
(2007) 09 AHC CK 0058
In the Allahabad High Court

Lakhan Tomer, Asit Gupta and Siddhartha Manohar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Penal Code, 1860 (IPC) — Section 304A, 337, 338, 427

Citation : (2008) CriLJ 1521

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—Heard Dileep Kumar and Sri Rajiv Gupta, learned Counsels for the petitioners and learned A.G.A. for the State.

2. The prayer in the instant writ petition is for quashing the orders dated 1.7.2006, Annexure-VII to the writ petition, passed by Chief Judicial Magistrate, Meerut and 1.8.2007, Annexure-IX to the writ petition, passed by Sessions Judge, Meerut. The second prayer is for a direction in the nature of mandamus for release of the petitioners under proviso of Section 167(2) of Criminal Procedure Code, in case crime No. 95 of 2006, Police Station Civil Lines, Meerut.

3. The, petitioner Nos. 1, 2 and 3 are partners of a firm in the name and style of M/s Mirnal Events & Exposition having its registered office at 31 Sarvodaya Colony, Civil Lines, Meerut. The petitioners organized a show of electronics/electrical/mechanical gadgets of the products of a number of manufacturing companies to educate the public at large imparting technical awareness of utilizing various products of the aforesaid traders. The show was inaugurated on 6.4.2006. On 10.4.2006, suddenly the temporary structure erected caught fire which resulted in causality of 64 lives and left a huge number of injured visitors. A first information report was registered at case crime No. 95 of 2006, under Sections 304-A, 337, 338, 427 I.P.C. Police Station Civil Lines, Meerut against the petitioners. The petitioner No. 1 surrendered on 27.4.2006, petitioner

No. 2 on 28.4.2006 and petitioner No. 3 on 30.4.2006 before the Chief Judicial Magistrate, Meerut and were remanded to judicial custody. Objection were raised before the Remand Magistrate that no offence under the Penal Code is made out and, therefore, they are entitled for release forthwith. The objections were rejected by the Magistrate and the petitioners were granted remand. The bail applications of the petitioners were rejected by the Chief Judicial Magistrate as well as the court of Sessions Judge. As mentioned in the writ petition, the bail application has been heard by this Court and order was reserved. Thereafter the bail was listed for further hearing but the final orders are still awaited.

4. Learned Counsel for the petitioners has placed the order of the Chief Judicial Magistrate, Meerut dated 27.4.2006 at the time of first remand of accused Lakhan Tomer. The order is annexed as Annexure-2 to the writ petition. Learned Counsel laid emphasis on the finding of the Chief Judicial Magistrate to the effect that it can not be ruled out that the accused had knowledge about the possibility of the accident on the site of electronic fair which was erected by him, which was not having requisite standard of precautions. In the circumstances, it is submitted that though the first information report was lodged for an offence u/s 304-A I.P.C. but can at the maximum be read as an offence u/s 304 Part II imparting "knowledge to the accused". On 30.6.2006, the petitioners moved an application u/s 167(2) Cr.P.C. as the process for investigation was not concluded within a period of 60 days from the date of first remand. In paragraph 16 of the writ petition, it is averred that the application was moved at 11.00 A.M. on which an endorsement was made by the Magistrate seeking report from the court of Moharrir about the charge sheet. A report was submitted at 1.00 P.M. on the same day i.e. 30.6.2006 after lunch that no charge sheet has been received and, therefore, the bail application was pressed by the counsel appearing for the accused. However, before any order, for bail could be allowed, there was an endorsement on the application that the charge sheet was received at 4.00 P.M. The application along with endorsement of the different timings as well as report of the Court Moharrir is annexed as Annexure-4 and charge sheet as Annexure-5 to the writ petition. Learned Counsel has also stated that the endorsement of moving application at 11.00 A.M. was not made in the application despite his request and thereafter an affidavit was moved by the counsel himself and also question are confirming that till then the charge sheet was not received in the court of Chief Judicial Magistrate. The question re is annexed as Annexure-6 to the writ petition. The applications were rejected by the Chief Judicial Magistrate on the ground that since the charge sheet has not been submitted u/s 304 Part II I.P.C. but u/s 304 I.P.C. where the maximum punishment prescribed under the Code is life imprisonment, therefore, charge sheet could have been submitted within 90 days and the provisions of Section 167(2)(a)(ii) Cr.P.C. does not come into play. Learned Counsel has tried to demonstrate that the applications on behalf of three petitioners were moved after expiry of 60th day, i.e. on 61st day on behalf of the petitioner No. 1, 63rd day on behalf of the petitioner No. 2 and 64th day on behalf of the petitioner No. 3. At this juncture, Sri Dileep Kumar has

tried to show the orders passed on the bail applications of the petitioners by the learned Sessions Judge, Meerut wherein it was argued by D.G.C. (Criminal) that knowledge by the petitioners includes

negligence and if the accused had knowledge which is likely to cause death, they will be guilty of culpable homicide u/s 304 I.P.C. It is once again emphasized that since the prosecution itself believed, that the petitioners had knowledge but not "intention" to cause death, therefore, the offence at the maximum can only be one u/s 304 Part II I.P.C.

