

Mahesh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jan-09-2008

Reported in : 2008(3)MPHT47

Judge : R.C. Mishra, J.

Appellant : Mahesh

Respondent : State of M.P.

Judgement :

ORDER

R.C. Mishra, J.

1. Arguments heard.

2. This is an application, under Section 482 of the Code of Criminal Procedure (for short 'the Code'). The applicants are aggrieved by the order dated 19-5-2007 passed by 1st ASJ, Katni in Cr. Revision No. 70/07 affirming the order dated 28-4-2007 passed by CJM, Katni in Cr. Case No. 1414/07 whereby their application for compulsive release on bail under proviso to Sub-section (2) of Section 167 of the Code (hereinafter referred to as 'the Proviso') was rejected.

3. The applicants were arrested on 22-1-2007 in connection with Crime No. 29/07 registered at P.S. Kuthla Distt. Katni in respect of the offences punishable under

Sections 395 of the IPC and 30(iii) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958. The corresponding trial is pending as S.T. No. 79/07 in the Court of End ASJ, Katni. On 23-1-2007 they were first produced before the Trial Magistrate who authorised their detention in the police custody till 31-1-2007 and 27-1-2007 respectively.

4. On expiry of the period of 90 days, they claimed benefit of the proviso by filing an application on 25-4-2007. On the following day, Le., 26-4-2007 only, the charge-sheet against the applicants and the other persons arrayed as co-accused was filed.

5. Learned Magistrate computing the statutory period from the respective dates on which the applicants were remanded to judicial custody, viz., 31-1-2007 and 27-1-2007 proceeded to reject the application.

6. In revision, the learned ASJ, without entering into the question as to whether the learned Magistrate has erred in calculating the actual period of detention and placing reliance on the decision of Sanjay Dutt v. State through CBI, Bombay : 1995 CriLJ477 , declined to interfere for the reason that the applicants' right to be released under the proviso did not survive on the charge-sheet being filed. However, while doing so, she completely lost sight of the object, scope and effect of the proviso as explained by the Supreme Court in a subsequent decision rendered in Uday Mohanlal Acharya v. State of Maharashtra : 2001 CriLJ1832 , as under:

accused has an indefeasible right to be released on bail when investigation is not complete within the specified period- In order to avail of such right, accused is only required to file an application before the Magistrate seeking release on bail alleging that no challan has been filed within the period prescribed and he is prepared to offer bail on being directed by the Magistrate. Expression 'if not already availed of used by Supreme Court in Sanjay Dutt's case (supra), has to be understood in this manner- Magistrate has to dispose of such application forthwith and on being satisfied that the accused has been in custody for the specified period, that no charge-sheet has been filed and that accused is prepared to furnish bail, Magistrate is obliged to grant bail even if after filing of the application by

accused, a charge-sheet had been filed.

7. Accordingly, the applicant's right would have been extinguished only in case, they had failed to furnish the bail as directed by the Magistrate. However, as pointed out already, no order of their release on bail was passed by the Magistrate before filing of the charge-sheet.

8. In this view of the matter, it is a fit case for interference under the inherent powers.

9. However, taking into consideration the nature of offences and other facts and circumstances of the case, the application deserves to be allowed on comparatively stringent conditions.

10. It is, therefore, directed that each one of the applicants namely Mahesh and Chheddu @ Ganesh shall be released on furnishing a personal bond in the sum of Rs. 50,000/- with two solvent and local sureties of Rs. 25,000/- each in the like amount to the satisfaction of Trial Judge for his appearance during the trial.

11. Copy of this order be forwarded to the S.P. Katni for initiating necessary departmental action against the Police Officer responsible for delay in filing the charge-sheet leading to compulsory release of the applicants under the proviso despite the fact that their prayer for grant of bail has already been rejected on merits by this Court, of course, after giving him opportunity of being heard.

12. C.C. as per rules.