

(2006) 07 BOM CK 0057

In the Bombay High Court

Case No : Criminal Bail Application No. 1184 of 2006

Nijamuddin Mohammad Bashir Khan and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 07-07-2006

Acts Referred:

Criminal Procedure (Amendment) Act, 1978 — Section 167(2)
Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 344
Penal Code, 1860 (IPC) — Section 306, 307, 34, 366, 386

Citation : (2006) CriLJ 4266 : (2006) 5 MhLj 690 : (2007) 2 RCR(Criminal) 827

Hon'ble Judges : Roshan S. Dalvi, J; J.N. Patel, J

Bench : Division Bench

Advocate : None, for the Appellant; A.S. Gadkari, Assistant Public Prosecutor, for the Respondent

Judgement

J.N. Patel, J.—The learned single Judge of this Court while dealing with the application filed by the accused seeking their release on bail on the ground that the prosecution has failed to submit charge-sheet u/s 167(2) of the Criminal Procedure Code within the stipulated period i.e. within 60 days from the date of their arrest, was required to make a reference to the larger bench and this is how the matter has been assigned to us.

2. The question which is referred to the Division Bench can be culled out from para 7 of the order which reads as under:

7. There is, therefore, a clear conflict on the issue whether the provisions of Section 167(2)(a)(i) is attracted or the provisions of Section 167(2)(a)(ii) are attracted in respect of the decisions of two learned single Judges of this Court on the one hand and the one learned single Judge of this Court on the other hand. Therefore, in my view, it would be appropriate if the matter is referred to the Division Bench. Neither the learned Counsel for the applicants nor the learned APP for the State has invited my attention to any other judgment of the Supreme Court on this point besides the judgment in the case of Rajeev Chaudhury

(supra). Therefore, I have no other alternative but to request the Hon''ble Chief Justice to refer this matter to the Division Bench or a larger Bench as the Hon''ble Chief Justice deems fit and proper.

3. The facts which gave rise to the filing of the application and which are not much disputed are that the original applicants came to be arrested on 7-1-2006 on the complaint of Smt. Rajiya Begum Mohammad Siraj Dhobi for having committed the offence u/s 366 read with Section 34 of the Indian Penal Code which came to be registered vide C.R. No. 14/06 of Sahar Police Station.

4. It appears that the Investigating Officer failed to file the charge-sheet against the applicants before the Magistrate for a period of more than 60 days and by an order of remand passed u/s 167(2), the applicants are held in judicial custody in Mumbai Central Prison and Byculla Prison respectively and therefore the applicants moved the application for seeking bail u/s 167(2) of the Criminal Procedure Code for the failure on the part of the prosecution to file charge-sheet within the stipulated period i.e. 60 days from the date of their arrest. The said application was moved before the learned Metropolitan Magistrate, 22nd Court at Andheri which came to be rejected by an order dt. 10-3-2006 on the premise that the offence for which the applicants are arrested, the investigating agency are entitled to file charge sheet by completing the investigation within 90 days and not 60 days. The learned Metropolitan Magistrate held that in the case of the applicant, 90 days are not completed from the date of arrest of accused Nos. 1 and 2 and therefore relying on the decision of this Court in the case of Mohammed Arif Din Mohd, Shaikh Vs. State of Maharashtra, rejected the application. The applicants then approached the Court of Sessions, Greater Bombay by filing Bail Application No. 500 of 2006 for seeking bail on the ground that the applicants are arrested for the offence punishable u/s 366 read with Section 34 of the Indian Penal Code, police should have completed investigation and filed charge-sheet within 60 days from the arrest of the applicant/accused persons. It is not so filed within 60 days and therefore, the applicants are entitled for bail under the provisions of Section 167(2)(a)(ii) of Criminal Procedure Code which in addition to justifying the view taken by the learned Metropolitan Magistrate was also contested on the ground that such powers to release the accused can only be invoked before the learned Magistrate and not before the Sessions Court.

