA Act were applied in respect of appellants. It was admitted position in the said case that no application for bail on the said ground was made on behalf of the appellant and, therefore, it was held that unless

applications had been made on behalf of the appellants, there was no question of their being released on ground of default in completion of the investigation within the statutory period.

8. In the instant case, the position is different as mentioned above right of the applicant to be released on bail under Section 167(2), Cr. P.C. accrued on 8-12-2000 and remained inforce till 12-12-2000 as the period of 90 days expired on 7-12-2000 and charge-sheet was submitted on 13-12-2000. The applicant 'availed' his right to be released on bail under section on 12-12-2000 by moving an application before the Chief Judicial Magistrate concerned. No doubt the bail application before the Sessions Judge on the direction of this Court was moved much later, but it cannot be said that the applicant had not 'availed' his right to be released on bail under Section 167(2), Cr. P.C. when it actually 'accrued' to him. The observation of the learned Sessions Judge in this regard is thus erroneous, as it defeats the indefeasible right of accused under Section 167(2), Cr. P.C.

9. It is, therefore, clear from the record as well as admitted position that the right of the applicant to be released on bail accrued between 8-12-2000 and 12-12-2000 and the applicant availed the same on 12-12-2000 by moving bail application before the initial Court i.e. C.J.M., but his bail application was wrongly rejected. Thus, the applicant is entitled to be released on bail under proviso to Section 167(2), Cr. P.C.

10. Let the applicant-Dinesh Kumar Jain involved in case Crime No. 820 of 2000 under Sections 364/302/34, I.P.C, P.S Loni, District Ghaziabad be enlarged on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Chief Judicial Magistrate, Ghaziabad.