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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2851/2017

RAJESH KUMAR VERMAPetitioner

Through: Mr. Ramesh Gupta, Senior Advocate with
Mr. R. K. Wadhwa, Mr. Ajay P. Tushir and
Mr. Anuj Gupta, Advocates.

versus

STATE NCT OF DELHI & ORS.Respondents

Through: Mr. Akshai Malik, APP for the State.

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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11.08.2017

1. By way of the present petition filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') the petitioner has assailed the order dated 18.07.2017 (hereinafter referred to as the 'Impugned Order') in Criminal Revision No. 120/17 passed by Additional Session Judge (hereinafter referred to as 'ASJ'), Rohini Courts, Delhi whereby, respondents No. 2 and 3 have been granted bail in case FIR No. 12/2017 under Sections 306/34 Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station - Shalimar Bagh, New Delhi.
2. The contextual matrix of the case as set out in the petition is that, the petitioner lodged an FIR against respondents No. 2, 3 and others, alleging that the accused persons conspired against the deceased father of the petitioner. In furtherance of that conspiracy,

they allegedly abetted his suicide.

3. The respondents No. 2 and 3 moved an application seeking bail which was dismissed by the Trial Court vide order dated 06.07.2017, on the ground of non-submission of chargesheet within ninety days as prescribed under clause (i) of Section 167(2)(a) Cr.P.C.
4. Thereafter, respondents No. 2 and 3 aggrieved by the order of the Trial Court, preferred a Revision Petition No.120/17 before the Session Court. The ASJ relied on ***Rajeev Chaudhary vs. State (NCT) of Delhi***, reported in **(2001) CAR 463**, wherein it was *inter-alia* observed that where an offence is punishable for a term which may extend to 10 years, the chargesheet has to be filed within 60 days and only in cases where the offence was punishable for a term "not less than 10 years", the chargesheet ought to be filed within 90 days from the day of arrest. On the basis of the above observation, the ASJ granted bail to the respondents No. 2 & 3, vide order dated **18.07.2017** holding that, the limitation for filing the chargesheet would be 60 days, as the respondents were involved in an offence under Section 306 IPC, punishable with "*imprisonment for a term which may extend to ten years*". Hence, the present petition.
5. Learned counsel for the petitioner, relying on the judgement of the Hon'ble Supreme Court in ***Bhupinder Singh and Ors. vs. Jarnail Singh and Anr.*** reported in **AIR (2006) SC 2622**, has challenged the impugned order on the ground that the relief to the respondents under Section 167(2) Cr.P.C is unwarranted, as the offence complained of is of grave and serious nature; and therefore the said

order is bad in law and is liable to be set aside.

6. Per contra, the learned counsel for the respondents have placed reliance upon ***Rajeev Chaudhary vs. State (NCT) of Delhi*** reported in **(2001) CAR 463** and ***State vs. B.B. Singh*** reported in **2004 (1) JCC 640**. The learned counsel contended that as the punishment prescribed for offence punishable under Section 306 IPC is *"imprisonment of either description for a term which may extend to ten years...."*, therefore chargesheet ought to have been filed within 60 days from the date of arrest. As the chargesheet had not been filed within the prescribed statutory period, the respondents were entitled to statutory bail.
7. I have given my thoughtful consideration to the submissions made by the learned counsels for the parties and perused the material available on record.
8. The issue that arises for consideration in the present case is that,
"Whether in a case involving an offence punishable under Section 306 IPC, the period of filing chargesheet would be 90 days or 60 days."
9. Returning to the ratio laid down in ***Rajeev Chaudhary vs. State (NCT) of Delhi*** reported in **(2001) CAR 463**, the Hon'ble Supreme Court has *inter-alia* observed that:
"..... clause (i) of proviso (a) to Section 167(2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. Under Section 386 of the IPC,

imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years."

However, the Supreme Court in this case dismissed the appeal and upheld the order of this Court in **Rajeev Chaudhary vs. State** reported in **2001 CriLJ 2023**, wherein it was *inter-alia* held that:

"..... clause (i) of proviso (a) to Section 167(2) will be applicable where the investigation relates to an offence punishable with imprisonment for a term which may extend to ten years".

10. Furthermore, so far as the judgement of this Court in **State vs. B.B. Singh** reported in **2004 (1) JCC 640** is concerned, the same has been held "*per incuriam*" by a subsequent order of this Court in **Om Prakash vs. State (NCT of Delhi)** reported in **121 (2005) DLT 686**. Hence, the reliance placed thereon by the learned counsel for the respondents is unsustainable.
11. Learned counsel for the petitioner, on the other hand, has relied upon **Bhupinder Singh and Ors. vs. Jarnail Singh and Anr.** reported in **AIR 2006 SC 2622**, wherein it was *inter-alia* held that:

"Where minimum and maximum sentences are prescribed, both are imposable depending on the facts of the case. It is for the court, after recording conviction, to impose appropriate sentence. It cannot, therefore, be accepted that only the minimum sentence is imposable and not the maximum sentence merely because minimum sentence is provided that does not mean that the sentence imposable is only the minimum sentence....."

