

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.466 OF 2016

Akbar Badsha @ Pasha

.. Petitioner

-Versus-

State of Maharashtra & Ors.

..Respondents

Mr. Abad Ponda with Mr. Ashish Raghuvanshi i/b. Moinuddin Khan for
the petitioner

Mr.H.J.Dedhia, APP for State.

CORAM : DR. SHALINI PHANSALKAR JOSHI, J.

DATE : 15th February 2016.

P.C.

1] A very short question of law raised for consideration in this petition is whether the period of 60 days or 90 days as the case may be, as required by Section 167(2) of Cr.P.C. can be calculated from the date when the accused surrenders himself before the Magistrate and is remanded to custody or from the date when the investigating officer seeks his custody and for that purpose he is produced before a Magistrate and then remanded to Judicial Custody. The 13th Court of Metropolitan Magistrate Dadar vide his impugned order dated 26th

January 2016 rejected the application preferred by the petitioner for his release on default bail under section 167(2) of Cr.P.C. holding that the statutory period of 90 days has to be calculated from the first remand of petitioner after he was arrested by police in C.R.No.259 of 2015 and not from the date of his surrender before the court.

2] This order of the trial court is challenged by the learned Counsel for the petitioner submitting that the trial court has misconstrued the provisions of law, especially the well settled legal position as crystalised from the landmark decisions of the Apex Court in the cases of Uday M. Acharya Vs. State of Maharashtra, reported in 2001 (5) SCC 453; (ii) C.B.I. Vs. Anupam Kulkarni reported in 1992 (3) S.C.C. 141 and (iii) Ravi Prakash Singh @ Arvind Singh Vs. State of Bihar reported in 2015(8) S.C.C. 340.

3] Facts relevant for deciding this legal issue are to the effect that the petitioner who is original accused in C.R.No.259 of 2015 had moved an application for surrendering himself before the trial court on 23rd October 2015. The said C.R. was registered for the offences punishable under sections 141, 143, 144, 148, 149, 324, 326, 307, 341, 452, 504, 506(2) of Indian Penal Code read with Section 25 of the Arms Act. On his surrender before the trial court, the trial court called for the say of the

Investigating Officer and till then i.e. 26th October 2015, the petitioner was remanded to Judicial Custody.

4] The petitioner came to be arrested by the I.O. in the said C.R. on 27th October 2015 and on the very same date, he was produced before the Magistrate for the remand. As within 90 days from the date of his remand on 23rd October 2015, charge sheet was not filed in the court, on 21st January 2016 i.e. 90th day the petitioner moved an application before the trial court for exercising his indefeasible right of bail under section 167(2) of the Cr.P.C. on the ground that since the date of his surrender on 23rd October 2015, the period of 90 days was over and police have yet to file the charge sheet. The trial court confirmed that the charge sheet was not till then filed. The trial court also ascertained that the period of 90 days was over from 23rd October 2015. The trial court however, rejected the said application only on the ground that the period of 90 days has to be calculated from 27th October 2015 and not from 23rd October 2015. In this respect, the trial court relied upon certain observations in the case of Nizamuddin Mohammed Bashir Khan Vs. State of Maharashtra reported in 2006 All M.R. (Cri) 3110, holding that the question whether in computation of the period, the date of arrest has to be excluded or not, no longer arise as the period has to be calculated from the date of first remand by the Magistrate. The trial court held that whatever may be the

period of detention prior to the first remand is required to be excluded. Accordingly, the trial court held that as in this C.R. the petitioner was arrested and remanded for the first time on 27th October 2015, his earlier period in Judicial custody from 23rd October 2015 to 27th October 2015 cannot be taken into consideration and hence, rejected the application of petitioner.

5] However, as rightly submitted by the learned Counsel for the petitioner the trial court has committed an error in this respect because the period of 60 or 90 days is required to be computed from the first remand. Whether remand was on the arrest of the accused or whether it was in pursuance of the surrender of the accused is totally irrelevant. The law in this respect, as laid down in the case of Uday M. Acharya (supra) is no longer res integra. In the case of Uday Acharya also the facts disclosed that the accused had surrendered in court and was remanded to J.C. by order dated 17th June 2000 and at the time of calculating his period for the purpose of deciding whether 60 days detention is over or not, next date for computation was held to be 18th June 2000 and in the light of the same, it was held that the period was over and he was entitled for indefeasible bail under section 167(2) of Cr.P.C.

6] In the case of Ravi Prakash Vs. State of Bihar (supra), the Supreme Court has referred to its earlier decisions in Chaganti Satyanarayana Vs. State of A.P. reported in 1986 (3) S.C.C. 141 : 1986 SCC (Cri) 321 while deciding the relevant date for computation of the period of 60 days or 90 days it was held that the relevant date will be when the accused surrendered himself and was remanded to custody by the court.

7] Therefore, it can be in unequivocal and crystal clear terms, said that the date for the purpose of calculation of 60 days or 90 days under section 167(2) of Cr.P.C. is first date of remand whether on that date the accused had surrendered or was produced before the Magistrate by the police.

8] In this view of the matter, the impugned order passed by the trial court rejecting the petitioner's application for bail under section 167(2) of Cr.P.C. cannot survive and needs to be quashed and set aside. It is accordingly quashed and set aside.

9] In consequence, the petitioner is released on bail in P.R. Bond of Rs.15,000/- with one or two sureties in the like amount subject to conditions that the petitioner shall not tamper with evidence and/or

influence the prosecution witnesses and the petitioner shall report to the concerned police station on every Monday between 6.00 p.m. and 8.00 p.m. until filing of charge sheet..

(JUDGE)