5. On going through the order passed by the learned Addl. Sessions Judge, we find that the learned Sessions Judge while rejecting the application in addition to considering the issue raised before it by the applicants seeking bail for default of the prosecution in completing the investigation within 60 days, proceeded to consider the merits of the matter and on both counts rejected the application for bail and that is how the applicants have approached the High Court by filing the said application for bail on the. ground of default.

6. Though the reference was taken up by us from time to time, none appeared for the applicants. Therefore, we propose to dispose of the reference on hearing

the learned A.P.P.

7. The learned A.P.P. Mr. Gadkari submitted that the question which is referred by the learned single Judge for the decision of this Court highlights the key issue as to whether offence u/s 366 of the Indian Penal Code for which punishment prescribed is imprisonment for either description for a term which may extend to 10 years and shall also be liable to fine; would fall u/s 167(2)(a)(i) or (ii) of the Criminal Procedure Code. It is submitted that due to conflict of decision of co-ordinate benches of this Court, the reference has been made to the Division Bench of this Court by the learned single Judge and submitted that in case of Mohammed Arif Din Mohd, Shaikh Vs. State of Maharashtra, the learned single Judge of this Court held that even in case where the punishment is upto 10 years, the provisions of 167(2)(a)(i) would apply which probably prevailed on the learned Magistrate to reject the application for bail.

8. The learned A.P.P. fairly stated that considering the subsequent decisions of this Court where it has taken a contrary view i.e. in the case of Santosh Singh Govardhan Singh Kashyap Vs. State of Maharashtra, and so also in the case of Pralhad Vithal Giri and Another Vs. State of Maharashtra, where the learned single Judge of this Court placed reliance on the case of Rajeev Chaudhary Vs. State (N.C.T.) of Delhi, . The decision of the learned single Judge in the case of Mohammed Arif Din Mohd. Shaikh (supra) can no longer hold the field as in the case of Rajeev Chaudhury v. State of Delhi (supra) which was followed by this Court in Pralhad Vithal Giri and Anr. v. The State of Maharashtra (supra) and in the case of Santosh Singh Govardhan Singh Kashyap v. State of Maharashtra (supra), the law on the point is well settled.

9. In the case of Rajeev Chaudhury v. State of Delhi (supra), the Supreme Court has made it very clear that u/s 386 of the Indian Penal Code 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.

10. 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 not less than 10 years. u/s 386 of the Indian Penal Code imprisonment can vary from minimum to maximum period of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years. Therefore, the decision of the learned single Judge of this Court in the case of Mohammed Arif Din Mohd. Shaikh v. State of Maharashtra (supra) wherein learned single Judge observed that the expression "which may extend to 10 years used in Section 307 of the Indian Penal Code in my view, includes the sentence of 10 years. In other words even an offence u/s 307 of the Indian Penal Code where hurt is not caused, punishment of 10 years can be imposed and if

punishment of 10 years can be imposed in such a case, the period for completing the investigation u/s 167(2)(a)(i) of the Criminal Procedure Code would be 90 days." The learned A.P.P. submitted that this Court may take into consideration the various judgments referred to by the learned single Judge and dispose of the reference,

11. We would have restricted ourselves to the issue which is referred to us by the learned single Judge for resolving the conflict in the decision on the point taken by co-ordinate benches of this Court i.e. on one hand in the case of Mohammed Arif Din Mohd. Shaikh (Coram : Vishnu Sahai, J) (supra) and on the other hand in the case of Santosh Singh Govardhan Singh Kashyap v. State of Maharashtra (Coram : P. S. Patankar, J) (supra) and in the case of Pralhad Vithal Giri and Anr. (Coram : D. D. Sinha, J) (supra). On going through the record, we find the order dt. 10-3-2006 passed by the Metropolitan Magistrate, 22nd Court, Andheri, the learned Magistrate has taken the computation of the time of custody of the accused from the date of their arrest and therefore, by taking this opportunity, we would also like to clarify this aspect so that for future it can be a guide-line to the subordinate Courts for computation of the period of detention u/s 167(2) of Criminal Procedure Code and for that very same reason, we have taken pains to examine the facts of the case in detail, though strictly speaking, it is not necessary for us for the purpose of deciding the reference.

