

(2023) 10 UK CK 0102

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 1873, 1874, 1875, 1876 Of 2023

Sunny @ Sarik Ahmad & Others

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 19-10-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 167, 167(2), 167(2)(a), 167(2)(a)(i), 167(2)(a)(ii), 482

Indian Penal Code, 1860 — Section 34, 323, 395, 397, 412, 427, 447, 448, 452, 506

Citation : (2023) 10 UK CK 0102

Hon'ble Judges : Pankaj Purohit, J

Bench : Single Bench

Advocate : Lalit Sharma, Akshay Latwal

Final Decision : Dismissed

Judgement

Pankaj Purohit, J

1. A common question of law arising out of same set of facts has been raised in all these Criminal Miscellaneous Applications moved by the applicants under Section 482 of Cr.P.C., against four separate orders dated 12.09.2023 passed in Criminal Miscellaneous Case No.151 of 2023, State Vs. Sunny @ Sarik Ahmad; Criminal Miscellaneous Case No.152 of 2023, State Vs. Suraj Chetri; Criminal Miscellaneous Case No.150 of 2023, State Vs. Nand Kishor Kala; and Criminal Miscellaneous Case No.154 of 2023, State Vs. Vishal Bhardwaj respectively, whereby, the bail cancellation applications moved on behalf of State, against the orders of default bail given to the applicants vide orders dated 11.04.2022 and 07.04.2022, by learned ACJM, Dehradun, were allowed; hence, all these Criminal Miscellaneous Applications are being decided by this common judgment.

2. Applicants Sunny @ Sarik Ahmad, Suraj Chetri, Nand Kishor Kala and Vishal Bhardwaj were facing investigation in connection with Crime No.8 of 2022 under Sections 452, 447, 448, 427, 323, 506, 395, 397, 412 and 34 of IPC registered

with Police Station Clementown, Dehradun.

3. The brief facts of the case shorn of unnecessary details are that a first information report was lodged in Police Station Clementown, Dehradun being Case Crime No. 8 of 2022 under Sections 452, 447, 448, 427, 323, 506, 395, 397, 412 and 34 of IPC and the applicants were arrested in the aforesaid case crime number and sent to judicial custody on 05.02.2022, 06.02.2022, 04.02.2022 and 06.02.2022 respectively. When more than 60 days' period of judicial custody expired and no charge-sheet could be submitted by the prosecution, the applicants moved applications under the Proviso appended to sub-Section (2) to Section 167 of Cr.P.C. seeking default bail. Although, those applications for default bail of the applicants, moved on the ground that even after expiration of 60 days' in the judicial custody, no charge-sheet was submitted, was opposed by the respondent-State that since the accusation(s) against the applicants involved Section 395 IPC, which is punishable with 'imprisonment for life' or 'with rigorous imprisonment for a term which may extend to 10 years', it was contended that the applicants were not entitled to be released on default bail after expiry of a period of 60 days, as in such cases, the period to complete investigation is prescribed as 90 days instead of 60 days. This argument advanced on behalf of the State did not find favour with the learned Magistrate, and accordingly, the applicants were granted default bail by the learned Magistrate as stated above.

4. It is feeling aggrieved by the aforesaid default bail granted to the applicants, the State moved bail cancellation applications before the learned Sessions Judge, Dehradun, raising the same argument that since the accusations against the applicants involve Section 395 IPC, which is punishable with 'imprisonment for life' or 'with rigorous imprisonment for a term which may extend to 10 years', Proviso to Section 167(2)(a)(i) of Cr.P.C. shall be applicable for completion of the investigation and not Proviso to Section 167(2)(a)(ii) of the Cr.P.C., and in that eventuality, the period for investigation would be 90 days.

5. The learned Sessions Judge, Dehradun by reason of impugned orders dated 12.09.2023 mentioned above in the first paragraph of the judgment, found favour with the argument advanced by the respondent-State and accordingly, cancelled the default bail granted to the applicants.

6. Now, the applicants are before this Court by filing the instant C-482 applications.

7. Heard Mr. Lalit Sharma and Mr. P.C. Petshali, learned counsel for the applicants and Mr. Akshay Latwal, learned Brief Holder for the State in detail.

8. It is submitted by learned counsel for the applicants that the impugned orders, whereby, the default bail granted to the applicants were cancelled, run contrary to the law enunciated by the Hon'ble Apex Court in case of Rakesh Kumar Paul Vs. State of Assam reported in (2017) 15 SCC 67.

9. The arguments advanced by learned counsel for the applicants, in brief, are as under:

(1) The offence under Section 395 of IPC involved in the instant case provides not a clear period of 10 years or more; in other words, it may be 'not less than 10 years', therefore, Proviso to Section 167(2)(a)(ii) of Cr.P.C. would be applicable and therefore, charge-sheet should have been filed after completion of the investigation within 60 days and not Proviso to Section 167(2)(a)(i) of Cr.P.C. which enjoins completion of investigation within 90 days.

