

Devendra Kumar Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Nov-14-1991

Reported in : 1992CriLJ1730

Judge : S.K. Dube, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 167(2), 438, 439, 439(1) and 442; Indian Penal Code (IPC) - Sections 34, 302 and 307; [General Clauses Act, 1897](#) - Sections 10, 57, 167 and 167(2)

Appeal No. : M.C.C. No. 2210 of 1991

Appellant : Devendra Kumar

Respondent : State of M.P.

Advocate for Pet/Ap. : Shri. R. B. Tiwari

Disposition : Petition dismissed

Judgement :

ORDER

S.K. Dube, J.

1. The petitioner by this petition Under Section 439(1), Criminal P.C. has sought his entitlement to be enlarged on bail by raising a question, that the period of

temporary bail of 13 days should be reckoned in computing 90 days under proviso (a) to Sub-section (2) of Section 167 and, thus, the petitioner/accused who is in continuous detention and in custody after his arrest, acquired the statutory right to be released on bail for the default of the prosecution in not filing the charge-sheet within the prescribed period of 90 days.

2. The facts leading to this petition are thus. The petitioner and two others after their arrest on 22-4-1991 in Crime No. 146/1991 for offences Under Sections 302 and 307/34, IPC, by Police Station Dabra, were first remanded by the Judicial Magistrate to judicial custody on 23rd April 1991; the charge-sheet was to be filed in terms of proviso (a) to Section 167(2) within 90 days. 22nd July 1991 being Sunday, the charge sheet was filed on Monday, the 23rd July. During the period of detention in judicial custody the petitioner moved an application under Section 439, Cr. P.C., before the Sessions Judge, Gwalior, for grant of bail for few days to perform 'Kanyadan' of his daughter Sunita and other marriage ceremonies. The Sessions Judge vide order dated 25-6-1991 passed in Misc. Cr. Case No. 1402/1991, released the petitioner on interim bail for 13 days on three conditions, that the petitioner on his furnishing personal bond of Rs. 40,000/- and two solvent sureties of Rs. 20,000/- each to the satisfaction of Chief Judicial Magistrate, Gwalior, shall be released on interim bail till 7-7-1991; he will surrender on 8-7-91 at 8-00 a.m. before the Chief Judicial Magistrate, Gwalior, from where he will be taken into custody and will be sent to Jail, he will not contact the prosecution witnesses nor will tamper with the evidence or terrorise the witnesses and for that petitioner will report on 28th June 1991 and 3rd July 1991 between 11 a.m. and 12 noon at Police Station, Dabra.

3. The charge-sheet in the case was filed on the 91st day; therefore, in an application for bail of co-accused Ashok Sharma in Misc. Cr. Case No. 1642 of 1991, decided on 24-9-91, Shri K. K. Verma, J. after dealing with the question whether the 90th day falling on a Sunday has to be excluded from consideration in accordance with the provisions of Section 10 of the General Clauses Act 1897, and considering various authorities and the provisions of Sections 57 and 167, held that such a day cannot be excluded for reckoning the period of 90 days and, as such, the co-accused got the statutory right under the proviso (a) to Section

167(2) to be released on bail.

4. Shri R. B. Tiwari, counsel for the petitioner, contended that there is no provision in law of granting interim bail; though the petitioner was released on interim bail, he was well within the control of the Court; therefore, the period of 13 days in computing 90 days cannot be excluded; hence, the petitioner is entitled to be released on bail. Counsel pressed into service a decision of the apex Court in case of *Niranjan Singh v. Prabhakar* AIR 1980 SC 785 : 1980 Cri LJ 426, wherein the apex Court considered the meaning of 'Custody' for the purpose of Section 439.

5. It is settled that an accused acquires statutory right to be released on bail on default of prosecution in not filing charge-sheet within the prescribed period, and that right to bail under proviso (a) to Section 167(2) is absolute, as it is a legislative command and not Court's discretion; (see *Raghubir Singh v. State of Bihar* (1986) 4 SCC 481: 1987 Cri LJ 157 : 1986 SCC (Cri) 511 and *Rajnikant Jivanlal's case* (1989) 3 SCC 532 : 1989 Cri LJ 62: 1989 CAR 208.

6. The question for consideration, before this Court is; an accused released on bail for a limited period or for a few days on conditions, be said to be in custody of the Court.