12. The relevant portion of Section 167 of the Criminal Procedure Code which falls for our consideration are reproduced herein:

167. Procedure when investigation cannot be completed in twenty-four hours -
(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

Provided that -

[(a) the Magistrate may authorise the detention of the accused person, otherwise than in the 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

authorise the detention of the accused person in custody under this paragraph for a total period exceeding -

(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.

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, 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 sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

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

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

(Explanation I - For the avoidance of doubts, it is hereby declared that notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.)

(Explanation II) - If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.

2(A)...

(3) ...

(4) ...

(5) ...

(6) ...

13. The point referred to us is in respect of correct interpretation of proviso (a)(i) and (ii) to Sub-section (2) of Section 167 of the Criminal Procedure Code. This proviso has been substituted by Act 45 of 1978 in order to remove the difficulty which was experienced under the original Proviso in cases of investigation into offences of a serious nature which, as pointed out by the Supreme Court in the case of *Matabar Parida, Bisnu Charan Parida, Batakrushna Parida and Babaji Parida Vs. The State of Orissa*, might not be completed within the originally limited time of 60 days and, if in such cases, the accused were to be released on bail after that period, such law might be a "paradise for the criminals". Hence, by the substituted Proviso, the Magistrate is now empowered to authorise detention of the accused in custody pending investigation for an aggregate period of (a) 90

days where the investigation relates to an offence punishable with death, imprisonment for life or for a term of not less than 10 years or more, and (b) upto 60 days in other cases. While, under the original Proviso (a), the period of extension was limited upto 60 days only, the substituted Proviso (a) classifies cases deserving extension into two categories and for offences punishable with death or imprisonment for life or for 10 years or more, raises the limit of extension upto 90 days. This came up for consideration of the Andhra Pradesh High Court in the case of *The Public Prosecutor, High Court of A.P., Hyderabad v. Chaganti Satyanarayana and Ors.* reported in (1986) Cr.LJ. 1134 para 12 of which reads as under:

12. In *Malabar Parida v. State of Orissa* 1975 Cri LJ 1212 (supra) adverting to the limited period of remand of sixty days enacted in proviso (a) of Sub-section (2) of Section 167, their Lordships of the Supreme Court observed:

But if it is not possible to complete the investigation within a period of sixty days then even in serious and ghastly types of crimes, the accused will be entitled to be released on bail. Such a law may be a ""paradise for the criminals", but surely it would not be so, as sometimes it is supposed to be because of the Courts. It would be so under the command of the Legislature.

The observations of the Supreme Court led to amendment of the proviso (a) to Sub-section (2) of Section 167 by Act 45 of 1978. By the amendment the Magistrate is empowered to authorise detention of the accused in custody pending investigation for an aggregate period of 90 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 or more and up to 60 days in any other case. The amendment is intended to remove difficulties which had been actually experienced in relation to the investigation into offences of a serious nature as pointed out by the Supreme Court. By Act 45 of 1978 original Explanation in the Code of 1973 has been numbered as Explanation - II an Explanation - I has been added to clarify that when the accused person does not furnish bail he would continue to be in detention notwithstanding the expiry of the period specified in the proviso (a).

14. The aforesaid decision came to be affirmed by the Supreme Court in the case of *Chaganti Satyanarayana and Others Vs. State of Andhra Pradesh*, wherein the Supreme Court held in para 7 as under:

