

In the High Court of Punjab and Haryana at Chandigarh

CRM M-38993 of 2018 (O&M)
Reserved on : October 11, 2018

Date of Decision: October 26, 2018

Surender and another

... *Petitioners*

Versus

State of Haryana

... *Respondent*

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. S.S. Momi, Advocate,
for the petitioners.

Mr. R.K. Doon, AAG, Haryana.

P.B. Bajanthri, J.

1. In the present petition, petitioners have sought for quashing of order dated 27.08.2018 by which their application under Section 167 (2) Cr.P.C. has been rejected. Further, they have sought for releasing them on bail in case FIR No. 198, dated 28.05.2018 for the offences under Sections 148, 149, 302 of IPC, registered at Police Station Dadri City, District Charkhi Dadri.

2. Brief facts of the case are that one Mr. Gaurav Sharma, Inspector, informed scene of crime for registration of FIR read with complaint of one Sh. Khazan son of Ram Kumar that his brother Satyawar, who was working as a Peon in Bar Association, Dadri, had beaten mercilessly by Om Parkash Kalkal, Advocate Sandeep Rawaldhia, Naveen Marhata Advocate and two other associates. Due to beatings, Satyawar

died. Thus, FIR No. 198 has been registered on 28.05.2018. Arising out of these facts and circumstances, petitioners were arrested on 28.05.2018. They have been produced before jurisdictional Magistrate on 29.05.2018. Default bail application under Section 167(2) Cr.P.C. was submitted on 27.08.2018 and on the same day, challan was presented.

3. In this background, learned counsel for the petitioners apprised this Court on 07.09.2018 stating that after arrest on 28.05.2018, petitioners were produced before jurisdictional Magistrate on 29.05.2018 and they were remanded. He apprised that date of remand is required to be taken into consideration for the purpose of computation of 90 days so as to extend default bail under Section 167(2) Cr.P.C. On 07.09.2018, following order was passed:-

“Notice of motion for 04.10.2018.

On the asking of the Court, Mr. Munish Sharma, AAG, Haryana accepts notice on behalf of the State.

Learned counsel for the petitioner is directed to furnish two sets of paper book to learned State counsel, during the course of the day.

In the present petition, petitioner has sought for quashing of order dated 27.08.2018 (Annexure P-4). It is an interpretation of Section 167(2) read with bail application filed prior to completion of 90th day. Perusal of the dates and events to the extent that petitioner had been arrested on 28.05.2018 and produced on 29.05.2018. Thereafter once again he was produced on 01.06.2018. He had filed bail application on 27.08.2018 before the presentation of the challan as is evident from endorsement issued on petitioner's bail application under Section 167(2) Cr.P.C. which reads as under:-

“According to CIS, FIR No. 188 of 2018 challan not received till dated 27.08.2018.

Thus, it is evident that before filing challan petitioner had submitted bail application on 27.08.2018.

In view of these factual aspects, trial Court shall release him on interim bail on his furnishing bail/surety bonds to its entire satisfaction.

However, the petitioner shall not in any way indulge in any criminal activities and he shall also not influence the witnesses or otherwise interfere with the fair trial.”

4. Learned counsel for the petitioners in support of main prayer relating to quash order dated 27.08.2018 passed by the court of Chief Judicial Magistrate, grant of bail under Section 167(2) Cr.P.C. or to confirm an interim bail granted on 07.09.2018, submitted that date of remand by the Judicial Magistrate, namely, 29.05.2018 is required to be included so also date of challan dated 27.08.2018 for the purpose of computation of 90 days. Further, it was submitted that challan was submitted after filing of bail application dated 27.08.2018 as is evident from the note relating to receipt of challan on 27.08.2018 which has been extracted in the order dated 07.09.2018.

5. Learned counsel for the petitioners relied on number of decisions for the purpose of computation of 90 days. The latest decisions are relevant for the purpose of considering the petitioners' grievance which are as under:-

- “i) *Pragyna Singh Thakur vs. State of Maharashtra*, reported in *(2011) 10 SCC 445*;**
- ii) *Rakesh Kumar Paul vs. State of Assam*, reported in *2017(3) R.C.R. (Criminal) 996*;**
- iii) *Sarabjit Singh @ Sabi vs. State of Punjab*, reported in *2014(1)***

R.C.R. (Criminal) 341.

The aforesaid citations cited to the extent that date of remand by the Judicial Magistrate and date of presentation of challan are required to be taken into consideration for the purpose of computation of 90 days. In the present case, challan was not presented within 90 days. Therefore, Court below has erred in holding that date of remand by the Magistrate is required to be excluded for the purpose of computation of 90 days is incorrect and is liable to be set aside.

6. Per contra, learned State counsel while resisting petitioners' contention submitted that there is no error committed by the Court below insofar as computation of 90 days, namely, excluding the date of remand dated 29.05.2018 and computation of 90 days in the present case is required to be taken into consideration from 30.05.2018 till 27.08.2018. Thus, challan has been presented within 90 days. Therefore, rightly taken note of ***Ravi Parkash Singh @ Arvind Singh vs. State of Bihar, 2015(2) Recent Apex Court Judgement 22*** insofar as computing the period of 90 days wherein it is held that remanded to the judicial custody day should be excluded and day on which challan is filed in the Court, should be included.

