

Uday Mohanlal Acharya v. State of Maharashtra , 2001 SupremeCourtOnline 0008

SUPREME COURT OF INDIA

Before:- G.B. Pattanaik, U.C. Banerjee and B.N. Agrawal, JJ.

Uday Mohanlal Acharya v. State of Maharashtra

Criminal Appeal No. 394 of 2001 (Arising out of S.L.P. (Crl.) No. 3312 of 2000).

29.3.2001

(i) Cr.P.C Section 167 (2) - Imposition of conditions - An accused must be held to be availed of his right flowing from the legislative mandate and engrafted in the proviso to sub-section (2) of Section 167 of the Code, if he has filed an application after the expiry of the stipulated period alleging that no challan has been filed and he is prepared to offer the bail that is ordered and it is found as a fact that no challan within the period prescribed from the date of the arrest of the accused - Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof as stipulated under Article 21 of the Constitution of India - There is no provision in the Code of Criminal Procedure authorising detention of an accused in custody after the expiry of the period indicated in proviso to sub-section 2 of Section 167 Cr.P.C except the contingency indicated in Explanation-1, namely, if the accused does not furnish the bail i.e. in case the accused does not satisfy the condition of bail and does not furnish bail and bonds, then his right gets extinguished when in the meantime the challan is filed - In other words, if the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation-I and the proviso to sub-section 2 of Section 167, the continued custody of the accused even beyond the specified period in clause (a) will not be unauthorized and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished. [Para 12, 13]

(ii) Criminal Procedure Code, 1973, Section 167(2) - Constitution of India, Article 21 - Default bail - Challan not filed within specified period - Accused gets an indefeasible right to be released on bail

Held :-

1. Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days in the whole.

2. Under the proviso to aforesaid sub-section (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.

3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the Investigating Agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnish the bail, as directed by the Magistrate.

4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have accrued in his favour on account of default on the part of the Investigating Agency in completion of the investigation within the specified period, the Magistrate/Court must dispose of it forthwith, on being satisfied that in fact the accused has been custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the Investigating Agency. Such prompt action on the part of the Magistrate/Court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the Investigating Agency in completing the investigation within the period stipulated.

5. If the accused is unable to furnish bail, as directed by the Magistrate, then the conjoint reading of Explanation I and proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in paragraph (a) will not be unauthorised, and, therefore, if during that period the investigation is complete and charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.

6. The expression 'if not already availed of' used by this Court in Sanjay Dutt's case (supra) must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in paragraph (a) of proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.

[Para 12]

(iii) . Criminal Procedure Code, 1973, Section 167(2) - If charge-sheet is filed

subsequent to the availing of the indefeasible right by the accused then that right would not stand frustrated or extinguished - If on the application for grant of default bail, the Magistrate erroneously refuses the same and rejects the application and then accused moves the higher forum and while the matter remains pending before the higher forum for consideration a charge-sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby - On the other hand, the accused has to be released on bail. [Para 13]

Cases Referred :-

1. *Ram Narayan Singh v. State of Delhi*, 1953 SCR 652 : AIR 1953 Supreme Court 277.
2. *Makhan Singh Tarsikka v. State of Punjab*, 1952 S.C.R. 368, Petn. No. 308 of 1951 : AIR 1952(39) 27.
3. *Naranjan Singh Nathawan v. State of Punjab* 1952 SCR 395 : AIR 1952 Supreme Court 106.
4. *State through CBI v. Mohd. Ashraft Bhat and another*, 1996(1) Supreme Court Cases 432.
5. *A.K. Gopalan v. Government of India*, 1966(2) SCR 427 : AIR 1966 Supreme Court 816.
6. *State of M.P. v. Rustom and others*, 1995 Supp.(3) Supreme Court Cases 221.
7. *Dr. Bipin Shantilal Panchal v. State of Gujarat*, 1996(1) Supreme Court Cases 718.
8. *Mohamed Iqbal Madar Sheikh v. State of Maharashtra*, 1996(1) Supreme Court Cases 722.
9. *Union of India v. Thamisharasi and others*, 1995(4) Supreme Court Cases 190.
10. *Hitendra Thakur v. State of Maharashtra*, 1994(4) Supreme Court Cases 602.
11. *Sanjay Dutt v. State through C.B.I. Bombay (II)*, 1994(5) Supreme Court Cases 410.
12. *Abdul Latif Abdul Wahab Sheikh v. B.K. Jha*, 1987(2) SCC 22.
13. *Aslam Babalal Desai v. State of Maharashtra*.
14. *Raghubir Singh v. State of Bihar*.

(2001)5 SCC 453 = 2001 AIR SC 1910

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