
(1974) 12 GUJ CK 0014
In the Gujarat High Court

Vakhatsinh Somsinh

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 03-12-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167, 167(2), 437, 57
Penal Code, 1860 (IPC) — Section 302

Citation : (1975) 16 GLR 1034

Hon'ble Judges : M.C. Trivedi, J

Bench : Single Bench

Judgement

M.C. Trivedi, J.—Applicant Vakhatsinh Somsinh, undertrial prisoner No. 447 in the District Jail at Junagadh, has filed this application u/s 167 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for releasing him on bail. The allegation against him is that he committed murder and, thereby, committed an offence u/s 302 of the Indian Penal Code. During the investigation of the offence, he was arrested by "the police. He was then produced before the learned Judicial Magistrate, First Class, Junagadh. He was remanded to the judicial custody u/s 167 of the Code. He made an application u/s 437 of the Code for releasing him on bail. The learned Judicial Magistrate, by his order dated 21-9-75, rejected his said application. Thereafter, he filed Criminal Miscellaneous Application No. 53 of 1974 in the Court of the learned Sessions Judge, Junagadh, for releasing him on bail. By the order dated 9.10.74, his said application was rejected. In the said application before the learned Sessions Judge, it was also contended by him that he was entitled to be released on bail u/s 167 of the Code. The learned Sessions Judge found that the provisions of Section 167 of the Code were applicable only in a case where the accused concerned was forwarded to the learned Judicial Magistrate under Sub-section (1) of Section 167 of the Code. He found that, in the present case, the accused was not forwarded to the Judicial Magistrate u/s 167 (1) of the Code. He was arrested u/s 56 of the Code. The learned Sessions Judge found that reading Sections 57 and 167 of the Code together, it was obvious that Section 167 of the Code applied when there was

detention of an accused for more than 24 hours in the custody of the police and when he was produced before the learned Judicial Magistrate only for the purpose of taking him on remand.

He found that the provisions of Section 167 of the Code did not come into play and, therefore, he rejected the request of the accused for being released on bail u/s 167 of the Code.

2. Before me, it has been argued by Mr. Shah for the State that Section 167 of the Code should be read with Section 437 of the Code which provides for bail in case of non-bailable offence. According to him, as the accused is said to have committed an offence punishable u/s 302 of the Indian Penal Code, he is not entitled to be released on bail u/s 437 of the Code and, therefore, he is not entitled to be released on bail, even u/s 167 of the Code. He wants the two sections of the Code to be construed harmoniously, so that the provisions of Section 167 of the Code may not conflict with the provisions of Section 437 of the Code. It is incorrect to say and therefore it is not argued before me that accused having been forwarded to the Magistrate under Sections 56-57 Cr. P. Code, provisions of Section 167 Cr. P. Code do not apply.

3. The point involved is very simple- Section 167 of the Code provides for procedure to be followed when investigation cannot be completed in twenty four hours. Sub-section (1) of Section 167 of the Code provides for detention of the person arrested in police custody for a period of twenty-four hours fixed by Section 57 and further for forwarding him to the nearest Judicial Magistrate, when there are grounds for believing that the accusation or information is well founded. Sub-section (2) of Section 167 of the Code provides for detention of the accused person in custody for a term not exceeding 15 days in the whole. It also provides that if the Magistrate concerned 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. However, there is a proviso added to Sub-section (2) which lays down-"(a) the Magistrate may authorise detention of the accused person, otherwise than in 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 section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, 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 section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter." Sub-section (2) of Section 167 relates to the detention of the accused person in custody after he has been forwarded to the Magistrate under Sub-section (1) of Section 167. The section is contained in Chapter XII, which relates to the information to the police and their powers to investigate and, as the marginal note to Section 167 suggests, the provision relates to the detention of an accused person pending investigation of the offence by the police. The period for which the accused can

be kept in detention at different stages by different authorities has been prescribed in the section. Sub-section (1) of Section 167 refers to period of twenty-four hours fixed u/s 57 in the police custody. Thereafter, unless the accused is remanded to police custody by the Judicial Magistrate on his being produced before the Judicial Magistrate, provision is made for detaining him in the Magisterial custody. Sub-section (2) Section 167 provides for detention in Magisterial custody for a term not exceeding 15 "days in the whole. For further detention after the expiry of 15 days, the proviso to Sub-section (2) provides that, if the Magistrate is satisfied that adequate grounds exist for detaining the accused for a period beyond 15 days, he can detain him for a further period of 15 days. However, a restriction has been laid on the power of the Magistrate that such detention of the accused person in custody under this provision shall not be for a total period exceeding sixty days. The proviso further provides that where such detention exceeds the prescribed total period of sixty days, accused person shall be released on bail, if he is prepared to and does furnish bail. The section is clearly enacted to restrict the power of detention of an under-trial person pending the investigation to a maximum period of 60 days, thereby requiring the investigating authority to complete the investigation within a period of 60 days and submit the charge-sheet in the Court. Failure to do so will result in entitling the accused person to be released on bail, if he is prepared to and does furnish bail. Section 167 of the Code does not distinguish between persons accused of offences punishable with death or imprisonment for life and offences punishable otherwise than that. Irrespective of the offence which appears to have been committed by the accused, he is entitled to be released on bail on the expiry of the prescribed period of 60 days. Section 437 is contained in Chapter XXXIII, which contains provisions as to bail and bonds, and provides "When any person accused of or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court other than the High Court or Court of Sessions he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life." This section provides for the release of the accused on bail from the stage of his arrest or detention without a warrant by an officer in charge of a police station. This right continues even at the stage of the trial. The restriction which is placed on the powers of the Court to release a person on bail under this section is that he shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. Mr. Shah wants me to read this restriction in Section 167 of the Code also. His submission is that the restriction which has been placed in Section 437 of the Code should equally apply to the provision of Section 167 of the Code, because the intention of the Legislature is to restrict the right of a person to be released on bail in a case where there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. I am unable to accept his contention, because of the language employed in Section 167 of the Code,