7. Learned State counsel relied on the following decisions in support of contention that how to compute 90 days for the purpose of entertaining bail application under Section 167(2) of Cr.P.C.:-

- i) ***Ravi Prakash Singh @ Arvind Singh vs. State of Bihar***, reported in ***2015(3) Crimes, 374 (Para 12)***;
- ii) ***Rambeer Shokeen vs. State of NCT of Delhi***, reported in ***2018 (2) R.C.R. (Criminal) 109 (Para 28)***;
- iii) ***State of M.P. vs. Rustam and others***, reported in ***1995 (Sup.3) SCC 221 (Para 3)***;

iv) Yash Pal Gupta vs. State of Punjab and another, Crl. Misc. No. M-39463 of 2014, decided on 31.07.2017.

Latest decisions are required to be taken into consideration for the purpose of computation of 90 days under Section 167(2) of Cr.P.C. Thus, petitioners have not made out a case so as to interfere with the Court below order dated 27.08.2018.

8. Heard learned counsel for the parties.

9. Crux of the matter in the present petition is how to compute 90 days for the purpose of invoking Section 167(2) of Cr.P.C. It is to be noted that Section 167(2) of Cr.P.C. is silent as to how to compute number of days in respect of default bail to an accused depending upon alleged offence stated to have been committed vide reference FIR. For the purpose of present petition having regard to the offences under Sections 148, 149, 302 of IPC, 90 days is required to be taken into consideration for the purpose of invoking Section 167(2) of Cr.P.C. to extend default bail to the accused or not.

10. Learned counsel for the petitioners relied on number of decisions for the purpose of deciding the present matter. It is relevant to take note of latest decisions, namely, **Pragyna Singh Thakur vs. State of Maharashtra**, reported in **(2011) 10 SCC 445** wherein it is held that 90 days computation is required to be taken into consideration from the date of remand. Decision in the case of **Rakesh Kumar Paul vs. State of Assam**, reported in **2017 (3) R.C.R. (Criminal) 996**, is not relates to computation. No doubt, in the case of **Sarabjit Singh @ Sabi vs. State of Punjab**, reported in **2014(1) R.C.R. (Criminal) 341**, it was held that computation of 90 days is required to be taken into consideration inclusive of date of

remand with reference to Supreme Court's decision, namely, ***Chaganti Satyanarayana vs. State of Andhra Pradesh***, reported in ***1987(1) R.C.R. (Criminal) 40***. At the same time, latest decision, namely, ***Ravi Prakash Singh @ Arvind Singh vs. State of Bihar***, reported in ***2015(3) Crimes 374***, wherein it is held that date of remand to the judicial custody should be excluded. Para 12 reads as under:-

*“12. In ***State of M.P. v. Rustam and others***, 1995 Supp (3) SCC 221, this Court has laid down that while computing period of ninety days, the day on which the accused was remanded to the judicial custody should be excluded, and the day on which challan is filed in the court, should be included. That being so, in our opinion, in the present case, date 5.7.2013 is to be excluded and, as such, the charge sheet was filed on ninetieth day, i.e. 3.10.2013. Therefore, there is no infringement of Section 167(2) of the Code.”*

11. On the other hand, learned State counsel relied on ***Ravi Prakash Singh @ Arvind Singh vs. State of Bihar***, reported in ***2015(3) Crimes, 374***, ***Rambeer Shokeen vs. State of NCT of Delhi***, reported in ***2018(2) R.C.R. (Criminal) 109***, ***State of M.P. vs. Rustam and others***, reported in ***1995 (Sup.3) SCC 221 (Para 3)*** and ***Yash Pal Gupta vs. State of Punjab and another***, ***Crl. Misc. No. M-39463 of 2014***, decided on ***31.07.2017*** to contend that date of remand is required to be excluded having regard to the dates and events like date of filing FIR i.e. 28.05.2018, accused were arrested on 28.05.2018, produced before Magistrate and remand on 29.05.2018, challan was presented on 27.08.2018. In this background, it is to be noted that date of remand, namely, 29.05.2018 is required to be excluded in view of latest decision of Supreme Court in ***Ravi***

Prakash Singh's case (*supra*) and decision of this Court in **Yash Pal Gupta's** case (*supra*). Even though petitioners had the benefit of interim bail from 07.09.2018 till date. At the same time, during intervening period from the period of interim bail till date, conduct of the petitioners cannot be looked into for the reasons that interim bail has been granted contrary to latest decision of **Ravi Prakash Singh's** case (*supra*), wherein Section 167 (2) of Cr.P.C. interpreted for the purpose of computation of 90 days to extend default bail under Section 167(2) of Cr.P.C. to the extent of date of remand is required to be excluded. In the present case, if the date of remand i.e. 29.05.2018 is excluded and computation of 90 days from 30.05.2018 read with filing of challan on 27.08.2018 is taken into consideration, challan was presented within the stipulated period of 90 days. Thus, petitioners have not made out a case in respect of quashing order dated 27.08.2018. Hence, order dated 27.08.2018 passed by Chief Judicial Magistrate, Dadri is affirmed.

12. Instant petition stands dismissed. As petitioners are in bail pursuant to order dated 07.09.2018, therefore, they are directed to surrender forthwith. In case of their failure to surrender, trial Court is directed to proceed in accordance with law.

October 26, 2018
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : No