

Darshansingh Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Apr-26-1978

Reported in : 1978(11)WLN156

Judge : P.D. Kudal, J.

Appeal No. : S.B. Criminal Misc Bail application No. 101 of 1978

Appellant : Darshansingh

Respondent : The State of Rajasthan

Judgement :

P.D. Kudal, J.

1. This is an application under Section 439 Cr PC, 1973, praying for enlarging the accused-applicant on bail.

2. The brief facts of the case, which are relevant for the disposal of this application are that on 27 0 1977, at about 2 a.m. Darshan Singh lodged a report with the police stating that he has three more brothers and all the four brothers are living jointly. It was further contended that they have two trucks RJR 6167 & RJR 6667. RJR 6167 is registered in the name of Darshan Singh and Major Singh while the truck No RJR 6667 is registered in his own name. It was further alleged that Major Singh and Khelihigh's wife along with seven children died in an accident about a

year back. Out of the our brothers, he alone had a wife who had also come in 'nata'. His brother Major Singh had started keeping his wife as his own wife. The petitioner, it was contended, wanted to be compensated for the loss of his wife by getting the truck transferred in his name which was in the name of Major Singh. Major Singh, however, did not agree with this proposal. It was further alleged that on October 26, 1977, he took away the truck after loading wheat in it along with his driver Mangal Singh. When he came near Pechiki Bawari, he asked his cleaner to go back. When Mangal Singh reached near Banthali, it is alleged that the truck No RRR 45 stopped them. It is said that his brother Majorsingh, Harbaksh Singh and Chhida got down from the truck and stopped the truck. The truck driver Mangalsingh was Killed by them. On of the report, the police went to the site for investigation. During investigation, it transpired to the investigation agency that the murder of the driver Mangal Singh was committed by the accused-petitioner Darshan Singh himself. The accused was arrested on 27th October, 1977 at 3. 30 p.m. A challan was submitted before the Judicial Magistrate on 26th December 1977, An application for releasing the accused petitioner on bail was moved before the learned Sessions Judge, Tonk, who rejected the same on the 10th Januaiy 1977.

3. It has been contended on behalf of the accused petitioner that as the provisions of Section 167(2). Cr.P.C. were violated, the accused-petitioner is entitled to be enlarged on bail. It was further contended that the provision of Section 167 Cr.P.C. 1973 are mandatory in character and had to be complied with. It is also contended that the learned Sessions Judge erred in law in computing the period and also in applying Section 469, 471 and 473 Cr.P.C., to the facts of the present case.

4. Mr. Sharma, learned Public Prosecutor appearing on behalf of the State, has opposed the grant of bail to the accused petitioner.

5. The respective contentions of the learned Counsel for the parties have been considered and the record of the case carefully perused.

6 Reliance was placed on Notobar Parida v. State of Orissa : AIR 1975 SC1465 , wherein it was held that under the new Code, on police officer can detain a person in custody, arrested without a warrant, for a period longer than 24 hours as

mentioned in Section 57 corresponding to Section 61 of the Old Code. Section 167 occurring in Chapter XII bearing the heading 'Information to the police and their powers to investigate'-the same as in Chapter XIV of the Old Code-has made some drastic departure. Similar is the position in regard to Section 309 of the new Code corresponding to Section 344 of the Old Code. It may be emphasised that the court will have no inherent power of remand of an accused to any custody unless the power is conferred by law. The assumption of the High Court without reference to Section 344 of the old Code that such a power existed is not correct.'

7. Reliance was placed on *Nabachandra v. Manipur Administration* A.I.R. 1964 Manipur 39, wherein it is held that twenty-four hours prescribed under Section 61 of the Cr.P.C. is the outer most limit beyond which a person cannot be detained in police custody. It is certainly not an authorisation for the police to detain the accused for twenty-four hours in their custody. It is only in a case where a police officer considers that the investigation can be completed within the period of twenty-four hours fixed by Section 61 that such detention for twenty-four hours is permitted.

8. Reliance was placed on *Prem Raj v. The State of Rajasthan* 1976 RLW 8, wherein it is held that the intention of the Legislature seems to be to grant no discretion to the Court and to make it obligatory for it to release the accused on bail. As the accused-applicants were detained exceeding the period of 60 days, they were entitled to be enlarged on bail.

