
(1978) 09 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Criminal M.P. (M) No. 182 of 1978

Gurbachan Singh and Another

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 29-09-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(1), 167(2), 167(3), 173(8)

Citation : (1979) ShimLC 1

Hon'ble Judges : T.U. Mehta, C.J

Bench : Single Bench

Advocate : K.D. Sud, for the Appellant; A.G., for the Respondent

Judgement

T.U. Mehta, C.J.—The Petitioner are sought to be prosecuted for the offence of murder of one Mehar Singh said to have been committed on 23-6-1978. First information report for this purpose was filed at the police station on the next day, that is, on 24-6-1978. The Petitioners moved the Sessions Judge, Solan for bail u/s 439 of the Code of Criminal Procedure. The learned Sessions Judge dismissed this application of 31-7-1978. This present petition is filed against that order of the learned Sessions Judge. When this petition was filed, sixty days for filing the challan contemplated by the proviso (a) attached to Sub-section (2) of Section 167 of the Code of Criminal Procedure, were not over. But during the pendency of this period became over and challan was filled by the police on 4-9-1978. Thereafter the Petitioners moved this Court stating that apart from the merits of the case, they were entitled to bail under the above referred proviso (a) to Section 167(2) of the Code of Criminal Procedure, because the challan was filed after the expiry of sixty days from the date of their arrest.

2. It is found that similar application was given by the Petitioners to the Chief Judicial Magistrate, Nahan, but the learned Magistrate by this order dated 7-9-1971 did not decide that petition and referred the same to the Sessions Court because the case was committed by him to the Sessions Court. When the matter went to the Sessions Court, the learned Sessions Judge, curiously

enough, rejected the bail application without considering whether or not the Petitioners were entitled to bail by virtue of proviso all attached to Sub-section (2) of Section 167 of the Code of Criminal Procedure. This is clear from the following order passed by the learned Sessions Judge on 1-9-1978:

The application stands to be rejected. So the course for accused is directed to adopt proper course. The case is fixed for 29-9-1978 for arguments on charge.

It is difficult to understand why the learned Sessions Judge rejected the bail application without considering the question whether proviso (a) to Section 167(2) was attracted or not. At any rate, the same point now is required to be considered by me in this petition.

3. It is found from the police record that the Petitioner No. 2 Jeet Singh was formally arrested by the police on 4-7-1978 and Petitioner No. 1 Gurbachan bingh was so arrested on 5-7-1978 and the challan against both of them was filed Sv the police on 4-9-1978. Therefore, if sixty days period of limitation which is contemplated by proviso (a) to Sub-section (2) of Section 167 of the Code of Criminal Procedure is counted from the date of the respective arrest of both the Petioners by the police, the said proviso would come into operation and both the Petitioners would be entitled to be released on bail. The question, however, is from what point of time the period of sixty days should be counted. Should the said period be treated as having started from the date of the arrest of the accused by the police or from the date on which the accused persons were surrendered to judicial custody.

4. In order to consider this question, it would be proper to refer to the provisions Section 167 and the scheme contemplated by it. Section 167 of the Code of Criminal Procedure should be read in conjunction with Section 57 which puts limitation on the detention of the arrested peron by the police and says that no police officer shall detain in custody a person arrested without warrant for a longer period than 24 hours, in absence of a special order of a Magistrate u/s 167. Sub-section (1) of Section 167 provides that where a person is arrested and detained in custody, and it appears that investigation cannot be completed within a period of 24 hours fixed by Section 57, the officer incharge of police station or the Investigating Officer shall forward the accused to a Magistrate. Under Sub-section (2) of this section the Magistrate to whom the accused is thus forwarded, may from time to time, authorise the detention of the accused in police custody for a term not exceeding 15 days in the whole. Thus reading Sub-sections (1) and (2) of Section 167 together, it follows that the concerned Magistrate can authoriесе the detention of the person arrested in police custody for a period of 15 day. Provisos (a) and (b) which are attached to Sub-section (2) and which are relevant for consideration of the point which has arisen, are in the following terms:

Provided that:

(a) The Magistrate may authorise detention of the accused person, otherwise

than in custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this section for a period exceeding sixty days, and on the expiry of the said period of "sixty days, 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 section shall be deemed to be so released under the provisions of Chapter XXXIII for the puposes of that chapter;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

we are not concerned either with the proviso (c) or the explanation attached thereto. But Sub-section (3) of Section 167 is also relevant. It is in the following terms:

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

5. The scheme which is revealed from the above quoted provisions of Section 167 is that the Magistrate can authorize two types of custodies, namely (1) the police custody and (2) the judicial custody. In other words Section 167 contemplates not merely the judicial custody, but also the police custody. So far as the police custody is concerned, there is a limitation to the effect that the same cannot exceed more than 15 days. After the expiry of these fifteen days of police custody, the arrested person is required to be taken in judicial custody. Now the question is whether the limitation of sixty days of custody refers to the period of total custody whether police or judicial or refers only to the judicial custody. Answer to this provided by the language employed by the proviso (a) itself. This language speaks of "custody under this section", and makes it clear that sixty days limitation which is contemplated by the proviso is with regard to both the types of custodies contemplated by this section. It, therefore, follows that sixty days limitation would start running from the time the person is arrested by the police. This view is further justified by the fact that Section 167 finds its place in the scheme of the Act in Chapter XII which contemplates the various stages,-of police investigation and the power of the police during the course of investigation. If that is so, it should follow that the limitation of sixty days for the pupose of custody refers to the stage of investigation by the police. In other words, the police is expected to put the challan within sixty days. Reference to Sub-section (8) of Section 173 shows that investigation can be continued even after the challan is put. But so far as the submission of the challan to the court is concerned, the period of limitation which is contemplated by proviso (a) of Section 167(2) is sixty days and since these sixty days are to be counted from any custody u/s 167, the period would begin to run from the date person is arrested and taken into custody by the police.

6. So far as the facts of this case are concerned, it is evident that the Petitioner

Jeet Singh was arrested by the police in connection with this case on 4-7-1978. Period of sixty days expired in his case on 1-9-1978. Petitioner Gurbachan Singh was arrested on 5-7-1978 and in his case the period of sixty days expired on 2-9-1978. The challan against both of them has been submitted a few days later, that is on 4-9-1978. Under circumstances, both the Petitioners are found entitled to bail under the proviso (a) attached to Sub-section (2) of Section 167 of the Code of Criminal Procedure.

7. It is, therefore, ordered that each of the Petitioners shall be enlarged on bail on his furnishing a personal bond with one surety in the amount of Rs. 5000/- to the satisfaction either of the concerned Sessions Judge or of the Cheif Judicial Magistrate. Dasti order on usual terms.