

Kamaljeet Vs. State

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Court : Delhi

Decided On : Jul-30-1986

Reported in : 30(1986)DLT296; 1986RLR51

Judge : Jagdish Chandra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1006 of 1986

Appellant : Kamaljeet

Respondent : State

Advocate for Pet/Ap. : O.P. Soni,; Kamlesh Dutt and; Sodhi Teja Singh, Advs

Judgement :

Jagdish Chandra, J.

(1) Petitioner Kamaljeet arrested in the case Fir No. 6/86 under Sections 302/34 Ipc, is alleged to have given one knife injury on the chest of the deceased as a result of which the deceased died. The petitioner claims the grant of bail asserting that the challan in this case was filed after more than 90 days of his remand The petitioner admittedly surrendered himself before the magistrate on 13-3-1986 and the police filed the challan on 13-6-1986 and the period calculated keeping in mind

these two dates the challan was filed on 93rd day. It is, however, pointed out by Mr. Sodhi representing the State that the police had no knowledge of the surrender of the petitioner before the magistrate and learnt of the same only on 17-3-1986 on receiving notice from the magistrate and the police arrested him formally on 17-3-1986. For this reason it is urged by Mr. Sodhi that the counting of the period of 90 days should start keeping in view the date 17-3-1986 on which the police came to know about the surrender of the petitioner before the Magistrate. It has been held in *Velu Viswanthan and others etc. v. State etc*, 1971 CrL J. 725 that where the accused surrendered before the Magistrate who took him into custody, the taking into custody was under Section 167 Cr. P.C. In the instant case when the petitioner surrendered himself before the Magistrate, the Magistrate sent him to the judicial custody. Section 167 contemplates the arrest as also the detention in custody. Obviously the order of the magistrate sending the petitioner to judicial custody on the day of his surrender is covered under Section 167(1) of the Code of Criminal Procedure, 1973 and consequently the period of 90 days has to be computed from 13-3-1986 on which date the magistrate ordered him to be sent to judicial custody. The challan was, thus, filed after the expiry of the statutory period of 90 days and in view of Section 167(2) proviso the petitioner is entitled to the grant of bail. Consequently the petitioner is ordered to be released on bail on his furnishing personal bond in the sum of Rs. 10,000.00 with one surety in the like amount to the satisfaction on of the court concerned.