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Court : Rajasthan

Decided On : Nov-21-1985

Reported in : 1986(1)WLN151

Judge : Panna Chand Jain, J.

Appeal No. : S.B. Cri. Misc. Bail Application No. 2333 of 1985

Appellant : Ram Swaroop

Respondent : State of Rajasthan

Disposition : Application dismissed

Judgement :

Panna Chand Jain, J.

1. In this bail application under Section 439 of the Code of Criminal Procedure, 1973 the accused petitioner has prayed that the benefit of Section 167, Cr. PC be extended to him for enlarge him on bail and he be released on bail. The offence under which he has been arrested is Under Section 302 IPC, relating to FIR No. 36/85 lodged at the Police Station, Rawanja Doongar, District Sawai Madhopur.

2. The main question involved in this case is, whether the benefit of Section 167, Cr. PC can be given to the accused-petitioner in case the maximum period of 90 days is completed.

3. Briefly stated, the facts of the case are that an FIR was lodged at the Police Station, Rawanja Doongar, on 17th July 1985, alleging that the accused-petitioner has committed an offence punishable under Section 302, 323 and 447, IPC. The allegations in the FIR are that the accused gave serious lathi blows on the head of Hanuman Singh who later on died on 17th July, 1985. The accused-petitioner surrendered himself before the Munsif & Judicial Magistrate, Sawai Madhopur by moving an application to the Court that as the police wants to arrest him, he be taken into custody and be sent to the judicial custody. The learned Munsif Magistrate on the same day sent the accused petitioner to judicial custody. From the judicial custody the police has taken the accused-petitioner to their custody on 22nd July, 1985 at 3.30 p.m. After the arrest, the police started investigation and, later on, he was sent to the judicial custody on 3rd August, 1985 by the learned Munsif Magistrate. Thus, he was sent to judicial custody after 15 days of the remand were over.

4. The police completed investigation and submitted challan under Section 174, Cr. PC before the Court on 18th October, 1985. It may be mentioned here that on that date the Munsif Magistrate, Shri Suresh Chandra Goyal was on leave and the court work was being looked after by Shri Sunder Lal, Munsif & Judicial Magistrate, Sawai Madhopur, who did not find any defect in the challan and directed the authorities to produce the accused on 24th October, 1985 before the Court. The learned counsel for the accused-petitioner submits that in the facts and circumstances of the case it should be taken that the accused-petitioner was detained on 20th July, 1985 and the charge-sheet, though filed on 18th October, 1985 but in fact, cognizance was taken by the Court on 24th October, 1985. If the date of detention is counted from 20th July, 1985 to 24th October, 1985, the period of detention comes to 98 days. Thus the period of detention is more than what is prescribed under Section 167(2)(a) of the Code of Criminal Procedure, 1973 and the detention became illegal and the accused-petitioner is entitled to be released on bail automatically. The submission of Shri S.R. Surana, learned counsel for the accused-petitioner, is that in view of the circumstances narrated above, the petitioner is entitled to the benefit of Section 167(2)(a) and, since the petitioner is ready and willing to furnish bail bonds to the satisfaction of the Court, therefore, he be released on bail.

5. Shri R.P. Garg, who assisted the learned Public Prosecutor and opposed the bail application, urged numerous grounds which may be summarised as follows:

(a) That the challan was submitted within a period of 90 days. Therefore, the question of illegal detention does not arise in this case;

(b) That even if the detention be held to be illegal that the petitioner is not entitled to be enlarged on bail in the facts and circumstances of the case, as the legal remedy lies elsewhere and the petitioner is not entitled to the benefit of Section 167, Cr. PC;

(c) That this case has been committed to the Court of Sessions and, as such, even if there was any illegality, that no more survives.

6. There is controversy about the fact that before the challan was filed the accused-petitioner remained in the custody for a period exceeding 90 days. The learned counsel for the accused-petitioner submits that the petitioner remained in custody for a period of 98 days, while the learned Public Prosecutor assisted by Shri R.P. Garg submits that the period of detention is 89 days. In such circumstances, it would be better to resolve the factual controversy. There is no doubt that the accused-petitioner surrendered himself on 20th July, 1985 before the Munsif & Judicial Magistrate and that he was in fact taken into police custody on 22nd July, 1985. Further, the question would arise whether the date of arrest should be counted within the period of 90 days or is to be excluded. The submission of the learned counsel for the accused-petitioner is that the relevant date for consideration of filing of the challan under Section 173 Cr.PC is the date on which cognizance is taken by the Court and, thus, the period from 20th July, 1985 to 24th October, 1985 comes to 98 days. His further submission is that even if the date of cognizance is ignored and the period is computed from 20th July, 1985 the date when the accused petitioner surrendered to the date when the challan was filed on 18th October, 1985, the period would be 91 days and, as such the petitioner would be entitled to the benefit of Section 167. Shri Garg submitted that the date of arrest by police under Section 57 of the Code of Criminal Procedure, 1973 has to be excluded while computing the period of 90 days under Section 167. To substantiate his contention, he placed reliance on The State of

Maharashtra v. Sharan B. Sarda 1983 (2) Crimes 254, wherein a similar question arose and the Bombay High Court held that the date of arrest is to be excluded.

