
(1991) 07 BOM CK 0002

In the Bombay High Court

Case No : Criminal Application No. 570 of 1991

Bhujangrao Jadhav and Another

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 10-07-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)

Citation : (1992) 2 BomCR 198

Hon'ble Judges : M.S. Vaidya, J

Bench : Single Bench

Advocate : A.H. Kapadia, for the Appellant; K.H. Dhuldhwaj, Assistant Public Prosecutor, for the Respondent

Judgement

M.S. Vaidya, J.—Rule returnable forthwith.

A.P.P. waives notice.

Dead body of one Anandibai w/o Koutikrao Jadhav i.e. the wife of petitioner No. 2 was found in a field at village Borgaon (BK), Taluka Jafrabad, Dist. Jalna on 5-3-1991. Some woman reported that fact at the house of Anandibai and the matter was reported in course of time, to Jafrabad Police Station. It was found from the medical report that she had died of throttling. The matter was reported to the parents of and brothers of deceased Anandibai. The brother of Anandibai lodged first information report at Jafrabad Police Station, alleging therein that the present petitioners and one Leelabai w/o Ramchandra Pandit were responsible for causing the death of Anandibai. An offence punishable u/s 302, 498-A, 201 read with section 34 of the Indian Penal Code came to be registered against the said persons and the present petitioners were arrested on 7-3-1991. Previous attempts for seeking bail failed in the Courts below as well as in Criminal Application No. 274 of 1991 filed in this Court. In the last mentioned proceeding, the petitioners were given liberty to move the learned Sessions Judge for bail, after the charge-sheet was filed. Having done that unsuccessfully, the petitioner have moved this Court for bail. The charge-sheet was submitted to the

Magistrate on 11-6-1991 i.e. more than 90 days after the arrest of the petitioners.

2. When the matter had come up for hearing before this Court on 5-7-1991, the prosecution was called upto to explain the circumstances on account of which the delay in submitting the charge-sheet has been caused, and other relevant factors which were indicated in the decision of the Supreme Court in Raghubir Singh and Others Vs. State of Bihar, . The Investigating Officer was directed to file an affidavit, but instead of doing so, he had submitted through the Public Prosecutor his report dated 8-7-1991. He has stated in that report that the charge-sheet in question was prepared on 17-5-1991, but the same could not be filed in the Court of the concerned Judicial Magistrate, First Class, because the Police Station Officer remained busy in his bandobast duties on account of the meetings held by several VIPs and VVIPs in the context of General Parliamentary Elections and the extra ordinary situation that had resulted thereafter on account of assassinations of the Former Prime Minister, the Late Shri Rajiv Gandhi. He submitted that the charge-sheet was filed on 11-6-1991, immediately after the Investigating Officer get himself freed of his responsibilities of maintaining law and order.

3. The learned Advocate for the petitioners contended that such an explanation could not be used by the prosecution for giving a go-by to the statutory right in favour of the petitioners u/s 167(2) of the Code of Criminal Procedure. He submitted that in Raghubir Singh's case, referred to above, several considerations were indicated, but they were for the purposes of determining, whether or not, in given circumstances, the cancellation of bail as was sought in that case, should be ordered. The learned Advocate for the petitioners, referred before me to several rulings, such as; State of Uttar Pradesh Vs. Lakshmi Brahman and Another, , State of Maharashtra Vs. Sharad B. Sarda, ; Udhav Kale v. The State of Maharashtra, unreported judgment in Criminal Application No. 269 of 1991, decided by this Court on 27-3-1991 and B.S. Rawat, Asstt. Collector of Customs, Bombay Vs. Leidomann Heinrich and another, . As against this, the learned A.P.P. submitted that in none of these cases the explanation of the delay, such as one offered in the present case was offered, and it was not a matter for consideration before any of the courts, which have decided the aforesaid cases, as to whether or not, in the event of satisfactory explanation given by the prosecution for delay in submission of the charge-sheet, the right of the accused u/s 167(2) of the Code of Criminal Procedure to get bail could be side tracked. It was this contention that the merits of the case show, in the present case, that there was sufficient evidence against the accused and the Investigating Officer was at no fault in not submitting the charge-sheet in time. It was submitted further, that when the circumstances had prevented him from submitting the charge-sheet in time, the so called right of the petitioners u/s 167(2) of the Code of Criminal Procedure could not be allowed to supervenes the inability of the prosecution in submitting the charge-sheet in time, for the reasons were beyond the control of the Investigating Officer.

4. The argument advanced by the learned Addl. Public Prosecutor is certainly attractive and may be, in given circumstances, the same argument would hold some force for protecting the interest of the prosecution in ensuring that the accused remained in custody pending the trial. But, the various rulings on the point, which were relied upon before me do not warrant such a course. The propositions of the law as they emerge from the decisions referred to above, may be summed up very briefly as follows :

i) The right of the accused to bail u/s 167(2) of the Code of Criminal Procedure is an absolute right and even if the accused fails to apply for bail, after the expiry of 90 days, the Magistrate may pass the orders for bail and communicate it to the accused. *Rajnikant Jivanlal and Another Vs. Intelligence Officer, Narcotic Control Bureau, New Delhi, and State of Uttar Pradesh Vs. Lakshmi Brahman and Another, .*

ii) This right of the accused is not lost because the charge-sheet is filed subsequently *State of Maharashtra Vs. Sharad B. Sarda, , Udhav Kale v. State of Maharashtra*, unreported judgment in Criminal Application No. 269 of 1991 decided by this Court on 27-3-1991.

iii) The remedy open to the prosecution is to apply u/s 437(5) of the Code of Criminal Procedure for cancellation of bail, because the accused's right is not defeated by filing the charge-sheet or the remand granted u/s 309(2) of the Code of Criminal Procedure. *Raghubir Singh and Others Vs. State of Bihar, .*

iv) An application for cancellation of bail, pending the bail application filed by the accused u/s 167(2) of the Code of Criminal Procedure is premature, because the question of cancellation of bail does not arise, unless the accused is, in fact, on bail. The inherent powers of the High Court cannot be exercised for the purpose of resorting to the considerations which are relevant for the purposes of cancellation of bail. *B.S. Rawat, Asstt. Collector of Customs, Bombay Vs. Leidomann Heinrich and another, .*

5. The aforesaid four propositions squarely cover the facts of the present case, and the considerations which were indicated by *Raghubir's* case as relevant for the purposes of cancellation of bail u/s 167(2) of the Code of Criminal Procedure, which has arisen, as described in *Rajnikant Patel's* case on account of the order, which ought to be passed in default of the prosecution in submitting the charge-sheet in time. True it is, that it would be a cumbrous procedure first order to the accused to be released on bail and then to consider the question, whether or not, the bail should be cancelled, in view of the considerations indicated by the Supreme Court in *Raghubir Singh's* case. But, the weight of the authority, as stated above, appears to be in favour of that view.

6. For these reasons, the petitioners must succeed in this petition. Hence the order.

ORDER

The petitioners be released on bail on each of them executing a P.R. of Rs. 3,000/- with one surety in like amount on the conditions ---

i) that they shall not tamper with the prosecution evidence, and

ii) they shall not make any default in attending the Magisterial Court or the Sessions Court on the dates fixed for the inquiry or trial, as the case may be.