Before making a scrutiny of the terms of the proviso in question it will be of use to have a glimpse of the historical background of this legislative provision. Originally, the Code provided only a period of 15 days for remand. As the period was too short for investigation in cases of serious nature the police were forced to resort to filing before the Magistrates a preliminary or incomplete report and seek extension of remand u/s 344 of the old Code. This device was resorted to as an inevitable necessity, even though Section 344 of the old Code could be invoked only after a Magistrate had taken cognizance of an offence which in turn

could be only after a report u/s 173 had been received and not while investigation was in progress. The course followed for obtaining orders of remand beyond 15 days very often led to lethargy in the investigation of cases resulting in scores of accused persons languishing in custody for long periods. To remedy the situation the Legislature deemed it fit to put a time limit on the powers of the police to obtain remand while the investigation was in progress after taking care to provide a longer period of remand so that investigations are not affected. Consequently, a time limit of 60 days with a provision for its extension under certain circumstances was fixed by adding proviso (a) to Sub-section (2) of Section 167 of the Code of 1973. In the working of the provision it came to be realised that a ceiling limit of 60 days for completion of investigation in all cases including serious cases involving sentence of death, imprisonment for life etc. was hampering full and effective investigation in serious cases and affected the interests of the State. Consequently, certain amendments were effected to the proviso to Section 167(2) by means of Act 45 of 1978. By reason of the amendment the ceiling limit for remand period for cases, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years was raised to 90 days, while in other cases the earlier limit of 60 days was retained. Apart from this, another significant change made was that instead of the words "under this section" occurring in the old proviso, the words "under this paragraph", were substituted. A third change was the addition of Explanation I to the proviso to highlight the position that the statutory right of bail under Clause (a) of the proviso will stand restricted only to those accused persons who are in a position to furnish bail. Another important change made by Amendment Act is the provision of Section (2A) whereby Executive Magistrates, on whom the powers of a Judicial Magistrate have been conferred, have also been empowered to order remand for a term not exceeding 7 days in the aggregate, wherever Judicial Magistrates are not available.

15. Insofar as proviso (a) is concerned, it casts duty upon the Magistrate because of the mandatory terms of the proviso as held in the case of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, that (1) when an undertrial prisoner is produced before a Magistrate and the prisoner has already been in detention for 90 days or 60 days (as the case may be), - (a) The Magistrate must, before making an order for further remand to judicial custody, point out to the accused that he is entitled to be released on bail, (b) In view, of Article 39A, read with Article 21, the State Government must also provide at its own cost a lawyer to the undertrial prisoner with a view to enable him to apply for bail in exercise of his right under this Proviso, (c) The Magistrate must take care to see that the right of the undertrial prisoner to the assistance of a lawyer at State cost is secured to him, even without his asking for it. (2) In view of the foregoing duty of the Magistrate, no formal or written application for bail need be filed on behalf of the prisoner, and an oral application would suffice. It is now well settled by a catena of decisions that the accused has an indefeasible right to

be released on bail when investigation is not completed within the specified period. Therefore, when an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/Court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/Court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated. After the amendment of provision (a) to Sub-section (2) of Section 167 by Act 45 of 1978, the legislature has classified the offence in two separate categories on the basis of punishment prescribed for such offence and where the 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 or more, it is provided that the Magistrate is empowered to authorise detention of the accused in custody pending investigation for an aggregate period of 90 days and it is covered by provision (a)(i) of Sub-section (2) of Section 167 and in other cases, the said period is specified upto 60 days. In the present case, admittedly the applicant accused had been arrested for having committed offence u/s 366 of the Indian Penal Code which offence is punishable for imprisonment for a term which may extend to 10 years which does not mean and will include that it is expressed for a term of not less than 10 years and therefore, as the maximum punishment prescribed for an offence u/s 366 of the Indian Penal Code is imprisonment of either description for a term which may extend to 10 years clearly means that imprisonment can be for a clear period of 10 years or less and therefore, the case of the applicants would be covered by provision of Section 167(2)(a)(ii) for which the period of investigation prescribed is 60 days and therefore, the Magistrate in the case will have no jurisdiction to authorise detention of the accused present in custody under this proviso for a total period exceeding 60 days and the accused person will have to be released on bail if he is prepared to furnish bail and the person released on bail under this sub-section shall be deemed to be released under the provision of Chapter 33 for the purposes of that Chapter.

