

(2020) 07 DEL CK 0248

In the Delhi High Court

Case No : Bail Application No. 1041 Of 2020

Rakesh

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 07-07-2020

Acts Referred:

Indian Penal Code, 1860 — Section 376, 506
Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Section 6
Code Of Criminal Procedure, 1973 — Section 167(2)

Citation : (2020) 07 DEL CK 0248

Hon'ble Judges : Anup Jairam Bhambhani, J

Bench : Single Bench

Advocate : Lakshay Kumar, Sahil Khurana, Tarang Srivastava

Final Decision : Disposed Of

Judgement

Anup Jairam Bhambhani, J

1. The applicant, who is an undertrial in case FIR No. 79/2020 dated 18.02.2020 registered under sections 376/506 IPC and section 6 of the POCSO

Act 2012 at PS: Vijay Vihar, New Delhi, seeks bail under the provisions of section 167(2) Cr.P.C., namely statutory or default bail by reason of the

charge-sheet not having been filed within 90 days from the date of his arrest.

2. Notice in this matter was issued on 28.05.2020, on which date the learned APP appearing at that time on advance copy, had submitted that while

investigation in the matter was complete and charge-sheet had been prepared, the same could not be filed before the trial court by reason of the

restricted functioning of courts due to the prevailing pandemic. On that date, counsel representing the applicant had also brought to the attention of this

court that the reason why the learned Additional Sessions Judge had rejected the

applicant's bail application vide order dated 23.05.2020 was, that according to the ASJ, in suo moto proceedings initiated by way of W.P.(C) No.3/2020, the Supreme Court had extended the period of limitation in court proceedings, irrespective of the limitation period prescribed under the general law or any special law, whether condonable or not, w.e.f. 15.03.2020 till further orders. In the opinion of the learned ASJ, by reason of the said order of the Supreme Court, the time-frame prescribed in section 167(2) Cr.P.C. also stood waived.

3. At a subsequent hearing, applicant's counsel had informed the court that the issue whether the time-frame specified in section 167(2) Cr.P.C.

stood waived by reason of order dated 23.03.2020 made in W.P. (C) No. 3/2020 was pending before the Supreme Court; and that the Supreme Court was considering the matter to resolve conflicting views of some High Courts on this question.

4. By judgment dated 19.06.2020 rendered by the Supreme Court in Criminal Appeal No. 452/2020 titled S. Kasi vs. State, Through The Inspector of Police Samaynallur Police Station Madurai District reported as 2020 SCC OnLine SC 529, the Supreme Court has given its final opinion on this issue.

5. Status report dated 30.06.2020 has been filed in the matter.

6. Nominal roll dated 04.07.2020 has also been received from the Jail Superintendent.

7. Mr. Lakshay Kumar and Mr. Sahil Khurana, learned counsel appearing for the applicant submit that it is not in dispute that pursuant to FIR dated

18.02.2020 the applicant was arrested on 18.02.2020 itself, whereafter investigation was carried-on ; but the charge-sheet came to filed only on

23.06.2020, which is about 36 days beyond the 90-day time-frame specified in section 167(2) Cr.P.C.

8. Counsel further submit that the nominal roll discloses that the applicant has no other involvement in any criminal case; that his jail conduct is

'satisfactory'; and that he has spent more than 4 months in custody as an undertrial.

9. Counsel place reliance upon the decision of the Supreme Court in S. Kasi (supra), whereby the court has opined as under :

“26. We, thus, are of the view that neither this Court in its order dated 23.03.2020 can be held to have eclipsed the time prescribed under

Section 167(2) of Cr.P.C. nor the restrictions which have been imposed during the lockdown announced by the Government shall operate

as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-

submission of charge sheet within the time prescribed. The learned Single Judge committed serious error in reading such restriction in the

order of this Court dated 23.03.2020.â??

10. Relying upon the status report, Mr. Tarang Srivastava, learned APP submits that while investigation in the case was almost complete as of

13.06.2020 and charge-sheet had been prepared, scrutiny of the charge-sheet could not be done because the prosecution branch was closed due to the

lockdown consequent upon the pandemic.

