
(1995) 02 SC CK 0020
In the Supreme Court Of India
Case No : SLP (Crl) No.3727 Of 1994

State of M.P.

APPELLANT

Vs

Rustam and Others

RESPONDENT

Date of Decision : 01-02-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2) General clauses act— Section 9,10

Citation : (1995) 9 JT 345

Hon'ble Judges : M. M. Punchhi, J; K. Jayachandra Reddy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. LEAVE granted.

2. The High Court of Madhya Pradesh, on 19-1-1994, in Criminal a Miscellaneous Case No. 3492 of 1993, passed an order of compulsive bail holding the accused-respondents entitled to it by virtue of the provisions of S. 167(2) of the Code of Criminal Procedure on the basis that 90 days from the date of the authorised detention of the respondents had expired and the challan had not been filed within that duration, entitling them to bail. It would be relevant to mention that the respondents are accused of offences punishable with death or life imprisonment under Section 302 Indian Penal Code etc. Unfortunately, the factual details of the crime have not been made available to us. All the same, it is pertinent to note that the accused-respondents on 3/9/1993 were sent by the Magistrate concerned to judicial custody which custody, under orders, was extended from time to time. On 2/12/1993, the challan was submitted in the court whereafter the accused-respondents applied for compulsive bail, as according to them, the period of 90 days expired on 1/12/1993 and on the premise that their right to compulsive bail survived even after the challan was filed. The High court agreeing with the pleas raised by the accused-respondents granted them bail.

3. WE find that the High court was in error both in the matter of computation of the period of 90 days prescribed as also in applying the principle of compulsive bail on entertaining a petition after the challan was filed as the so-called "indefeasible right" of the accused, in our view stood defeated by efflux of time. The prescribed period of 90 days, in our view, would instantly commence either from 4/9/1993 (excluding from it 3/9/1993 or 3/12/1993 (including in it 2/12/1993. Clear 90 days have to expire before the right begins. Plainly put, one of the days on either side has to be excluded in computing the prescribed period of 90 days. S. 9 and 10 of the General Clauses Act warrant such an interpretation in computing the prescribed period of 90 days. The period of limitation thus computed on reckoning 27 days of September, 31 days of October and 30 days of November would leave two clear days in December to compute 90 days and on which date the challan was filed, when the day running was the 90th day. The High court was, thus, obviously in error in assuming that on 2/12/1993 when the challan was filed, period of 90 days had expired.

4. WE may also observe that the High court's view in entertaining the bail petition after the challan was filed was erroneous. The matter now stands settled in Sanjay Dutt v. State in which case Hitendra Vishnu Thakar v. State of Maharashtra has aptly been explained away. The court is required to examine the availability of the right of compulsive bail on the date it is considering the question of bail and not barely on the date of the presentation of the petition for bail. This well-settled principle has been noticed in Sanjay Dutt case on the strength of three Constitution bench cases Naranjan Singh Nathawan v. State of Punjab, Ram Narayan Singh v. State of Delhi and A.K. Gopalan v. Govt. of India". On the dates when the High court entertained the petition for bail and granted it to the accused-respondents, undeniably the challan stood filed in court, and then the right as such was not available.

5. THUS, on the basis of aforesaid two grounds, finding the orders of the High court as erroneous, we allow this appeal and upset the order of the High court and remit the matter back to it for consideration of the application for bail of the accused-respondents on merits, if pleaded. The accused-respondents shall remain enlarged on bail for a period of four weeks from today. Let the order be communicated to the High court forthwith who shall put to notice the accused-respondents to press their prayer for bail. if interested, and abide by the result of the deliberations of the High court.