

(1998) 12 AHC CK 0013
In the Allahabad High Court
Case No : Criminal Revision No. 2045 of 1998

Inayatullah and Others (in Jail)

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 17-12-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Penal Code, 1860 (IPC) — Section 302

Citation : (1999) 1 ACR 378

Hon'ble Judges : O.P. Jain, J

Bench : Single Bench

Advocate : Ashfaq Ahmad Ansari, for the Appellant; A.G.A., for the Respondent

Judgement

O.P. Jain, J.—This is a revision against order dated 30th November, 1998 passed by Sri Raj Krishna Incharge Chief Judicial Magistrate, Saharanpur, by which an application u/s 167, Sub-clause (2), Code of criminal procedure has been rejected.

2. u/s 302, I.P.C, etc. has been registered and they have been arrested. The prosecution case is that on 19th August, 1998 at about 3.00 p.m. accused Suleman poured kerosene oil over complainant's brother Sukhvir and Bholu took a match-box from accused Inayatullah and set Sukhvir on fire. The accused also set fire to the thatched roof of the house. Sukhvir was immediately taken to a hospital situated in a nearby village and thereafter he was removed to Saharanpur and then to Delhi. First Information Report was lodged by Jaipal, brother of Sukhvir, on 20th August, 1998 after returning from Delhi.

3. The application u/s 167, Sub-clause (2), code of Criminal Procedure was filed on 28th November, 1998 on the ground that the accused were arrested on 28.8.98 and they completed 90 days in Jail on 25.11.98 and, therefore, they were entitled to be released on bail because no charge-sheet was filed against them within the period of 90 days. This application was rejected by the learned Magistrate. Hence this revision.

4. I have heard Sri Ashfaq Ahmad Ansari, learned Counsel for the revisionists, Sri Viresh Mishra, learned Counsel for the complainant and A. G. A. for the State.

5. The learned counsel for the revisionists has given the following dates:

6. (i) Date of arrest 28.8.98. (ii) Last remand order 25.11.98. (iii) Date on which 90 days completed 26.11.98. (iv) Application for bail filed 28.11.98. (v) Charge-sheet filed 30.11.98. (vi) Bail application considered 30.11.98.

7. On the basis of the above dates, it is contended that the charge-sheet was not filed within 90 days and, therefore, the accused were entitled to be bailed out as of right and the Court below was wrong in postponing the hearing of the bail application to 30.11.98. Learned Counsel for the revisionist has cited *Amar Singh and Anr. v. State of U. P.* 1993 JIC 143, in which it has been held that bail has to be granted even if there is no bail application on behalf of the accused if the charge-sheet is not filed within 90 days. However, it appears from *Dr. Bipin Shantilal Panchal v. State of Gujarat* 1996 Cr U 1652 (SC), that the Court is not obliged to release a person on bail unless a bail application is before it.

For calculation of period of 90 days, the date on which the accused are remanded to judicial custody is to be excluded and the period of police custody remand is also to be excluded as held in *State of M. P. v. Rustam and others* 1995 SCC 830 and *Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J. Kulkarni* AIR 1992 SC 1768. In the instant case, it does not appear from the record as to how many days the accused remained in police custody. For the purpose of deciding the revision, it is being assumed that the period of 90 days expired on 26.11.98.

8. The main contention on behalf of the revisionist is that the bail application should have been allowed by the Court below on the same day on which it was filed, i.e, on 28.11.98. However, the Court below did not do so and postponed the hearing of the bail application to 30.11.98 on which date the charge-sheet was filed by the police and, therefore, the statutory right which had accrued to the accused was defeated. In support of this contention, learned Counsel for the revisionist has cited *Mohammad Iqbal Madar Sheikh and Ors. v. State of Maharashtra* 1996 ACC 136 (SC), in which the following observations have been made:

"During hearing of the appeal, it was pointed out by the counsel appearing on behalf of the Appellants that some courts in order to defeat the right of the accused to be released on bail under proviso (a) to Section 167(2) after expiry of the statutory period for completion of the investigation, keep the applications for bail pending for some days so that in the meantime, charge-sheets are submitted. Any such act on the part of any court cannot be approved. If an accused charged with any kind of offence, becomes entitled to be released on bail under proviso (a) to Section 167(2), that statutory right should not be defeated by keeping the applications pending till the charge-sheets are submitted, so that the right which had accrued is extinguished and defeated."

9. In the instant case, it cannot be said that the learned Magistrate deliberately avoided to hear the arguments on the bail application on 28.11.98 and it was purposely postponed to 30.11.98. On the contrary, it appears that the accused deliberately filed the application for bail on 28.11.98 which was a Saturday. In the Western part of Uttar Pradesh, on every Saturday there is a strike by Advocates in support of their demand of a Bench of the High Court in Western Uttar Pradesh. 29th November, 1998 was Sunday and, therefore, the bail application was taken up on the earliest possible date, i.e., 30.11.98.

10. The learned Magistrate has rightly pointed out that the Investigating Officer submitted the charge-sheet as early as on 22nd September, 1998 and the Circle Officer passed an order on the same on 2nd November, 1998. Thereafter, there was some manipulation due to which the charge-sheet was actually filed in Court on 30.11.98. During the course of the hearing before this Court, Sri Sunil Kumar Tyagi, S.H.O., Behat district Saharanpur was present and he made a statement that police constable Harpal Singh, who was working as Court Pairokar has been suspended in this connection. Therefore, it is apparent that the filing of the charge-sheet in Court was deliberately delayed by persons having vested interest in the matter.

11. Whatever may be the reasons for the delay in the filing of the charge-sheet, the fact remains that at the time when the arguments on the bail application were heard, the charge-sheet was before the Court. Therefore, the accused was not entitled to get compulsive bail. It has been held in the case of State of M. P. v. Rustam and others 1995 SCC 830 (para 4). that the accused is not entitled to claim a right for compulsive bail after the charge-sheet was filed. A similar view has been taken in Dr. Bipin Shantilal Panchal Vs. State of Gujarat, in which it has been held that Section 167(2) proviso does not create indefeasible right on accused to exercise the right to get bail at any time. Accused cannot be released on bail on the ground that charge-sheet was not submitted within statutory period. In the instant case on the date on which the bail application was being considered, the charge-sheet was before the Court and, therefore, the learned Magistrate rightly rejected the bail application. In view of the above discussion, this revision has no force and is hereby dismissed.