

Bipln Babu Gupta Vs. State

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Court : Delhi

Decided On : Oct-19-2001

Reported in : 94(2001)DLT910; 2002(61)DRJ39

Judge : K.S. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 167(2), 437, 439 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120-B, 418 and 420; General Clauses Act - Sections 9 and 10

Appeal No. : Crl. M.(M) No. 3407/2001

Appellant : Bipln Babu Gupta

Respondent : State

Advocate for Def. : Richa Kapoor, Adv.

Advocate for Pet/Ap. : Jugal Wadhwa, Adv

Disposition : Petition dismissed

Judgement :

K.S. Gupta, J.

1. In this petition filed under Section 439 read with Sections 482 and 167(2) Cr.P.C., petitioner seeks setting aside of the order dated 10th September, 2001

passed by an Addl. Sessions Judge in CrI. R.No. 58/2001 whereby the order dated 5th July, 2001 passed by a Metropolitan Magistrate declining bail was affirmed.

2. Facts giving rise to this petition lie in a narrow compass. FIR being No. 272/2001 under Sections 418/420/120-B IPC was registered against the petitioner and others at PS Darya Ganj. Petitioner who was already in judicial custody in another case, was summoned by issuing a production warrant by the Metropolitan Magistrate concerned for 4th May, 2001. On production, at the request of investigation officer, he was sent to police remand up to 10th May, 2001. Thereafter petitioner continued to be in judicial remand and an application under Section 167 read with Section 437 Cr. P.C. was filed by him on 3rd July, 2001 seeking bail on the ground that charge sheet had not been filed within the statutory period of 60 days. To be noted that on 3rd July, 2001 itself charge sheet was also filed by the police. Said application came to be dismissed by the order dated 5th July, 2001. CrI. R. No. 58/2001 taken out against this order was also dismissed by the order dated 10th September, 2001.

3. Short submission advanced by Sh. Jugal Wadhwa for petitioner was that 4th May, 2001 on which date the petitioner was produced before the Metropolitan Magistrate in this case, is to be included in computing 60 days' time for the purpose of Section 167(2)(a)(ii) Cr. P.C. and as the charge sheet was filed on 61st day, the petitioner was entitled to an order for release on compulsive bail on his application dated 3rd July, 2001. In support of submission, reliance was placed, particularly, on the decisions in *Meghji Jethabhai Vankar and Ors. v. State of Gujarat*, , *Chaganti Satyanarayana and Ors. v. State of Andhra Pradesh*, : [1986]2SCR1128 , and *Powell Nwawa Ogechi v. The State (Delhi Administration)*, 30 (1986) DLT 462. It was pointed out that decision in *State of M.P. v. Rustam and Ors.* 1995 SCC (Cri) 830 was over-ruled by the Apex Court in the decision in *Uday Mohanlal Acharya v. State of Maharashtra*, : 2001 CriLJ1832 . *Meghji Jethabhai Vankar's* case (supra) was rendered following the decision in *Chaganti Satyanarayana's* case (supra). Ratio of the latter decision is that the period of 90/60 days envisaged by proviso (a) to Section 167 Cr.P.C. would begin to run from the date of order of remand and not from earlier date when the accused was arrested. Question of computation of prescribed period under the said Section with

reference to provisions of Sections 9 & 10 of General Clauses Act was not considered therein. In Powell Nwawa Ogechi's case (supra), one of the points which arose for consideration was whether Section 10 of General Clauses Act could be brought in aid in cases in which charge sheet is not filed within 90/60 days as envisaged by Section 167 Cr.P.C. It was held that Section 10 of the said Act has no application as the Code does not prescribe any time limit for presentation of charge sheet before a Court. In Rustam's case (supra), accused/respondents were sent by the Magistrate concerned to judicial custody on 3rd September, 1993 which was extended from time to time. On 2nd December, 1993, challan was submitted in Court where after the accused/respondents applied for compulsive bail, as according to them, the period of 90 days expired on 1st December, 1993 and on the premise that their right to compulsive bail survived even after the challan was filed, the High Court agreeing with the pleas raised by accused/respondents, granted them bail. While dealing with two fold issue which fell for consideration, it was held by Apex Court in paras 3 & 4 of the decision:-

'3. We find that the High Court was in error-both in the matter of computation of the period of 90 days prescribed as also in applying the principle of compulsive bail on entertaining a petition after the challan was filed as the so-called 'indefeasible right' of the accused, in our view stood defeated by efflux of time. The prescribed period of 90 days, in our view would instantly commence either from 4-9-1993 (excluding from it 3-9-1993) or 3-12-1993 (including in it 2-12-1993). Clear 90 days have to expire before the right beings. Plainly put, one of the days on either side has to be excluded in computing the prescribed period of 90 days. Sections 9 and 10 of the General Clauses Act warrant such an interpretation in computing the prescribed period of 90 days. The period of limitation thus computed on reckoning 27 days of September, 31 days of October and 30 days of November would leave two clear days in December to compute 90 days and on which date the challan was filed, when the day running was the 90th day. The High Court was, thus, obviously in error in assuming that on 2-12-1993 when the challan was filed period, of 90 days had expired.

4. We may also observe that the High Court's view in entertaining the bail petition after the challan was filed was erroneous., The matter now stands settled in

Sanjay Dutt v. State in which case Hitendra Vishnu Thakur v. State of Maharashtra has aptly been explained away. The court is required to examine the availability of the right of compulsive bail on the date it is considering the question of bail and not barely on the date of the presentation of the petition for bail. This well-settled principle has been noticed in Sanjay Dutt case on the strength of three Constitution Bench cases-- Naranjan Singh Nathawan v. State of Punjab, Ram Narayan Singh v. State of Delhi and A.K. Gopalan v. Govt. of India. On the dates when the High Court entertained the petition for bail and granted it to the accused-respondents, undeniably the challan stood filed in court, and then the right as such was not available.'

4. From the discussion made in para No. 8 at page 1839 of the report in Uday Mohanlal Acharya's case (supra), it may be seen that only the legal position as enunciated in para No. 4 in Rustam's case (supra) was over-ruled and not the manner of computation of prescribed period as laid down in para No. 3 of the judgment. Obviously, the ratio in Powell Nwawa Ogechi's case (supra) runs counter to the ratio in Raustam's case (supra) as regards non-applicability of Section 10 of General Clauses Act to the Code. Powell Nwawa Ogechi and C.Satyanarayana's cases (supra) are, thus, of little help on the issue at hand. Applying the ratio in Rustam's case (supra) day of 4th May, 2001 on which the petitioner was produced in Court is to be excluded while that of 3rd July, 2001 on which charge sheet, was, admittedly, filed, to be included and the period of limitation thus computed, would come to 60 days on 3rd July, 2001. Petitioner was, thus, not entitled to be released on compulsive bail on the application filed on 3rd July, 2001 and petition deserves to be dismissed being without any merit. Dismissed as such.