5. In support of this contention, learned Counsel for the petitioners has cited a number of decisions. This Court in the case of Bijendra Singh ? Pinto v. State of U.P. 2001 (42) ACQ 493, enlarged the accused on bail for non compliance of Section 167(2) Cr.P.C. The detention of an accused person, otherwise than in custody of the police beyond the period of 15 days, at a stretch, if he satisfied that adequate ground exists for doing so, but no Magistrate shall authorise the detention of the accused person in custody for a total period exceeding 90 days where the investigation relates to an offence punishable with death or imprisonment for life or imprisonment of a term of not less than ten years and sixty days where the investigation relates to any other offence. On expiry of the aforesaid prescribed period, the accused person is entitled for his release u/s 167(2) Cr.P.C. This Court followed the decision of the Apex Court while granting bail in the case of Sanjay Dutt v. State through C.B.I., Bombay (31) 1994 ACC 702 (SC). The Apex Court held in the case of Mohammad Iqbal Madar Sheikh and Ors. v. State of Maharashtra (33) 1996 ACC 136 (SC) that unless application has been made on behalf the appellant, there was no question of the accused being released on the ground of default in completion of investigation within statutory period, therefore, this right can not be exercised after the charge sheet is submitted and cognizance is taken by the Court. A Full Bench of this Court in the case of Bal Mukund Jaiswal v. Superintendent, District Jail, Varanasi and Anr. (36) 1998 ACC 542 has taken the same view. This was a Habeas Corpus Petition and the questions referred in the said petition was also considered. A Full Bench of five Judges of this Court in the case of Deepak Som v. Superintendent, District Jail, Lucknow and Ors. 2001 (2) EFR 150 has considered the questions referred in the aid case. Both the Full Bench decisions cited by the learned Counsel for the petitioners relate to a stage of the case when the accused is remanded either u/s 309(2) or 209 Cr.P.C. it is either at the stage of committal or it is to be tried by Magistrate when it is adjourned and, therefore, the Full Bench was of the view that there is no necessity for the Magistrate to record a separate order for remanding the accused in jail custody, in the event of adjournment to a future date. In fact the question decided by the Full Bench is at a stage which has not arisen in the instant case.

6. The present writ petition is only on the question that since the investigation continued beyond the period of 60 days and no charge sheet was filed till the 61st, 63, 64th day, therefore, the detention of the petitioners was rendered

illegal and they were entitled for being released. "The application was filed after expiry of 60 days and before the charge sheet was submitted, therefore, I am of the considered view that the two I Full Bench decisions cited by the learned Counsel for the petitioners are of subsequent stage which does not arise in the instant writ petition. The other two decisions placed before me by the learned Counsel are; *Rajeev Chaudhary Vs. State (N.C.T.) of Delhi*, and *Uday Mohanlal Acharya v. State of Maharashtra* (42) 2001 ACC 952. In the case of *Uday Mohanlal Acharya* (supra) it was held that the provision of Section 167 Cr.P.C. is supplementary to Section 57, in consonance with principle that accused is entitled to demand that justice is not delayed. Proviso to Section 167(2) Cr.P.C. stipulates that accused shall be released on bail on failure of prosecution to file the challan within the period specified, an indefeasible right accrues to the accused to be released on bail. In the case of *Rajeev Chaudhary* (supra) in paragraph 6 it was held;

6. 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 (i) 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 I.P.C. imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years.

7. In view of the aforesaid decisions, it is clear that non filing of the charge sheet within a period of 60 days could prove fatal only in the event the prescribed sentence was less than imprisonment for life or may extend to 10 years and also liable to fine. Admittedly the punishment provided for an offence u/s 304 I.P.C. is either life imprisonment or 10 years and also fine, the period of 10 years imprisonment or with fine or with both is provided if the act is done with the knowledge that it is likely to cause death but without intention to cause death or cause fatal injury likely to cause death. Accepting the argument of Sri Dileep Kumar that the case is covered u/s 304(2) I.P.C. so far the petitioners had no intention of causing murder but had knowledge that it may cause death, without

any such intention, the prescribed period of punishment is 10 years and, therefore, the bar of 60 days does not come into play at all. The Apex Court had clearly provided in the case of Mohammad Iqbal Madar Sheikh and Ors. (supra) as far as back in the year 1996 that this right can not be exercised after the charge sheet has been submitted and cognizance has been taken.

8. In view of the decisions of the Apex Court, since admittedly the charge sheet was filed, even assuming it was after 60 days and the petitioners are in detention even today, no benefit could be given to the them in the instant writ petition. It is always open for the petitioners to claim their release in a regular bail, which has already been moved in this Court and is pending decision as informed by the counsel for the petitioners. Besides it has rightly been pointed out by the learned A.G.A. that whether the conviction is u/s 304(2), or otherwise it can only be ascertained after conclusion of evidence during the trial. This Court can not pre-empt the decision by the trial court even before the evidence is recorded. I am not inclined to interfere in the impugned orders. There is no good ground for interference in exercise of jurisdiction under Article 226 of Constitution of India. This Court can not pass an order of release, specially when the recourse to the remedy provided in the Code of Criminal Procedure has already been availed. The writ petition lacks merit and is accordingly dismissed.