(2) In the judgment of Rakesh Kumar Paul (Supra), a three-Judge Bench of the Hon'ble Supreme Court had an occasion to interpret the case of Rajeev Chaudhary Vs. State (NCT) of Delhi reported in (2001) 5 SCC 34; Bhupinder Singh & Ors. Vs. Jarnail Singh reported in (2006) 6 SCC 277 and in the case of Bikramjit Singh Vs. State of Punjab reported in (2020) 10 SCC 6 and the Hon'ble Apex Court upheld the law laid down in the case of Rajeev Chaudhary (Supra). In view of the para 6 of Rajeev Chaudhary (Supra), only in case of offences punishable with imprisonment for a term 'not less than 10 years', learned Magistrate is empowered to authorize the detention of the accused in custody for not more than 90 days, and for rest of the offences, the period prescribed is 60 days. For the sake of brevity, Para 6 of the said judgment is quoted herein below:

"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....."

(3) The learned Sessions Judge fell into error while relying upon the Para 84 of the judgment of Rakesh Kumar Paul (Supra), while the lead judgment was authored by Hon'ble Justice Madan B. Lokur. When the judgment was authored separately by each of the Hon'ble Judges, lead judgment should be relied upon. In support of his contention, the learned counsel for the applicants took this Court to Para 14 of the judgment in Rakesh Kumar Paul (Supra) (Lokur, J.), to trace the legislative history of Section 167 of Cr.P.C., which was amended in the year 1978. Para 14 of the said judgment is also quoted below for convenience:

"14. A few years later in 1978, a need was felt to amend Section 167 CrPC by not only extending the period for completing investigation but also relating that period to the offence. Therefore, a shift was proposed to grant an aggregate period of 90 days for completing the investigation in cases relating to offences punishable with death, imprisonment for life or "imprisonment for not less than

ten years or more” and up to 60 days in any other case, as stated in the Notes on Clauses accompanying the Statement of Objects and Reasons dated 9-5-1978 for amending the statute. What is of significance (for our purposes) is the use of the words “imprisonment for not less than ten years or more”. In our opinion, the use of the words “or more” gives a clear indication that the period of 90 days was relatable to an offence punishable with a minimum imprisonment for a period of not less than ten years, if not more. The Notes on Clauses reads as follows:

“Clause 13.— Section 167 is being amended to empower the Magistrate to authorise detention, pending investigation, for an aggregate period of 90 days in cases where the investigation relates to offences punishable with death, imprisonment for life or imprisonment for not less than ten years or more and up to 60 days in any other case. These amendments are intended to remove difficulties which have been actually experienced in relation to the investigation of offences of a serious nature.

A new sub-section is being inserted empowering an Executive Magistrate....”

(4) The object and reason for bringing about amendment in Section 167 of Cr.P.C. dated 09.05.1978 reflects that the learned Magistrate was empowered to authorize detention, pending investigation, for an aggregate period of 90 days in those cases where investigation relates to offences punishable with death, imprisonment for life or imprisonment for not less than 10 years or more and upto 60 days in any other case. The proposed amendment brought into Proviso to Section 167(2)(a)(i) of Cr.P.C. has empowered the Magistrate for detention of 90 days’ pending investigation. But, the deletion of word ‘or more than’ was construed by the Hon’ble Apex Court in context of use of words ‘not less than’ 10 years, and it is submitted that the word ‘not less than’ would be applicable to only those cases where the minimum punishment is of 10 years.

(5) The learned counsel for the applicants also pressed into service a three-Judge Bench judgment rendered in *Bikramjit Singh Vs. State of Punjab* reported in (2020) 10 SCC 616 as well as the judgment and order rendered by a Coordinate Bench of this Court in First Bail Application No. 907 of 2019, *Pradeep Agrawal Vs. State of Uttarakhand*, dated 21.05.2019.

11. Per contra, learned A.G.A. supported the orders impugned in these C-482 applications, whereby the default bail, wrongly granted to the applicants, has been rejected.

12. It is submitted by learned A.G.A. that since the applicants were facing investigation in connection with Section 395 of IPC, which is punishable with imprisonment for life, or with rigorous imprisonment for a term which may extend to 10 years, being a heinous offence, if the investigation has not been completed, the default bail can only be granted after expiry of 90 days’ period in judicial custody strictly under the First Proviso appended to Section 167(2)(a)(i), and not under the Second Proviso.

13. In order to substantiate his argument, learned A.G.A. relied upon a judgment of Coordinate Bench of this Court dated 31.05.2019 passed in First Bail Application No. 1102 of 2019, Qazi Mohammed Nooruddin Vs. State of Uttarakhand, wherein the Coordinate Bench also had an occasion to consider the judgment passed by the Hon'ble Apex Court in case of Rakesh Kumar Paul (Supra); judgment rendered by the Gujarat High Court in Special Criminal Appeal No. 829 of 2018, Manish @ Raju Vs. State of Gujarat, and by the Delhi High Court in Application No. 2760 of 2018, Devesh Kumar Vs. State, as well as the judgment rendered by a Coordinate Bench of this Court in Pradeep Agrawal (Supra).

