

(2001) 03 CAL CK 0034
In the Calcutta High Court
Case No : Criminal M. No. 183 of 2001

Bhagyabati Mondal and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 07-03-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 167(2)(a), 167(2)(a)(i)(ii), 439

Penal Code, 1860 (IPC) — Section 304, 305, 306, 307, 498

Citation : 105 CWN 1149

Hon'ble Judges : Malay Kumar Basu, J; Basudeva Panigrahi, J

Bench : Division Bench

Advocate : A. Sanyal and Rajendra Banerjee, for the Appellant; Kaji Safiullah and P.K. Roy, for the Respondent

Final Decision : Allowed

Judgement

Basudeva Panigrahi, J.—This is an application filed u/s 439 of the Code of Criminal Procedure to release the applicants on bail as they were arrested in connection with Margram Police Station Case No. 98/2000 dated 13.11.2000 arising out of the G.R. Case No. 618/ 2000 under Sections 498 and 304 of I.P.C. wherein the Sub-Divisional Judicial Magistrate, rampurhat had rejected the prayer for bail. The prosecution story as revealed from First Information Report is as follows:

The de facto-complainant's daughter Shyamali was given in marriage to Goutam Mondal as per Hindu rites and customs. It is further stated in the report that while the deceased Shyamali was staying in her matrimonial house, she was subjected to excessive torture as a result of which she could no longer tolerate any torture or humiliation, set herself ablaze on 19.10.2000 by pouring kerosene upon her person. Immediately, thereafter, it is alleged that the victim was sent to Udaypur Public Health Centre at the first instance but, subsequently, she was referred to Rampurhat Sub-Divisional Hospital. Subsequently, she succumbed to

burn injuries on 11.11.2000.

2. The petitioners, few days after the registration of the case, surrendered themselves in court below on 17.11.2000 and as their prayer for bail was rejected they filed this application.

3. Mr. A. Sanyal, the learned Counsel appearing for the petitioners has strongly contended that the petitioners are otherwise entitled to bail since no charge-sheet could be submitted within 60 days from the date of their custody. It has been further submitted that they surrendered to judicial custody on 17.11.2000, as there has been no charge-sheet filed against the accused till today. Therefore, they are otherwise entitled to bail u/s 167(2)(a) of the Code of Criminal Procedure. While appreciating the case of the petitioner, it is necessary to quote Section 167(2)(a)(i)(ii) of the Code of Criminal Procedure which is quoted here below:

The Magistrate to whom the accused person is forwarded at the time authorizes the detention of the accused in such custody as it thinks fit, for a term not exceeding fifteen days in the whole, and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate provided that -

(a) the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days if he is satisfied that adequate ground exists for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding -

(i) 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;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days" as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purpose of that chapter.

4. It is highlighted that if the investigation relating to an offence punishable with "an imprisonment for a term of not less than 10 years" is not completed within 60 days, then the accused shall be entitled to statutory bail. It should be remembered that the term "not less than 10 years" is not to be confused with the term "upto 10 years". In a case where the maximum punishment is upto 10 years, the period of detention that is permissible u/s 167(2) Cr. P.C. is only 60 days. Mr. Sanyal has further contended that there are two different expressions stated in the Code, i.e. "upto 10 years" and "not less than 10 years", where the sentence "upto 10 years" has been prescribed, the charge-sheet has to be filed

within 60 days. In cases where the sentence provided is "not less than 10 years", the charge-sheet has to be filed within 90 days. Illustrations are too many, such as, Sections 304, 305, 307 I.P.C. etc.

5. Mr. Additional Public Prosecutor, appearing for the State has contended that "upto 10 years" means the court can also award the maximum sentence of 10 years in suitable cases looking to the gravity of the offence, in such situation, it should not be interpreted that the expression "upto 10 years" should be the same as "not less than 10 years".

6. The case has been registered u/s 306 of the I.P.C. The term of sentence prescribed in the statute says "extend to 10 years". It is true that in some cases the court can award a sentence that may extend to 10 years. In such situation, we express our considered view that it should not be limited to 60 days in case of such grave offence. The investigating agency may require some more time to unfold the offence alleged to have been committed against the accused. Therefore, 90 days period of detention may be given to the prosecution u/s 167(2) Cr.P.C. for completion of investigation.

7. But, in this case major part of the prosecution is already over. We expect large number of witnesses must have been examined. It has proceeded a long way to close the prosecution case.

Therefore, we hereby allow the petitioner to be released on bail subject to furnishing the bond of Rs. 5,000/- each with two securities of whom one must be a local to the satisfaction of S.D.J.M., Rampurhat.

Accordingly, we allow the application.

Malay Kumar Basil, J.

I agree.