

State Through CBI

Vs

Mohd. Ashraft Bhat and Another

Criminal Appeal No. 1708 of 1995

(K. Venkataswami, M. M. Punchhi JJ)

07.12.1995

ORDER

1. Leave granted.

2. This is an appeal against the order dated 9-5-1994 of the Presiding Officer, Designated Court established under the Terrorist and Disruptive Activities Act, in the State of Jammu and Kashmir, whereby the first respondent was released on bail in terms of Section 167 CrPC inasmuch as the prosecution failed to submit police report (challan) within the period prescribed. It transpires that the prosecution submitted the police report on 23-12-1992, when the period of one year assigned for the purpose stood expired. It is noteworthy that when claim for bail by the respondent was being examined, the police report indeed stood filed. Yet the Designated Court granted bail to the respondent on the mere fact that police report had been filed belatedly. It apparently considered the right of the respondent to bail infeasible on the expiry of the period of one year.

3. Patently, the Designated Court was in error. A five-member Bench of this Court in *Sanjay Dutt v. State* has ruled at page 442 as follows : (SCC para 48)

"The infeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 CrPC ceases to apply."

4. The second error committed by the Designated Court was with regard to computation of period of one year. It appears that the respondent stood arrested earlier in another FIR No. 14 of 1991. In the instant FIR No. 56 of 1991, his date of arrest, for the purposes of computing the period of limitation, was taken as the date of the original arrest in the earlier FIR No. 14 of 1991. In the instant FIR No. 56 of 1991 the respondent was arrested later on 17-4-1992. It is from the later date the period of limitation had to be computed.

5. This Court in *Central Bureau of Investigation, Special Investigation Cell-I v. Anupam J. Kulkarni* had the occasion to clarify the position of law on the subject referred at pp. 158 and 159 as follows :

(SCC para 13)

"There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above. If the investigation is not completed within the period of ninety days or sixty days then the accused has to be released on bail as provided under the proviso to Section 167(2). The period of ninety days or sixty days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police. Consequently the first period of fifteen days mentioned in Section 167(2) has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody."

6. These two fatal errors committed by the Designated Court would warrant setting aside its order, and cancelling the bail granted to the respondent. He shall be arrested forthwith, but subject to the concession that he may of his own appear before the Designated Court and surrender himself and pray for bail on the merit of the matter if it is due to him. If he approaches the Court for the purpose, the Designated Court may put the Public Prosecutor to notice immediately and thereafter examine whether the respondent is due for bail in the facts and circumstances of the case, subject to the limitations imposed in the statute.

7. The appeal stands allowed accordingly.