14. Having heard the learned counsel for the parties and perusal of the impugned judgments and orders as well as the judicial pronouncements supplied by the learned counsel for the parties, I shall now proceed to examine the controversy involved in these C-482 applications. For ready reference, the relevant provision of sub-Section (2)(a) to Section 167 Cr.P.C. is quoted herein below:

"167(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, for 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 so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]"

15. Since the applicants are facing accusation of a heinous offence under Section 395 of IPC, the same is also being reproduced as under:

"395. Punishment for dacoity.—Whoever commits dacoity shall be punished with

imprisonment for life or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

16. So far as the argument advanced on behalf of the applicants is concerned, I do not find any force in the submissions made by him simply for the reason that interpretation of the Statute, a simple and ordinary meaning should be given to the words of the Legislature. There is no difficulty in appreciation of Provisos appended to Section 167(2) of the Cr.P.C. Two separate compartments have been made clearly by the legislature, for which the period of investigation has been provided. Compartment-One, which exists under the Proviso to Section 167(2)(a) (i) provides a period of 90 days of investigation in graver offences which are punishable with death, imprisonment for life or imprisonment for a term of not less than ten years; whereas Compartment-Two provides for a period of 60 days in other offences. In respect of offence punishable under Section 395 of IPC, the Court can impose maximum punishment of imprisonment for life to an accused, if charge under Section 395 of IPC was found proved against him during trial, and therefore, the argument that since Section 395 IPC does not provide the imprisonment of ‘minimum 10 years’ under Proviso to Section 167(2)(a)(i), 90 days’ period would not be attracted, rather the Second Proviso attached to Section 167(2)(a)(ii) providing 60 days’ period would be attracted, cannot sustained and is hereby rejected.

17. It is also submitted by learned counsel for the applicants that in case where there is a conflict in the judgments of a Coordinate Bench of this Court in Qazi Mohammed Nooruddin (Supra), viz.a.viz. Pradeep Agrawal (Supra), this Court may refer the dispute to a Larger Bench.

18. I do not find any substance in this submission simply for the reason that the judgment rendered by the Coordinate Bench in Qazi Mohammed Nooruddin (Supra) relied upon the Majority View of Rakesh Kumar Paul (Supra), which is the law of the land (Justice Deepak Gupta concurred and agreed with Justice Lokur, referred in Para 85).

19. I have given a thoughtful consideration to the entire judgment of Rakesh Kumar Paul (Supra), which is being mainly relied upon by learned counsel for the applicants. I found that the ratio of the judgment is culled out in Paras 84.2 and 84.3 of the said judgment, which are quoted herein below:

“84.2. Section 167(2)(a)(i) of the Code is applicable only in cases where the accused is charged with (a) offences punishable with death and any lower sentence; (b) offences punishable with life imprisonment and any lower sentence; and (c) offences punishable with minimum sentence of 10 years.

84.3. In all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of “default bail” after 60 days in case charge-sheet is not filed.”

20. The majority view taken in the said matter is that Proviso to Section 167(2) (a)(i) of the Cr.P.C. would be applicable where the charge (a) for the offence is punishable with death and lower sentence; (b) offence is punishable with life imprisonment and lower sentence; and (c) offence is punishable with minimum sentence of 10 years. But, in the case in hand, where the applicants are facing offences under Section 395 of IPC, which is punishable with life imprisonment, the First Proviso to Section 167(2)(a)(i) Cr.P.C. i.e. 90 days would be applicable, and not the Second Proviso i.e. 60 days under Section 167(2)(a)(ii) would be applicable.

21. In this view of the matter, learned Magistrate had erred in law while granting default bail to the applicants for not completing the investigation and filing the charge-sheet within 60 days, and the same has rightly been cancelled by way of impugned orders passed by the learned Sessions Judge, Dehradun. I do not find any fault of facts or law in the orders impugned in these C-482 applications.

22. Consequently, the upshot of the aforesaid discussion results into dismissal of all these C-482 applications. Accordingly, all these C482 applications are dismissed. Impugned judgments and orders dated 12.09.2023 passed by learned Sessions Judge, Dehradun passed in Criminal Miscellaneous Case No.151 of 2023, State Vs. Sunny @ Sarik Ahmad; Criminal Miscellaneous Case No.152 of 2023, State Vs. Suraj Chetri; Criminal Miscellaneous Case No.150 of 2023, State Vs. Nand Kishor Kala; and Criminal Miscellaneous Case No.154 of 2023, State Vs. Vishal Bhardwaj respectively, are hereby affirmed.

23. Interim order(s), granted in these matters on 25.09.2023, is hereby vacated. Applicants are directed to surrender before the Court concerned at the earliest.

24. Registry to send a copy of this order to the Court concerned to ensure compliance and also to proceed with the case forthwith.