16. Now we come to the issue of computation of statutory period while considering the right of accused to be released on bail. There was a difference of opinion amongst the High Courts which again came to be resolved by the Supreme Court in the decision rendered in the case of *Hussainara v. State of Bihar* (supra) as to whether the period of 90 or 60 days should be counted from the date of arrest or surrender of the accused or from the date of the first order of remand made by the Magistrate. This controversy has now been settled by the Supreme Court in the decision rendered in the case of *Satyanarayana v. State of A.P.* (supra) in favour of the later view, as follows:

(i) The words in the Proviso are - "no Magistrate shall authorise detention .. exceeding .." Detention can be authorised by the Magistrate only from the time the order of remand is made by him. Hence, the earlier period when the accused is in the custody of the Police u/s 57 cannot be said to be detention authorised by the Magistrate; such period is, therefore, to be excluded for computing the period of 60 or 90 days under Proviso (a) to Section 167(2), Criminal Procedure Code.

(ii) as a result of the changes made by the Amending Act of 1978, Proviso (a) to Sub-section (2) should be regarded as an independent paragraph and has to be construed with reference to its own terms, without invoking the provisions of the General Clauses Act or the Limitation Act (para 30). So, construed, the period of 90 or 60 days under the Proviso will commence running only from the date of remand made under the Proviso and not from the date of arrest or any other anterior date (para 22). 3. The Supreme Court having decided that the computation of the period of 60 or 90 days (as the case may be) has to be started from the date of the first remand by the Magistrate, the question whether in the computation of the period the date of arrest has to be excluded or not, does no longer arise.

17. Having decided the scope and object of the provision, we now come to the issue referred to us. In our view, the question referred by the learned single Judge is no more *res integra* in view of the decision rendered by the Supreme Court in the case of *Rajeev Chaudhury v. State of Delhi* (supra) which is directly on the issue. In the case of *Rajeev Chaudhury v. State of Delhi* (supra), the Supreme Court was considering the case of the applicant who was arrested for having committed the offence u/s 366 of the Indian Penal Code and the question which the Supreme Court posed itself was for deciding the issue with regard to the interpretation and construction of the expression "offence punishable with imprisonment for a term of not less than ten years" occurring in Proviso (a) to Section 167(2) of the Criminal Procedure Code in context of the expression "imprisonment which may extend to ten years" occurring in Section 386 of the Indian Penal Code. After dealing with the facts of the said case, the Supreme Court in paras 4, 5 and 6 of the reported judgment has set at rest the controversy which is quite eloquent and that does not leave any doubt in one's mind that in a case where the accused is charged with an offence where the punishment prescribed is imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine means imprisonment can be for a clear period of 10 years or less. Hence, it cannot be said that minimum sentence would be ten years or more and therefore it will be Clause (ii) of proviso of Section 167(2)(a) and not Clause (i) of proviso of Section 167(2)(a) which will be applicable in such case. We therefore, reproduce the abstract of the relevant paras 4, 5 and 6 as under:

4. Section 167 is a provision which authorises the Magistrate permitting detention of an accused in custody and prescribing the maximum period for

which such detention could be ordered pending investigation. We are concerned with the interpretation of proviso (a) of Section 167(2) which reads thus:

167. Procedure when investigation cannot be completed in twenty-four hours.-

(1) * * * (2) * * * Provided that -

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the 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 authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(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) * * *

(emphasis added)

5. Further, Section 386, Indian Penal Code provides as under:

386. Extortion by putting a person on fear of death or grievous hurt. - Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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, the period prescribed is 60 days. Hence, in cases where offence is punishable with imprisonment for 10 years or more, the 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 year 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, Indian Penal Code, imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years.

