

(2001) 08 CAL CK 0026
In the Calcutta High Court
Case No : C.R.M. No. 2331 of 2001

Jayanta Majhi and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 07-08-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 439
Penal Code, 1860 (IPC) — Section 304(B), 306, 386, 498A

Citation : (2001) 3 CALLT 172 : (2001) 3 CHN 73 : (2002) 1 DMC 308 : (2002) 3 RCR(Criminal) 660

Hon'ble Judges : Sujit Barman Roy, J; Pradip Kumar Biswas, J

Bench : Division Bench

Advocate : Milan Mukherjee, for the Appellant; Sudipto Moitra, for the Respondent

Judgement

1. This is an application u/s 439 of the Code of Criminal Procedure filed by the petitioner namely, Jayanta Majhi, Sanatan Majhi and Chabi Rani Majhi praying for their release on ball, as they were arrested in connection with Chanditla P.S. Case No. 59 dated 30.5.2001 u/s 498A/306 of the Indian Penal Code, arising out of G.R. Case No. 466/2000 pending before the learned sub divisional Judicial Magistrate, Serampore.

2. The prosecution story as revealed from the first Information report is as follows: -

3. The petitioner No. 1 Jayanta Majhi was married to Piyali in the month of Ashar, 1406 B.S. according Hindu Rites and Customs and at the time of marriage articles were given as per the demands of the petitioners.

4. It has further been alleged that while the deceased Piyali was staying in her matrimonial Home, she was subjected to torture by the petitioners both mentally and physically, and the petitioners also made demands of cash of Rs. 50,000/- from the defacto complainant, but the defacto complainant was unable to satisfy

their demand. Subsequently, petitioner No. 1 brought Piyali to her paternal home on 27.05.2001 for attending the "Jamal Sasthi". In the morning of 29.5.2001 the petitioner No. 3 gave a call to Piyali and told her to return to her matrimonial home and Piyali immediately returned to her matrimonial home and around 11 P.M., of the same day, i.e., 29.5.2001, the defacto complainant received a phone call whereby he was informed about the death of his daughter. The defacto complainant thereafter lodged written complaint alleging therein that due to torture, both mental and physical, committed by the petitioners, his daughter Piyali died.

5. The petitioners were arrested by the police on the self-same day and their bail prayer was rejected by the concerned Court and the bail prayer of these accused petitioners was rejected by the learned Sessions Judge, Hooghly on 7.7.2001.

6. Mr. Milan Mukherjee, learned counsel appearing on behalf of the petitioners has strongly contended that the petitioners are entitled to bail since no charge sheet could be submitted within sixty days from the date of their arrest in connection with this case. It has further been submitted that these accused petitioners were taken into custody on 30.5.2001 and till today i.e., on 30.7.2001, no charge-sheet has been filed and as such as per the provisions of 167(2)(ii) of the Code of Criminal Procedure, the petitioners are entitled to be released on bail. In support of his contention, he has placed his reliance on a number of decisions reported in 1) Om Parkash Gabbar Vs. State of Punjab, page 2974, 2) Dilip Ojha Vs. State of Bihar and Others, , page 1352(Patna High Court) (Ranchi Bench) and 3) 2000 (1) CHN 578.

7. From the aforesaid decisions it is clear that for the offences wherein the sentence upto 10 years Imprisonment is provided, the charge-sheet has to be filed within 60 days as otherwise an accused will acquire a right to be released on bail.

For appreciating the case of the petitioner it is necessary to refer Section 167(2) (i)(ii) of the Code of Criminal Procedure which are quoted hereunder :-

(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".

8. Section 306 of 1PC denotes about the sentence of imprisonment for a term which may extend to 10 years. On a plain reading of Clause (I) and (II) of proviso (a) to Sub-section 2 of Section 167 of Cr. PC, there seemed to be no doubt that offences punishable with death, Imprisonment for life or imprisonment for a term of not less than 10 years would fall under Clause (I) and offences which are punishable for imprisonment "upto 10 years" would fall under Clause (II). Therefore, the two different expressions i.e., "up to 10 years" and "not less than 10 years" used in the statute deal with different situations and in

the offences, wherein the sentence "up to 10 years" imprisonment is provided, the charge-sheet has to be filed within 60 days and in cases where the sentence provided is "not less than 10 years", the charge-sheet will have to be filed within 90 days.

9. Mr. Sudipto Moitra, the learned APP appearing for the State has contended that "upto 10 years" means the Court can also award the maximum sentence in suitable cases looking into the gravity of the offence and in such a situation, it should not be interpreted that the expression "upto 10 years" should be the same as "not less than 10 years" and in support of his contention reliance has been placed on a decision reported in 2001 CCRLR (Cal) 182 as also on a decision of Supreme Court reported in AIR 2001 SC SCW 2210.

10. The learned APP has also submitted one written argument on behalf of the defacto complainant wherein it has been contended that as per the allegations in the FIR, the police has miserably failed to put right penal sections. In the FIR and instead of putting sections 498A/306 of IPC, section 304(3) of IPC should have been inserted as per the allegations in the FIR. In the written statement submitted by the defacto complainant they have also placed their reliance on the aforesaid Supreme Court decision and it was contended on their behalf that provisions of 167(2) (i) of Cr.PC should be invoked in this case.

11. we have considered the submissions of the respective parties and we have also carefully perused the decisions cited by both the parties. It has been held by the Supreme Court in the aforesaid decision that-

"From the relevant part of the aforesaid sections, it is apparent that pending investigation relating to an offence punishable with Imprisonment for a term "not less than 10 years", the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days. For rest of the offences, period prescribed is 60 days. Hence in case, where offence is punishable with imprisonment for 10 years or more, accused could be detained up to a period of 90 days. In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. u/s 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider Clause (1) of proviso (a) to Section 167(2) it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. u/s 386 of the IPC imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years."

12. Perusing the aforesaid decision of the apex Court, we are of the opinion that the head note as reported in AIR 2001 SCW 2212 has not reflected correctly the principles laid down by the apex Court, so, the aforesaid decision instead of supporting the prosecution version supports the defence contention.-

13. The instant case has been registered under sections 498A/306 of the IPC, and the term of sentence prescribed in this statute in respect of section 306 of IPC is imprisonment of either description for a term which may extend to 10 years and also fine and the offence u/s 498A of IPC has prescribed lessor sentence i.e., "imprisonment for 3 years and fine".

14. Taking into consideration the facts and circumstances of the case and in view of the principles laid down by the apex Court in the aforesaid judgment of the Supreme Court and also taking into consideration that in the Instant case, no charge-sheet has been submitted within prescribed period of 60 days from the date of arrest of these petitioners i.e., 30.5.2001, we hold clearly that the petitioners are entitled to be released on bail u/s 167(2)(ii) of the Code of Criminal Procedure. Accordingly, we direct that the three petitioners namely, Jayanta Majhi, Sanatan Majhi and Chabi Rani Majhi be released on bail on furnishing a bail bond of Rs 5000/- with one surety each of like amount to "the satisfaction of the learned Sub Divisional Judicial Magistrate, Serampore on condition that the petitioner No. 1 and 2 namely, Jayanta Majhi and Sanatan Majhi shall meet the I.O., of this case once in a week for the next two months.

15. Order accordingly