7. Another limb of argument of the learned counsel is that for the purpose of Section 167, taking of cognizance by the Court is not necessary and, reliance has been placed on Daula Ram v. State of Rajasthan 1984 RLR 300. The relevant portion of the judgment is as follows:

It is on the basis of proviso to Sub-section (2), that the petitioner's claim to be released on bail is considered. It would be useful to point out that the proviso makes it clear that no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding ninety days where the investigations relate to the offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. A bare reading of this Section 167 would make it clear that it relates to the authorisation of the detention of an accused period during investigation. Therefore, if the investigations are not over within the prescribed period, the proviso to Section 167 in respect of grant of bail would not apply. Therefore, the question for consideration in this case is whether in the present case, the investigations would be deemed to be over or not by the time the challan against the petitioners was filed on 30/4/1983.

8. The judgment of this Court in Daula Ram's case (supra) is based on the observations made by the Supreme Court in the case of State of U.P. v. Lakshmi Brahman : 1983 CriLJ839 in which their Lordships of the Supreme Court held as under:

Section 167 envisages a stage when a suspect is arrested and the investigation is not completed within the prescribed period. The investigation would come to an end the moment charge-sheet is submitted as required under Section 170 unless the Magistrate directs further investigation.

9. In Daula Ram's case, this Court also observed that Section 167 relates to the completion of the investigation and not to the taking of the cognizance. It was further observed in that case that after the charge-sheet was filed on 30th April, 1983 the Magistrate did not order for further, investigation and therefore, it must be

deemed that the investigation had been completed by 30th April, 1983, which was the date on which the challan was filed, well within 90 days of the arrest of the accused.

10. Shri Garg submitted that from a reading of Section 167 together with Section 57, Cr. PC it would be evident that Section 167 envisages arrest and detention of a person in police custody, as the accused-petitioner was arrested by the police on 22nd July, 1985, the period of 90 days should commence from 22nd July, 1985, after excluding the date of arrest. He placed reliance on S.K. Nair v. State of Punjab 1984 Cr. LJ 1090. The relevant portion of the judgment in the said case is reproduced as under:

'With regard to the nature of custody envisaged by Section 167, its Sub-section (.1) is amply clear, which lays down that whenever any person is arrested and detained in custody, and it appears that investigation cannot be completed within the period of twenty-four hours fixed by Section 57 and there are grounds for believing that the accusation is well founded, the Police Officer making the investigation shall produce the said person before the nearest Judicial Magistrate. Here, the terms of Section 57 may be quoted with advantage;

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 essential, and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty four hours exclusive of time necessary for the journey from the place of arrest to the Magistrate's Court;

From the combined reading of the above said provisions of the Code, it is manifest that Section 167 envisages arrest and detention of any person in police custody; preceding his production before a judicial Magistrate. Besides proviso (1) to Section 167 of the Code speaks of the detention of an accused person by the authority of a Magistrate.

11. The learned counsel for the accused petitioner in order to substantiate his contention placed reliance on Narayan v. State of Rajasthan 1983 Crimes 322 On the basis of this authority, Shri Surana submits that if the cognizance of the

offence is not taken before the expiry of 90 days, the bail application is maintainable. He also placed reliance on *Shishpal v. State of Rajasthan* 1984 RLR 474 and *State of Rajasthan v. Bhanwaru Khan* 1975 RLW 516.

12. The above referred cases cited by Shri Surana are quite distinguishable. In Narayan's case, no distinction was brought whether 90 days should be completed before the challan is filed under Section 173 Cr. PC or when the Court takes cognizance under Section 190 Cr. PC. The case of *Shishpal* (supra) is also distinguishable as the date of filing of the charge-sheet and the date of cognizance was the same and, therefore, there was occasion for the Court to consider the matter otherwise. In view of the fact that *Daula Ram's* case (supra) is based on the proposition of law laid down by the Supreme Court, referred to above, which relates to the point under consideration in this case, I respectfully follow the proposition of law laid down therein. I am of the view that the date of taking of cognizance is not relevant. The relevant date is the date of filing challan under Section 173, Cr.PC. Section 167 Cr.PC relates to the completion of the investigation and not to the taking of cognizance. I am of the view that the date of arrest is to be excluded.

13. Thus, in my opinion, the relevant period for consideration under Section 167 would be from 22nd July, 1985 to 18th October, 1985, and excluding the date of arrest, the total period will come to 88 days. In my opinion, the challan was filed well within time and, thus, the accused petitioner is not entitled to the benefit of Section 167. After arriving at this conclusion, there remains nothing for deciding the other controversial issues raised in this case.

14. It would suffice to mention that in order to obtain the release on bail the accused must show that his case is either covered by para (a) of Section 167, or that he is entitled to it under the provisions of Chapter XXXIII of the Code as laid down by the Full Bench of this Court in the case of *Mahesh Chand etc. v. State of Rajasthan* 1984 RLR 697.

15. The application is, thus, without any merit and the same is hereby dismissed.

