

Manoj

Vs

State of Madhya Pradesh

Criminal Appeal No. 371 of 1999

(K.T. Thomas, M. B. Shah JJ)

05.04.1999

JUDGMENT

K.T. Thomas, J.

1. Leave granted.

2. Appellant is caught between Scylla and Charybdis. Such a peculiar situation arises but rarely for an accused and he remains in jail for long, without conviction in any case, despite obtaining an order of bail as the High Court of Madhya Pradesh expressed helplessness in considering his plea for release, though he has a legal point in his favour.

3. The aforesaid situation was reached on the following facts. On 22.6.1998 appellant was arrested in connection with a case involving Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the NDPS Act) registered by the police of Kota in Rajasthan (it can be referred to as "the Rajasthan case", for convenience) and is remaining in custody. In the meanwhile, another case under NDPS Act started snowballing at Rampura district in Madhya Pradesh which initially was against one Govind Singh and eventually it involved the appellant also (for convenience the latter case can be referred to as "the MP case"). It is said that appellant was recorded as arrested in connection with the MP case on 7.8.1998.

4. Appellant move for bail in Rajasthan case and after initial setbacks he succeeded in getting an order in his favour which was passed on 16.10.1998 by the High Court of Rajasthan (Jaipur Bench) directing him to be released on bail on executing a personal bond for Rupees fifty thousand together with two solvent sureties in a sum of Rupees twenty five thousand each to the satisfaction of the Special Judge (dealing with NDPS cases) Kota. We are told that appellant did not execute the bond since his arrest in the MP case became a stonewall for his release from custody.

5. So he moved the High Court of Madhya Pradesh for bail under Section 493 of the Code of Criminal Procedure ('the Code' for short) after his first move before the Sessions Court at Mandsaur in Madhya Pradesh was rejected. The High Court of Madhya Pradesh also rejected his petition. After the expiry of ninety days of arrest in the Madhya Pradesh case he moved an application before the Special Judge, Kota contending that he is entitled to bail under proviso to Section 167(2) of the Code as no charge-sheet was laid in the MP case till then. But the special court rejected the application on the ground that "he was never produced before the court after the formal arrest (and no order as regards first remand was ever passed); therefore, in this case, question of completion of investigation within a period of ninety days does not arise."

6. He again moved the High Court of Madhya Pradesh upon which the impugned order was passed. Learned single judge of the High Court of Madhya Pradesh who passed the impugned order, was not inclined to give the appellant benefit of the proviso to Section 167(2) of the Code on the premise that he was not produced before any Court pursuant to the arrest dated 7.8.1998 and hence he cannot be treated to be in judicial custody in the MP case. This is what the learned judge has said :

"On perusal of the impugned order of the trial court, it emerged that the accused/applicant is not produced before the Court as yet in compliance to the production warrant issued by the Court. The trial Court considered that he is not in a judicial custody in the instant case. Without commenting anything on the applicability of Section 167(2) to this case at this stage I do not consider it proper to enlarge the accused on bail."

7. It is not well-nigh settled that benefit of the proviso to Section 167(2) of the Code would endure (endure ?) to an accused involved in the offences under NDPS Act as well, (Vide *Union of India v. Thamisharasi and ors.*, 1995(2) RCR 531 : 1995(4) SCC 190. Paragraph 14 of the said decision reads thus :-

"In our opinion, in order to exclude the application of the proviso to sub-section (2) of Section 167 Cr.P.C. in such cases an express provision indicating the contrary intention was required or at least some provision from which such a conclusion emerged by necessary implication. As shown by us, there is no such provision in the NDPS Act and the scheme of the Act indicates that the total period of custody of the accused permissible during investigation is to be found in Section 167 Cr.PC which is expressly applied. The absence of any provision inconsistent therewith in this Act is significant."

8. But the position is slightly different because appellant is not continuing in custody pursuant to any order passed under Section 167(2) of the Code. Sub-section (2) would apply only to an accused who was forwarded to a magistrate as per sub-section (1) because further detention of the accused can be made only if it is so authorised by such magistrate. Proviso to sub-section (2) contains the interdict 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 investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years". The proviso further mandates that "on the expiry of the said period of ninety days.....the accused person shall be released on bail if he is prepared to and does furnish bail." It is further provided that "every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter."

9. Here the prayer for bail is opposed on the ground that detention is without such authorisation. Can the benefit of bail be denied on such a ground ? Section 167(1) of the Code is relevant in this context as it enjoins on the police officer concerned a legal obligation to forward the arrested accused to the nearest magistrate. That sub-section reads thus :

"Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57 and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit

to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate."

10. The police officer who conducts investigation cannot obviate the legal obligation to perform two requisites if he knows that investigation cannot be completed within 24 hours after arrest of the accused. One requisite is, to transmit a copy of the diary to the nearest judicial magistrate. The other is, to forward the accused to such magistrate simultaneously. The only exceptional ground on which the police officer can avoid producing the arrested person before such magistrate is when the officer concerned is satisfied that there are no grounds for believing that the information or accusation was well-founded. In such a case, the accused must be released from custody to which he was interred pursuant to the arrest.

11. In this context Section 57 of the Code is also relevant and hence it is extracted below :-

"57. Person arrested not to be detained more than twenty-four hours. - 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 reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."

12. If the police officer is forbidden from keeping an arrested person beyond twenty-four hours without order of a magistrate, what should happen to the arrested person after the said period. It is a constitutional mandate that no person shall be deprived of his liberty except in accordance with the procedure established in law. Close to its heels the Constitution directs that the person arrested and detained in custody shall be produced before the nearest magistrate within 24 hours of such arrest. The only time permitted by Article 22 of the Constitution to be excluded from the said period of 24 hours is "the time necessary for going from the place of arrest to the court of the magistrate." Only under two contingencies can the said direction be obviated. One is when the person arrested is an "enemy alien". Second is when the arrest is under any law for preventive detention. In all other cases the Constitution has prohibited peremptorily that "no such person shall be detained in custody beyond the said period without the authority of a magistrate."

13. When the State of Madhya Pradesh, whose police made the arrest of the appellant in connection with the MP case on 7.8.1998, admitted that after arrest he was not produced before the nearest magistrate within 24 hours, its inevitable corollary is that detention made as a sequel to the arrest would become unlawful beyond the said period of 24 hours.

14. Of course the stand of the State of Madhya Pradesh is that appellant continues to be under detention pursuant to his arrest in the Rajasthan's case. Excuses were advanced by the respondent-State for their inability to produce the accused before the nearest magistrate within the required period. But no such excuse has been recognized by law. Hence respondent cannot validly press for further detention of the accused beyond 24 hours. That arrest has not become otiose.

15. We, therefore, make it clear that as soon as the appellant executes the bond to the satisfaction of the Special Magistrate, Kota, in pursuance of the order of the High Court of Rajasthan dated 16.10.1998 (cited supra) he shall be released forthwith unless his detention is lawfully required in any other case. We make it clear that nothing stated in this judgment shall prejudice the powers of

the police to arrest the appellant in accordance with law, in connection with any case.