On perusal of the judgment, it is inferred that the Supreme Court while dealing with the offence under Section 304-B IPC, punishable with "*imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life*" observed that in cases where minimum and maximum sentences are imposable, the quantum of the punishment shall be determined on the basis of facts and circumstances of that particular case. Therefore, in the present case the Apex Court held that the permissible period for filing the chargesheet for an offence under Section 304-B IPC is 90 days.

12. This Court in ***Om Prakash vs. State (NCT of Delhi)*** reported in ***121 (2005) DLT 686*** relied upon the Division Bench decision of this Court in the common judgment delivered on 10.10.1986 in the cases of ***Basant Kumar v. State [Crl.M.(M) 396/86]***, ***K.K. Malhotra v. State [Crl.M.(M) 426/86]***, ***Amrik Lal v. State [Crl.M.(M) 438/86]*** and ***Rama Swaroop v. State [Crl.M.(M) 634/86]***. The Division Bench, vide the said judgement, took the view that the expression "*not less than*" in clause (i) of Section 167(2)(a) Cr.P.C. takes within its fold all offences punishable with sentence of death, imprisonment for life or imprisonment for a term of ten years or more. The Division Bench further observed that as the expression "*not less than ten years*" is preceded by the word "*punishable*" in clause (i) of Section 167(2)(a) Cr.P.C., the Court shall have discretion to award indeterminate punishment subject to a maximum. While commenting on the gravity of offences it was

held that :

"The offences punishable with death, life imprisonment or with imprisonment for a term of ten years or more have been classified 'grave offences' and the offences punishable with imprisonment of less than ten years as less grave or less serious; the first category would fall in clause (i) and the second category in clause(ii) of Section 167(2)(a) of Cr.P.C."

13. For the purpose of deliberation, the related sections are reproduced hereunder:

Section 167 (2) of Cr.P.C. reads as follows:

"(2).....: Provided that-

(a).....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,;....."

Section 306 of IPC reads as follows:

"Abetment of suicide:, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

14. From a bare reading of Section 306 IPC, it is inferred that any person found guilty for the said offence "*shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine*"; thereby meaning that the maximum punishment for ten years, as prescribed under the

law, can be awarded by the Court. Therefore, the punishment can vary from a minimum to a maximum of ten years and there is a clear possibility of punishment being awarded for a maximum period of ten years on conviction. But it is for the Court, at the conclusion of trial, to decide what would be an adequate sentence based upon the facts and circumstances of the particular case.

15. On the other hand, by virtue of clause (i) of Section 167(2)(a) Cr.P.C., it is inferred that, a Magistrate shall not authorise detention for a period exceeding (1) ninety days where the investigation relates to an offence punishable with (i) death, or (ii) imprisonment for life, or (iii) imprisonment for a term not less than ten years, and (2) sixty days where the investigation relates to any other offences.
16. Therefore, from a perusal of the aforementioned judgements, it is hereby observed that the settled position of law, as regards the interpretation of clause (i) of Section 167(2)(a) Cr.P.C. is that, in cases where the accused can be punished with imprisonment for a term of ten years, the said clause (i) shall be applicable. Thus, for offences punishable with *"imprisonment for a term which may extend to ten years"* the Court has the discretion to sentence the accused for imprisonment for a term of ten years or less than ten years. By virtue of the fact that, the accused can be sentenced to imprisonment for a term of ten years, the offence clearly falls within the ambit of clause (i) of Section 167(2)(a) Cr.P.C. Therefore, such offences, wherein the punishment prescribed is for a term, which may extend to ten years, would consequently attract

clause (i) of Section 167(2)(a) Cr.P.C.

17. In the instant case, the respondents No. 2 and 3 are facing trial for the offence under Section 306 IPC punishable with "*imprisonment for a term which may extend to ten years*". The accused, if convicted, could be sentenced to undergo imprisonment for a period of ten years or for any period less than ten years. Hence, as there is a possibility of sentence being awarded for ten years, clause (i) of Section 167(2)(a) Cr.P.C shall be applicable and the chargesheet ought to be filed within 90 days and not 60 days as claimed by the respondents. Resultantly, accused is not entitled to be released on bail on the expiry of the period of 60 days.
18. In view of the aforesaid discussion, order dated 18.07.2017 passed by the Additional Sessions Judge is set aside.
19. Respondents/accused are directed to surrender forthwith before the concerned Court failing which the concerned Court shall initiate appropriate proceedings against the respondents/accused as per law.
20. Accordingly, the petition stands disposed of.
21. A copy of this order be sent to the concerned Trial Court.

SANGITA DHINGRA SEHGAL, J

AUGUST 11, 2017

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