9. Reliance was placed on *Rajani Kanta V. State of Orissa* 1975 Cr.L.J. 83, wherein it was held that as:

Section 56 does not authorise detention by police for 24 hours after arrest. Arrested person has to be produced before Magistrate without unnecessary delay. Twenty four hours prescribed in Section 57 is upper most limit beyond which arrested persons cannot be detained in police custody. It is certainly not an authorisation for police to detain him for 24 hours in their custody....

10. Reliance was also placed on *Khinvdan alias Khinv Singh v. State of Rajasthan* 1975 W L.N. 132 wherein it was held that:

It appears from the certified copies of the remand orders that after the expiry of the total period of 60 days the investigation could not be completed by the police in the present case and the learned Magistrate authorised further detention of the petitioner on 7-2-1975, otherwise than in police custody, for a period of 15 days inspite of the fact that the learned Magistrate was not authorised to detain the accused in custody under Section 167 Cr PC after 2-2-1975 and the petitioner was entitled to be released on bail on the expiry of the total period of 60 days from the date of his arrest.

11. In *Tarsem Kumar v. The State* 1975 Cri.L.J. 1303, it was held that the period of detention under Section 57 of the Code has to be excluded while computing the total period of sixty days, referred to in proviso (a) to Sub-section (2) of Section 167.

12 In *L.R. Chawla v. Murari and Ors.* 1976 Cri.L.J. 212 it was held that when the accused is produced before the Magistrate for remand under Section 167 and the Magistrate decides to grant the remand the custody thereafter is under orders of the Magistrate. The custody under this section cannot be granted for a period exceeding sixty days. A calendar day as a unit of time is the interval from one midnight to another. It is not correct to take into consideration fractions of two days to make up one day. Thus the day on which the custody is granted cannot be excluded.'

13. The accused was arrested on October 27, 1977 and the challan was submitted on December 26, 1977. The total period thus comes to be 61 days. The learned Sessions Judge has excluded two days on the ground that the day on which the offence was committed has to be excluded and as December 25, 1977, happened to be a Sunday, this has also to be excluded. The learned Sessions Judge, therefore, held that the total period for which he accused remained in custody comes to 59 days only. The learned Sessions Judge has also placed reliance on Sections 469, 471 and 473 of the Code of Criminal Procedure, 1973. The learned Sessions Judge further condoned one day's delay in exercise of the powers conferred on him under Section 473 Cr. P.C. 1973 Chapter XXXVI of the New Code of Criminal Procedure dealt with limitation for taking cognizance of certain

offences Section 467, Cr PC provides that the 'period of limitation' means the period specified in Section 468. For taking cognizance of an offence. Section 469(2) provided that in computing the said period, the day from which such period is to be computed shall be excluded Section 471 provides exclusion of date on which court is closed, and Section 473 provides that if the Court is satisfied that on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice, the delay may be condoned.

14. In *Babusingh v. State of U.P.* : 1978 CriLJ651 , it was held that:

Personal liberty deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the crucial power to negate it, is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorise impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of 'procedure established by law. So deprivation of personal freedom, ephemeral or enduring, must be founded on the most serious considerations relevant to the welfare objectives of society, specified in the Constitution.

Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for bi-focal interests of justice to the individual involved and society affected.

15. The freedom and liberty of an individual is guaranteed by Article 21 of the Constitution of India. Section 41 of the new Code of Criminal Procedure authorises a police officer to arrest a person without warrant in certain contingencies. Section 56 provides that a police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station. Section 57 provides that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall

not, in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court.

16. This clearly mean? that the provisions of Section 57 do not authorise a police officer to detain a person for a period of 24 hours exclusive of the time which may be necessary for the journey from the place of at rest to the Magistrate's court.

17. A careful examination of the provisions of Sections 41, 56 and 57 would indicate the once a person has been detained without warrant, he could not be detained for a longer period than in all the circumstances of the case, reasonable. If the investigating officer feels that the investigation cannot be completed within 24 hours then he must immediately produce the accused before the Magistrate and obtain orders under Section 167 Cr PC, 1973. Proviso (a) to Sub-section (2) of Section 167 provides that the Magistrate may authorise detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, the accused shall be released on bail if he is prepared to and does furnish bail In computing the period of sixty days, the learned Sessions Judge has taken into consideration the date of arrest, i.e., October 27, 1977.