It appears from reading the order seeking reference in the matter that the learned single Judge in spite of there being a clear finding of the Supreme Court in Rajeev Chaudhury's case that if a person is arrested for having committed an offence for which punishment prescribed is either descriptive for a term which may extend to 10 years and shall also be liable to fine, would fall within the ambit of Clause (ii) of proviso (a) of Section 167(2) as can be gathered from paras 4, 5 and 6 of the reported judgment but as in para 7, the Hon'ble Supreme Court has observed "In the result, the appeal is dismissed" felt hesitant and chose to refer the controversy to larger Bench. This appeal was preferred by Rajeev Chaudhary against the respondent State (NCT) of Delhi aggrieved by the order of the High Court which set aside the order passed by the Addl. Sessions Judge which in fact was in favour of the appellant as the High Court has set aside the order passed by the Addl. Sessions Judge who has held that for an offence u/s 386 of the Indian Penal Code, period of sentence could be upto 10 years rigorous imprisonment. Hence, Clause (i) of proviso (a) to Section 167(2) would be applicable. It, therefore, set aside the order passed by the Metropolitan Magistrate releasing the accused on bail and if that was so then, the appellant Rajeev Chaudhary who was the accused in custody and claimed benefit of being released on bail which accrues to him for failure of the Investigating Agency in submission of charge-sheet within the period of 60 days had no cause to approach Hon'ble Supreme Court. Therefore, with all humility at our command, we may express that either the judgment is not properly reported and contains the head note which is misleading or there appears to be typographical mistake in referring to the appellant for the simple reason that if Rajeev Chaudhary was ordered to be released by the High Court by observing that we set aside the order passed by the Addl. Sessions Judge who had set aside the order passed by the Metropolitan Magistrate releasing the accused on bail. On this ground the aggrieved person would be State of Delhi and not Rajeev Chaudhary and if State of Delhi has preferred this appeal then what has been observed in the concluding para, the appeal is dismissed will be the obvious result of the discussion made in the foregoing paras i.e. 4, 5 and 6.

18. This Court in Mohammed Arif Din Mohd. Shaikh (supra) took the view that where the punishment extends to 10 years and fine includes the sentence of 10 years and therefore, the expression, "not less than 10 years" used in Section 167(2)(a)(ix), Criminal Procedure Code would include offences wherein a sentence of 10 years can be awarded. The learned single Judge further observed that it is only where the period of imprisonment is less than 10 years that the investigation has to be completed within 60 days in terms of Section 167(2)(a)(ii), Criminal Procedure Code which view was not followed by the co-ordinate bench of this Court in the case of Santosh Singh Govardhan Singh Kashyap v. State of Maharashtra (supra) which held that sentence upto 10 years u/s 366, Indian Penal Code means that punishment for less than 10 years can be awarded, hence, case is covered by Section 167(2)(a)(ii) of Criminal Procedure Code. By referring to the case of Babu and another Vs. State of Karnataka, wherein the

Karnataka High Court was required to deal with the issue and the observations made by the Karnataka High Court in the case of Babu v. State of Karnataka while dealing with the case punishable under Sections 306 and 498-A of the Indian Penal Code, it was concluded that the maximum punishment prescribed is 10 years. Therefore, the charge-sheet ought to be filed within 60 days and not 90 days as held by the learned Sessions Judge which was accepted by this Court in the case of Santosh Singh v. State of Maharashtra. At this point of time, decision of the Supreme Court in the case of Rajeev Chaudhary v. State of Delhi was not passed but subsequently, when a similar issue came up for consideration by this Court in the case of Pralhad Vithal Giri and Anr. v. The State of Maharashtra, this Court has placed reliance on the case of Rajeev Chaudhary v. State of Maharashtra and held that the issue in question is squarely concluded and is no more res integra. In view of the ratio laid down by the Apex Court in the case of Rajeev Chaudhary v. State of Delhi (Supra) there can be no hesitation on our part to come to the conclusion that the decision in the case of Mohd. Arif Din Mohd. Shaikh on the point is no more good law and therefore, the conflict does not survive.

19. In view of the aforesaid discussion in every case in which offender is punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, provisions of Section 167(2)(a)(ii) will be attracted and if investigation in such case is not completed within the period of 60 days, no Magistrate shall authorise the detention of the accused person beyond the said period. The reference is answered accordingly. The application be placed before the learned single Judge so that it can be disposed of in accordance with law.