
(2008) 12 AHC CK 0204
In the Allahabad High Court

Tasha @ Tahseen

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Citation : (2008) 12 AHC CK 0204

Hon'ble Judges : A.K.Roopanwal, J

Final Decision : Dismissed

Judgement

A. K. Roopanwal, J.

This criminal revision has been filed against the order dated 4.8.2008 passed by the A.C.J.M., Saharanpur, in Case Crime No. 181 of 2008, u/s 448, 366, 452, 506, 376 I.P.C. Police Station Gangoh, District Saharanpur, whereby the application for bail moved by the revisionist was rejected.

It appears from the facts of the case that in the aforesaid case the revisionist was first remanded to judicial custody by the concerned Magistrate on 5.5.2008. The charge sheet was submitted on 4.8.2008. On 4.8.2008 an application for bail was moved by the revisionist u/s 167(2) Cr.P.C. by saying that the charge sheet had not been submitted within 90 days from the first date of the remand i.e. 5.5.2008. The Magistrate found that the charge sheet had been submitted within the time, hence the application was liable to be rejected. It was accordingly rejected.

I have heard Mr. Mukhtar Alam, learned counsel for the revisionist, learned G.A. for the State and perused the record.

Mr. Alam argued that the charge sheet was submitted on 91st day from the first date of the remand and the revisionist had exercised his right of bail u/s 167(2) Cr.P.C. before the submission of the charge sheet, hence in spite of the fact that the charge sheet had been submitted, he should have been granted bail. In this regard he relied upon the rulings reported in AIR 2001 SC 1910, Uday Mohanlal Acharya Vs. State of Maharashtra, 2002 Cri L.J. 24, Rehemankha Kalukha Vs.

State of Maharashtra, 1998 Cri. L.J. 4641, Hari Singh Vs. State of Rajasthan, 1986 Cri. L.J. 2081, Powell Nwawa Ogenchi Vs. The State (Delhi Administration) and 1992 Cri. L.J. 2287, Sri Shivanna Vs. State by Arasikere Rural Police.

To the above, it was argued by learned G.A. that even if it be assumed that the charge sheet was submitted on the 91st day from the first date of the remand, the revisionist was not entitled to bail as he had not exercised his right of bail u/s 167(2) Cr.P.C. before submission of the charge sheet. He placed reliance on 1994(5) SCC 410, Sanjay Dutt Vs. State through C.B.I., Bombay (II).

From the perusal of the rulings relied upon by both the sides it is very much clear that the accused is entitled to bail u/s 167(2) Cr.P.C. if the charge sheet is not submitted within the stipulated time of 60 days or 90 days, as the case may be. This right accrues after expiry of the stipulated period of 60 days or 90 days and continues up to the filing of the challan. If the charge sheet is filed after 90 days and the accused does not apply for bail before the filing of the charge sheet, he cannot be found entitled to bail u/s 167(2) Cr.P.C. For getting the benefit of bail u/s 167(2) Cr.P.C. he must apply for bail before the submission of the charge sheet. Thus, in the present case even if it be assumed that the charge sheet was submitted on the 91st day from the first date of the remand, the revisionist can be found entitled to bail only when he had exercised his right before filing of the charge sheet. In no case he could be allowed bail after the submission of the charge sheet if the right was not exercised before its submission even if the charge sheet was filed beyond the stipulated period as after the submission of the charge sheet no remand u/s 167 Cr.P.C. could continue.

From the impugned order passed by the Magistrate it appears that by the time the application was moved the charge sheet had been submitted and that is why the bail was not granted. If the charge sheet would not have been submitted by the time, the application u/s 167(2) Cr.P.C. was moved, the Magistrate would have certainly granted bail as it cannot be expected that the Magistrate would dare to reject the bail if the right was exercised before the submission of the charge sheet.

In view of the above, I find that there is no impropriety in the impugned order and the bail was rightly refused by the Magistrate as the right had not been exercised by the revisionist before the filing of the charge sheet.

The revision has no merits and is hereby dismissed.