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Court : Rajasthan

Decided On : Feb-01-1993

Reported in : 1993WLN(UC)57

Judge : Rajesh Balia, J.

Appeal No. : S.B. Cr. Misc. Bail Application No. 3023 of 1992

Appellant : Sri Ram

Respondent : State

Judgement :

Rajesh Balia, J.

1. Heard learned Counsel for the petitioner as well as the learned Public Prosecutor for the State. Learned Counsel for the petitioner submits that accused is in custody for 90 days since his arrest and, investigation has not yet been completed and no challan has been filed, therefore, he is entitled to be released on bail under the provisions of Section 167, Cr.P.C.

2. Learned Public Prosecutor opposed the prayer. Though there is not dispute that even after the expiry of 90 days since detention of the accused, the investigation has not yet been completed, but he contends that provisions of Section 167, Cr.P.C. are not applicable to investigations under the N.D.P.S. Act. He relies on

Jarin Khan v. State of Rajasthan 1992 Cr. LR. (Raj.) 723.

3. As against this, learned Counsel for the petitioner relied on two decisions of this Court reported in 1993 Cr. LR (Raj.) 8 (Phool Chand v. State of Rajasthan) and 1990(2) RLR 284 (Him Ram and Anr. v. State of Raj); wherein this Court has taken the view that filing of challan after expiry of 90 days does not curtail the right of the accused to be released on bail under Section 167, Cr. P.C, even under the N.D.P.S. Act.

4. Section 36A of the N.D.P.S. Act specifically makes provisions of Section 167, Cr.P.C. applicable to the cases arising under the N.D.P.S. Act, Section 36A of the N.D.P.S. Act is a non-obstante clause so also Section 37 of the N.D.P.S. Act. Both are to be construed harmoniously. It is to be remembered that right to be released under Section 167(2), Cr.P.C. is as a result of statutory consequence attached to the failure of investigating agency in completing investigation within 90 days and is not dependent on the discretion of the Court while, in the cases where bail application is to be considered on merits of the case, depends upon the discretion of the Court. In that view of the matter, the harmonious construction of two non-obstante clauses, in my opinion, leads to only one result that when condition for invoking provisions of Section 167, Cr.P.C. arises in a particular case, provision of Section 36A will apply and the provisions of Section 37 of the N.D.P.S. Act will not come in the way. Section 37 deals with the consideration of bail application by the Court where it is to be decided on merits of the case on the discretion of the Court.

5. This view is also supported by decision in Phoolchand's case (supra) with which I am in respectful agreement.

6. I have carefully gone through the decision of this Court in Jarin Khan's case (supra), on which reliance has been placed by the learned Public Prosecutor. It appears that provisions of Section 36A were not brought to the notice of the Court and decision in Jarin Khan's case (supra) is based on considering the provisions of Section 37 of the N.D.P.S. Act and, provisions of Section 36A has not been considered. That being the position, in my opinion, the aforesaid decision is distinguishable. The application of the petitioner is allowed. It is directed that the accused petitioner Sri Ram son of Sankhal Ram, aged 65 years, by caste Sant r/o

Jiwana, District Jalore (Raj.); shall be enlarged on bail, provided he furnishes a personal bond in a sum of Rs. 10,000/-(Rupees Ten thousand) with two sureties of Rs. 5,000/- (Rupees Five thousand) each to the satisfaction of Special Judge, under the N.D.P.S. Act, Jodhpur in CR. No. 113/92, Police Station-Sayala; for his appearance in the aforesaid Court on each and every date of hearing or whenever called upon to do so till the final disposal of the trial.

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