

(1999) 06 BOM CK 0021

In the Bombay High Court

Case No : Criminal Application No. 1121 of 1999

Santosh Singh Govardhan Singh Kashyap

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 11-06-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 482
Penal Code, 1860 (IPC) — Section 306, 363, 366, 498

Citation : (2000) 5 BomCR 290 : (1999) 2 MhLj 641 : (2000) 3 RCR(Criminal) 72

Hon'ble Judges : P.S. Patankar, J

Bench : Single Bench

Advocate : T.A. Mirza, U.V. Meshramkar, app, for the Appellant;

Judgement

P.S. Patankar, J.—Heard both sides. By consent, the rule is made returnable forthwith and the application is disposed of finally.

2. The applicant is involved in a crime punishable under sections 363, 366 of Indian Penal Code registered at Sadar Police Station, Nagpur i.e. Crime No. 115/99. He was arrested on 25-3-1999 and was remanded to police custody on 26-3-1999. He continued to remain in police custody. The mandatory period of 60 days was completed on 26-5-1999. No charge sheet was filed. Hence, the applicant moved bail application u/s 167(2) of Criminal Procedure Code on 27-5-1999. It came to be rejected by order dated 7-6-1999 by the learned Chief Judicial Magistrate, Nagpur. Hence, this application u/s 482 of the Criminal Procedure Code has been filed.

3. The learned Counsel for the applicant submitted that section 363 is punishable for a maximum period of seven years with fine. Section 366 is punishable with imprisonment for a maximum period of 10 years with fine. The phrase used in section 366 is "imprisonment of either description for a term which may extend to 10 years". He submitted that section 167(2)(a)(i) of the Criminal Procedure Code uses the phrase "imprisonment for a term not less than 10 years". He submits that as section 366 is punishable for less than 10 years, the learned

Judge ought to have exercised jurisdiction conferred u/s 167(2)(a)(ii) of the Criminal Procedure Code and released this applicant on bail. In support of his submission, he relies on the judgment of the Karnataka High Court in the case of Babu and another Vs. State of Karnataka, . The submission made by the learned Counsel for the applicant is practically not controverted by the learned Additional Public Prosecutor.

4. Section 366, which is more serious offence, is punishable with imprisonment of either description which may extend to 10 years. Hence, there can be punishment less than 10 years imposed upon the accused. Section 167(2) reads as under:

"The Magistrate may authorise the detention of the accused person other-wise 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) 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;

(ii) 60 days, where the investigation relates to any other offence."

5. Section 167(2)(a)(i) contemplates serious offences which are punishable with death, imprisonment for life or in which imprisonment can be imposed which is not less than 10 years. If the imprisonment for a term for less than ten years can be imposed then it would fall u/s 167(2)(a)(ii).

6 The learned Single Judge of the Karnataka High Court in the case of Babu v. State of Karnataka, (supra), considering the case punishable under sections 306 and 498A of the Indian Penal Code, has taken the view:

"The question is whether the case on hand would come under clause (i) or (ii) of sub-section (2) of section 167. The punishment prescribed for the offence u/s 306, Indian Penal Code is upto 10 years. That means the maximum punishment be imposed by the Court if the offence is proved, is upto 10 years and not beyond. The language used in sub-clause (ii) of sub-section (2) of section 167 is not less than ten years but the minimum punishment prescribed is 10 years."

In para 5 of the judgment, the learned Single Judge has observed that:

"In this case as indicated above, 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."

7. I agree with the said view. In view of this, I pass the following order:

1. The applicant be released on bail of Rs. 5,000/- with one surety of like amount.
2. The applicant not to tamper with the prosecution evidence.

3. The applicant to attend the Sadar Police Station at Nagpur, once in a week till the charge sheet is filed.
8. Order accordingly.