

Anand Singh Vs. State of Rajasthan

Anand Singh Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/766020

Court : Rajasthan

Decided On : Sep-17-1998

Reported in : 1999CriLJ842; 1999(1)WLC634

Judge : B.J. Shethna, J.

Acts : [General Clauses Act, 1897](#) - Sections 9 and 10; Code of Criminal Procedure (CrPC) , 1974 - Sections 167(2) and 437; Indian Penal Code (IPC) - Sections 302

Appeal No. : Cri. Misc. Bail Appln. No. 1880 of 1998

Appellant : Anand Singh

Respondent : State of Rajasthan

Advocate for Def. : S.K. Vyas, Public Prosecutor

Advocate for Pet/Ap. : Varun Gupta, Adv.

Disposition : Application dismissed

Judgement :

ORDER

B.J. Shethna, J.

1. The complainant Mukesh Parihar lodged FIR before the police on March 26, 1998 that the accused Anand Singh stabbed Bajrang Singh, due to that Bajrang Singh died on the spot on March 26, 1998. The accused was arrested on that very day i.e. on March 26, 1998. He was produced before the Court on the next day i.e. on March 27, 1998 and the Court gave remand on that day. Since then, he was in judicial custody. However, on June 24, 1998, the accused submitted the bail application under Section 437 read with Section 167(2), Cr. P.C. before the learned Magistrate on the ground that 90 days were over and no charge-sheet was filed. According to the accused-petitioner, his bail application was not decided by the learned Magistrate on that day i.e. on 24th June, 1998 and the same was kept, on the next day i.e. on 25th June, 1998. On the next day i.e. on June 25, 1998, the police submitted charge-sheet against the accused for the offence under Section 302, IPC and, therefore, the learned Magistrate rejected the bail application of the accused-petitioner. Thereafter, the accused-petitioner moved bail application before the learned Sessions Judge who also rejected the same on 15-7-1998. Hence, this bail application.

2. The learned counsellor the accused-petitioner has raised only one submission, namely, that in the instant case, no charge-sheet was filed on the expiry of 90 days, therefore, the accused petitioner's bail application ought to have been accepted by the learned Magistrate on 24th June, 1998, when it was presented/Instead of that, the learned Magistrate allowed the police to submit charge-sheet on the next day i.e. on June 25, 1998 and then rejected the bail application on the ground that charge-sheet was already submitted! It was submitted by the learned counsel for the accused-petitioner that the learned Sessions Judge committed an error in dismissing the bail application of the accused-petitioner on the ground that on the 90th day the charge-sheet was submitted by the police, therefore, the bail application was rightly rejected by the learned Magistrate.

3. The learned counsel for the accused-petitioner Mr. Gupta has heavily relied upon the judgment of the Supreme Court in the case of Chaganti Satyanarayana v. State of Andhra Pradesh AIR 1986 SC 2130 and submitted that on 24th June, 1998, the date on which the accused-petitioner submitted his bail application

before the learned Magistrate, 90 days were over and admittedly, no charge-sheet was filed by the police till 24th June, 1998, therefore, the accused-petitioner should have been released on bail.

4. In this case the accused-petitioner was arrested on 26th March, 1998 and on the next day i.e. on 27th March, 1998, the trial Court passed an order of remand. As per Chaganti's case AIR 1986 SC 2130 (supra), the day of remand order has to be counted for computing the period of 90 day's. Thus, 5 days of March, 30 days of April, 31 days of May and 24 days of June would make total of 90 days. Thus, 90 days would be over on 24th June, 1998 in this case. On that date, when the bail application was presented before the learned Magistrate, instead of deciding the same, the learned Magistrate allowed the police to file charge-sheet on the next date by keeping the hearing of that matter on the next day, thereby the accused-petitioner's right to be released on bail was defeated by the learned Magistrate. Such type of practice is condemned by the Hon'ble Supreme Court in the strongest words in the case of Mohamed Iqbal Madar Sheikh v. State of Maharashtra 1998 SCC (Cri) 202 (Sic). The accused has statutory right to be released on bail under proviso (a) to Section 167(2), Cr. P.C., but that right was tried to be defeated by the learned' Magistrate by keeping the bail application of the! accused-petitioner pending till the charge-sheet was filed by the police on the next date i.e. on 25th June, 1998. Thus, the right which had accrued to the accused-petitioner was extinguished and defeated by the learned Magistrate, which was not at all proper on the part of the learned Magistrate.

5. As per Chaganti's case AIR 1986 SC 2130 (supra), the period of 90 days envisaged by proviso (a) to Section 167(2), Cr. P.C. begins to run from the date of the order of remand and from the dates mentioned above, in the instant case, the accused-petitioner was required to be released on bail.

6. However, the learned Public Prosecutor Mr. Vyas submitted that in a later judgment in the case of State of M.P. v. Rustam 1996 Cri LR (SC) 56, the Apex Court itself has laid down how to compute the period of 90 days under Section 167(2), Cr. P.C. He submitted that in Rustam's case (supra), the Apex Court held that clear 90 days have to expire before the right begins. 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.

7. In Rustam's case (supra), the learned Magistrate passed an order on 3-9-1993 by which the accused were sent to judicial custody and on 2-12-1993 the challan was submitted by the police in the Court. The accused applied for compulsive bail, as according to them, period of 90 days expired on 1-12-1993. The Apex Court held in that case that the prescribed period of 90 days would instantly commence either from 4-9-1993 (excluding from it 3-9-1993) or 3-12-1993 (including in it 2-12-1993) and accordingly, the Apex Court held that the challan was filed before the expiry of period of 90 days.

8. However, Mr. Gupta, learned counsel for the accused-petitioner vehemently submitted that the earlier judgment of the Supreme Court in Chaganti's case AIR 1986 SC 2130 (supra) was not brought to the notice of the Apex Court in the latter judgment in Rustam's case 1996 Cri LR (SC) 56 (supra), therefore, the latter judgment in Rustam's case (supra) is not binding to this Court and this Court is bound by the earlier judgment of the Supreme Court.

9. In my humble opinion, if the latter judgment of the Apex-Court in Rustam's case (1996 Cri LR (SC) 56) (supra) was not there, then, the accused-petitioner was entitled to be released on bail, as per Chaganti's case (AIR 1986 SC 2130) (supra). However, in Rustam's case (supra), the Apex Court while explaining the computation of prescribed period of 90 days under Section 167(2), Cr. P.C. has taken into consideration Sections 9 and 10 of the [General Clauses Act, 1897](#) and it has come to the conclusion that one day either from commencing period or the last day has to be excluded, therefore, though in the latter judgment, the Apex Court has not considered its earlier judgment in Chaganti's case (supra), the judgment in Rustam's case (supra) is binding to this Court. Coming to the facts of this case, as stated earlier, if one day either from commencing period or the last day has to be excluded, then, the charge-sheet was filed on the 90th day by the police, therefore, this bail application is required to be dismissed and it is dismissed.

10. However, before parting I must state that as and when the application under Section 167(2), Cr. P.C. is submitted by the accused before the Court, the Court must try to decide the case on that very day and should not allow the statutory right of the accused to be defeated by keeping the application pending till the charge-sheet is submitted by the police, so that the right which had accrued to the accused is extinguished and defeated.

11. Accordingly, this bail application is dismissed. However, the accused-petitioner is at liberty to make a fresh bail application on any other ground except Section 167(2), Cr. P.C. before the trial Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com