7. According to the New Lexicon Webster's Dictionary, 1988 Edn. Vol. 1, at p. 73, 'bail' means a money or property security deposited to obtain a prisoner's freedom of movement, pledging that he will appear before the Court when called; to grant bail, to release on security to secure someone's temporary freedom of movement by putting up security for (him). The meaning of 'bail' given in the new edition of Chambers 20th Century Dictionary, at p. 92, is 'one who procures the release of an accused person by becoming security for his appearing in Court; the security given; to set a person free by giving security for him, to release on the security of another.'

8. A person is said to be admitted to bail when he is released from the custody of the officers of law and entrusted to private custody of person called his bail. Bail is basically release from restraint, more particularly, release from custody of the

police. An order of bail gives back to the accused freedom of his movement on condition that he will appear to take his trial. Personal recognizance, suretyship bonds and such other modalities are the means by which an assurance is secured for his presence at the trial.

9. An accused under proviso (a) to Section 167(2) gets his entitlement to bail where the detention of the accused person in custody exceeds 90/60 days as the case may be. Therefore, the meaning of 'Custody' and 'Detention' is relevant for statutory entitlement. The dictionary meaning of 'Custody' is 'a watching or guarding; care; security; imprisonment; and that of 'detention' is 'act of detaining; state of being detained; confinement, or restriction of liberty', and, 'detain' means 'to hold back, to withhold, to stop to keep; to keep in custody.'

10. Basic condition for grant of bail to a person, presupposes that he is in custody of police or of Court or under a restraint. The Supreme Court in case of *Niranjansingh* (supra), observed (at page 428 of 1980 Cri LJ):

Custody, in the context of Section 439, (we are not be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in Court coupled with submission to the jurisdiction and orders of the Court. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions.

11. The counsel for the petitioner, placing reliance on the observations of the apex Court in para 9, contends that though the petitioner was released for a limited period on certain conditions and directions, he still can be stated to be in judicial custody, as there was no free movement; therefore, the period of 13 days must be counted while computing the period of 90 days. But, in the opinion of this Court, *Niranjansingh's* case (supra) is not applicable, as in that case the petitioner/accused surrendered before the Court and then applied for bail under Section 439. In that context while considering the meaning of 'custody', the Supreme Court observed that the court acquires jurisdiction to consider bail application.

12. For acquiring the statutory right as envisaged under Section 167(2) the condition precedent is that an accused must be in continuous detention in custody of 90/60 days as the case may be. The petitioner during this period of detention in custody, applied under Section 439 for bail for a few days. In three Division Bench decisions of this Court in cases of Kishanlal v. State of M.P. Chandersen v. State of M.P. and Amarsingh v. State of M.P. 1978 (2) MPWN 171, 172 and 173 respectively, it has been said that bail for a few days or for a limited period can be granted under Section 439 when the accused person is in custody. A court while exercising the discretion of granting bail even for a limited period imposes any condition or conditions under Section 439(1)(a), then an accused is released from custody under Section 442, Cr. P.C. on execution of bonds. If the conditions are imposed even in a bail for a limited period, it cannot be said by any stretch of imagination that by the release of the accused person for the limited period on imposing of conditions or complying with the conditions by the accused, his movement was in any way restricted or he was in physical custody of the Court, so as to claim the computation of such period in reckoning the period of 90 days of detention, to acquire the statutory right under proviso (a) to Sub-section (2) of Section 167, Cr. P.C.

13. After execution of bonds, the petitioner was released and was not in the position where he was immediately before the execution of the bonds, therefore, was not in the detention or in custody for a total period of 90 days.

14. In the opinion of this Court, the submission of Shri C. S. Dixit, Deputy Govt. Advocate, that the language of Section 167 does not warrant such an interpretation that a person who remains in detention, if released or enlarged on bail for a limited period, is not released with full liberty, and such accused so released will be deemed to be detained in custody of the State for the purpose of reckoning the period of 90 days under proviso (a) to Section 167(2) so as to get the benefit of absolute and indefeasible right in default of the prosecution in not filing the charge-sheet, within the prescribed period of 90 days, to be enlarged on bail under Chapter XXXIII, Cr. P.C. is right.

15. In view of the aforesaid discussion, the petition fails and is dismissed.

