

Sunil Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Dec-09-2011

Reported in : 2012CrLJ334(NOC)

Judge : Anil Sharma

Appeal No. : Criminal Revision No. 921 of 2011

Appellant : Sunil

Respondent : State of Madhya Pradesh

Judgement :

1. Petitioner has filed the present revision petition under Section 397, 401 of Code of Criminal Procedure, 1973 challenging the order dated 12-10-2011 passed by learned Judicial Magistrate First Class, Morena in unregistered case No. /2011 (Crime No.93/11 registered at Police Station Noorabad District Morena) whereby the application filed by the petitioner under Section 167(2) of Cr.P.C. has been dismissed.

2. Petitioner has been arrested in crime No.93/11 registered at Police Station Noorabad District Morena for the offence punishable under Sections 147, 148, 149, 307, 327, 294, 201 and 120-B of IPC, under Section 3(1)(x) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 25, 27 and 30 of Arms Act.

3. Petitioner has been arrested on 07-07-2011 and has been sent in judicial custody on 08-07-2011. When the concerning Police Station did not file the challan within 90 days of sending the petitioner in judicial custody, petitioner has filed a bail application under the provisions of Section 167(2) of Cr.P.C. but the learned trial Court has dismissed the application on the ground that the offence punishable under Sections 11/13 of M.P.D.V.P.K. Act has been added in the crime, therefore, under the provisions of M.P.D.V.P.K. Act challan is to be filed within 120 days.

4. Learned counsel for the petitioner has placed reliance on the decision of Apex Court in the matter of Uday Mohanlal Acharya Vs. State of Maharashtra, 2001 SCC (Cri) 760 in which it has been held that the delay beyond the period specified in clause (a) of the proviso in completion of investigation gives accused an indefeasible right to be released on bail when investigation is not complete within the specified period. In order to avail such right the accused is only required to file an application before the Magistrate seeking release on bail alleging that no challan has been filed within the period prescribed and he is prepared to offer bail on being directed by the Magistrate.

5. Learned counsel for the petitioner has also submitted that the date on which the order has been passed no charge-sheet has been filed, hence the statutory right of bail of the petitioner cannot be defeated by keeping the bail application pending till the charge sheet is submitted. In support of his contention and arguments he has further cited the judgment of Apex Court in the matter of Mohammed Iqbal Madar Sheikh and others Vs. The State of Maharashtra, 1996 CAR 103 in which it has been held that the statutory right of bail under Section 167(2) of Cr.P.C. cannot be defeated by keeping the bail application pending till the charge sheet is submitted so that the right which had accrued is extinguished and defeated.

6. Learned Public Prosecutor for the respondent/State has opposed the revision petition filed by the petitioner and submitted that since the offence punishable under Section 11/13 of M.P.D.V.P.K. Act has been added, therefore, the prescribed period for filing of challan shall be deemed to be extended for 120 days.

7. According to proviso 5 of M.P.D.V.P.K. Act no court or Magistrate shall authorise the detention of a person accused of a specified offence in custody during the course of investigation for a period exceeding 120 days and on the expiry of such period accused shall be released forthwith if he is prepared to and does furnish the bail. Therefore, on bare perusal of this proviso, it is clear that this provision applies to the accused who has been detained for a specified offence as defined in M.P.D.V.P.K. Act while petitioner has not been detained in any of the specified offence of M.P.D.V.P.K. Act. Merely by adding the Section 11/13 of M.P.D.V.P.K. Act, the rights of petitioner as provided under Section 167(2) of Cr.P.C. of bail cannot be curtailed as the provisions of M.P.D.V.P.K. Act are applicable only to those accused who have been in judicial custody for a specified offence as defined in M.P.D.V.P.K. Act.

8. In view of the foregoing reasons, learned lower appellate Court has erred in not exercising the jurisdiction vested in it by law, therefore, the revision petition filed by the petitioner is allowed. Petitioner be released on bail on his furnishing personal bond in the sum of Rs.25,000/- (Rupees Twenty-five thousand only) with one solvent surety in the like amount to the satisfaction of the concerned Magistrate, on the condition that he shall remain present before the Court concerned during trial and also comply with the conditions enumerated under Section 437(3) of Cr.P.C. Accordingly, the revision petition stands allowed and disposed of.

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