18. The learned Counsel for the petitioners have invited the attention of the Court to the two decisions reported in Tarsem Kumar's case 1975 Cri.L.J. 1303 (Supra) and L.R. Chawala's case 1976 Cri.L.J. 212 (Supra). In these cases, it has been held that while computing the period of sixty days, as envisaged under the provisions of Sections 167 of the new Criminal Procedure Code, the period of detention for which the accused has been detained without a warrant by the police officer under Section 57 Cr PC, shall be excluded With due respects, having given my anxious consideration to the ratio decidendi in these two cases, I find myself unable to agree with the view taken therein. Section 41 Cr PC authorises a police officer to arrest a person in certain circumstances; Section 56 enjoins upon him the duty to produce the accused as soon as possible before the Magistrate;

Section 57 provides that the police officer shall not be authorised to detain any person arrested without a warrant for a period longer than 24 hours excluding the time which might be necessary in taking the accused from the police station to the Magistrate. The Magistrate may then authorise further detention if other conditions are satisfied as envisaged under the provisions of Section 167 Cr PC. The period for which the accused is detained in police custody without a warrant, shall be included for the purposes of counting the period of sixty days for which the accused may be kept under detention under the orders of the Magistrate. The period of detention of the accused starts the moment he is arrested. His personal liberty and freedom is curtailed the moment the police officer takes him into the custody. The period for which a person remains in police custody in pursuance of the provisions of Section 57 Cr PC, cannot be excluded from the period of 60 days, as provided under Section 167 Cr PC. It is because of this that a duty is cast upon a police officer to produce before the Magistrate with all reasonable dispatch if he is of the opinion that the investigation cannot be completed within 24 hours. The provision of Section 57 Cr PC do not authorise a police officer to detain a person in all cases upto 24 hours. This is the upper most limit for which period a police officer may detain a person in custody without a warrant. Where a police officer is of the opinion that the investigation cannot be completed within 24 hours, the accused must be produced before the Magistrate. The period for submitting a challan within a period of 60 days would, therefore, include the period of detention of the accused in police custody under the provisions of Section 57 Cr PC.

19. The provisions of Sections 469, 471 and 473 have an application only when cognizance has to be taken for offence which have been enumerated in Chapter XXXVI. These sections have absolutely no relevancy while computing the period of 60 days for the purpose of Section 167 Cr.P.C.

20. Having given my most anxious consideration to the respective contentions of the learned Counsel for the parties, I have no hesitation in holding that the learned Sessions Judge has no jurisdiction to condone a day's delay in computing the period of 60 days provided under Section 167 Cr.P.C. The period of 60 days has to be counted from the date of arrest. A detention beyond the period of sixty days would be illegal and against the mandatory provisions of Section 167 Cr.P.C. It

would also be violative of the individual liberty guaranteed under Article 21 of the Constitution of India.

21. The Investigating officer shall have to be careful in filing the challan within the period of 60 days & if the 60th day happens to be a holiday, the challan ought to have been submitted earlier. By taking recourse to the provisions of the Indian Limitation Act or to the provisions of Chapter XXXVI Cr PC, 1973, the period of detention of a person cannot be enlarged. The provisions of Section 167 Cr PC authorises the detention of an accused person to the maximum time limit of 60 days. It does not authorise a Magistrate to extend the period of detention upto 60 days in each case. It, therefore, follows that the investigating agency must be cautious in putting up the challan within the stipulated period of 60 days. If the 60th day or even the latter days happened to be holidays, in which the courts are closed, then the only interpretation, which can be possibly put, that the investigating agency must file the challan within the period of 60 days. This may ultimately mean in some extreme cases a curtailment of a day or two for the investigating agency, with regard to the period of 60 days envisaged under Section 167 Cr PC, But keeping in view that the freedom and liberty of an individual is guaranteed by Article 21 of the Constitution of India, the investigating agency has to be extremely cautious to ensure that no such deprivation of personal liberty and freedom is occasioned by lapses on their part.

22. For the reasons stated above, I have no hesitation in holding that the challan in the instant case was not filed within 60 days of the petitioner's arrest, He is thus entitled to be enlarged on bail. The accused-petitioner shall be released on bail provided he furnishes a personal bond of Rs. 10,000/- with a surety in the like amount to the satisfaction of the learned Sessions Judge, Tonk, with an undertaking to appear before him when ever called upon to do so.