11. Mr. Srivastava has very fairly conceded that while the State was under the impression that by reason of orders made by the Supreme Court in suo

moto proceedings in W.P.(C) No. 3/2020, the period of limitation available for completion of investigation and filing of charge-sheet stood extended or

waived, the judgment of the Supreme Court in S. Kasi has held otherwise ; and that therefore, there can be no dispute with the proposition that the

mandate of section 167(2) Cr.P.C. was not waived or extended in any manner and remained binding upon the prosecuting agency.

12. Mr. Srivastava also does not dispute that while the applicant was arrested on 18.02.2020, charge-sheet in the matter came to be filed only on

23.06.2020, i.e. after a lapse of 126 days instead of the 90-day period provided under section 167 (2). Mr. Srivastava also affirms what is stated in the

nominal roll, namely that the applicant is not implicated or required in any other criminal case; and that his conduct in prison has been satisfactory. Mr.

Srivastava also confirms that unlike other special laws, such as the Unlawful Activities (Prevention) Act 1967 and the Narcotic Drugs and

Psychotropic Substances Act 1985, there is no provision under the POCSO Act which contemplates extension of the period of investigation or for

filing of charge-sheet ; and that therefore the time period contemplated under section 167 (2) Cr.P.C. would be applicable.

13. Now, the law in relation to the right of an accused to bail in the event charge-sheet is not filed within the stipulated time-frame under section

167(2) Cr.P.C. is well settled. In Achpal alias Ramswaroop & Anr. vs. State of

Rajasthan : (2019) 14 SCC 599, the Supreme Court has reiterated the following position of law:

¶11. The law on the point as to the rights of an accused who is in custody pending investigation and where the investigation is not completed within the period prescribed under Section 167(2) of the Code, is crystallised in the judgment of this Court in Uday Mohanlal

Acharya v. State of Maharashtra. This case took into account the decision of this Court in Hitendra Vishnu Thakur v. State of Maharashtra,

Sanjay Dutt (2) v. State and Bipin Shantilal Panchal v. State of Gujarat. Pattanaik, J. (as the learned Chief Justice then was) speaking for

the majority recorded conclusions in para 13 of his judgment. For the present purposes, we may extract Conclusions 3 and 4 as under:

(Uday Mohanlal Acharya case, SCC p. 473, para 13)

¶13. ¶ 3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the

accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period

prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

4. 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.¶

¶12. The principles laid down in Uday Mohanlal Acharya have been consistently followed by this Court, namely, in State of W.B. v.

Dinesh Dalmia ; Sanjay Kumar Kedia v. Narcotics Control Bureau ; Union of India v. Nirala Yadav and in Rambeer Shokeen v. State (NCT

of Delhi) . It must therefore be taken to be well settled that in terms of 3rd conclusion as recorded in Uday Mohanlal Acharya, on the expiry

of the period stipulated, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the

investigating agency in the completion of the investigation within the period stipulated and the accused is entitled to be released on bail, if

he is prepared to and furnishes the bail as directed by the Magistrate.â??

14. In view of the prevalent pandemic and the restricted functioning of courts, it is also evident that trial in the matter is unlikely to commence or be

concluded anytime soon.

15. In view of above, the applicant is entitled to default bail under section 167(2) Cr.P.C. Accordingly, this court admits the applicant to regular bail, on

the following conditions :

(a) The applicant shall furnish a personal bond in the sum of Rs.25,000/- along with 01 surety of the like amount from a family member, to the

satisfaction of the trial court.

(b) The applicant shall not leave the State of Delhi without permission of the trial court and shall ordinarily reside at the address mentioned in this

application;

(c) The applicant shall present himself before the Investigating Officer on every alternate Friday between 11 am to 11.30 am to mark his presence, till

such time as cognizance of the charge-sheet/offence is taken. However the applicant shall not be kept waiting for longer than an hour at the police

station for this purpose;

(d) The applicant shall furnish to the Investigating Officer a cell phone number on which the applicant may be contacted at any time and shall ensure

that the number is kept active and switched-on at all times;

(e) If the applicant has a passport, he shall also surrender the same to the trial court;

(f) The applicant shall not contact, nor visit, nor offer any inducement, threat or promise to the first informant/ complainant or to any of the prosecution

witnesses. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the

proceedings in the pending matter.

16. Nothing in this order shall be construed as a reflection on the merits of the matter.
17. The application stands disposed of in the above terms.
18. Other pending applications, if any, also stand disposed of.
19. A copy of this order be sent to the Jail Superintendent.