The two provisions are different, meant for meeting with different contingencies. Provision of Section 437 of the Code is a general provision regarding the bail, while Section 167 is a provision relating to the detention of an accused person in custody pending investigation. The proviso to Sub-section (2) of Section 167 of the Code amply clarifies the position. It provides that "every person released on bail under this section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter". It does not provide that the right of a person to be released on bail under the proviso to Sub-section (2) of Section 167 is subject to the provision of Section 437 (1) of the Code. The deeming provision does not restrict the right of a person to be released on bail just as it has been restricted in Section 437 of the Code. Section 167 of the Code is meant to compel the investigating authority to expedite the completion of the investigation, so that a person detained, during the period of investigation, may not remain in detention unnecessarily. It does not make any distinction as regards the nature of the offence, which appears to have been committed by the person detained in custody pending investigation. The right provided in Section 167 of the Code extends to all accused persons detained pending investigation, irrespective of the nature of the accusation, made against him. The language used in Section 167(2) clearly confers a right of being released on bail without the same being governed by the provision contained in Section 437. The order of release on bail is to be passed u/s 167(2) and not u/s 437. The deeming provision in Section 167(2) comes into play not at the time of releasing him on bail but on his being released on bail. On his being released on bail, he should be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter. This deeming provision is enacted with a view that other incidental provisions as to bail and bonds contained in Chapter XXXIII may apply to the order of bail and the bonds, etc. By no stretch of imagination it can be construed that the provision for releasing on bail contained in Section 167(2) is subject to the provision of Section 437. If that was the intention in enacting Section 167(2), it would not have been necessary to introduce this new provision in Section 167, because u/s 437 the power is already vested in the Magistrate to release an accused person on bail pending investigation subject to the limitation contained therein. In that case, provision of 167(2) becomes redundant. Section 167(2) is clearly an independent provision without any restriction on the power of the Magistrate.

4. Mr. Shah wants me to harmoniously construe the two sections so that the provision of one may not nullify the provision of other section. However, in the instant case, there is no question of harmoniously construing the two provisions, because there is no conflict between the two. Neither of the two provisions is dependant on the other for construction. The two are independent provisions enacted to meet with two different contingencies. It cannot be read in Section 167 of the Code that it is to be read subject to the provision of Section 437 of the Code. The accused, if released on bail u/s 167 of the Code, gets entitled to remain on bail pending the investigation only. The moment the investigation is

over, the provision of sec, 437 of the Code comes into play and his being continued on bail will be governed by that section.

5. I am unable to agree with the learned Sessions Judge that the provision of Section 167 of the Code applies only in cases where the accused is produced before the judicial Magistrate for remand in police custody. In this case also, after the period of detention of accused in police custody provided in Section 57 was over, he was forwarded to the Judicial Magistrate for being detained in custody. Thereafter, he was in detention pending investigation u/s 167 of the Code. Thereafter, he made an application to the learned Sessions Judge for being released on bail. He was in detention u/s 167 of the Code pending the Investigation. Therefore, it cannot be said that the provisions of Section 167 of the Code have no application. The application was made to the learned Sessions Judge before charge-sheet was submitted in the Court.

6. Therefore, he was in detention pending the investigation u/s 167 of the Code. The period of sixty days had admittedly expired and, therefore, in my opinion, he was entitled to be released on bail under the proviso to Sub-section(2) of Section 167 of the Code, if he was prepared to and if he Mid furnish bail. In my opinion, the learned Sessions Judge erred in holding that he was not entitled to be released on bail, even if his detention had exceeded the period of sixty days under the provisp to Sub-section (2) of Section 167 of the Code.

7. It has been submitted before me by Mr. Shah that it transpires from the order of the learned Sessions Judge that the charge-sheet against the accused was already submitted in the Court of the learned Judicial Magistrate on 20-9-74 and, therefore, it cannot be said that he was in detention pending the investigation. If he wants himself to be released on bail, he should submit an application u/s 437 of the Code. I agree that as he is now not in detention u/s 167 of Code pending investigation, no order can be passed directing him to be released on bail, as required under the proviso to Sub-section (2) of Section 167 of the Code.

8. The result is that though the finding of the learned Sessions Judge, holding that the accused was not entitled to be released on bail under the proviso to Sub-section (2) of Section 167 of the Code, is set aside, no order as regards releasing the accused on bail is passed in this application.