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STATE THROUGH CBI
v.
MOHD. ASHRAFT BHAT AND ANR.

DECEMBER 7, 1995

B

[M.M. PUNCHHI AND K. VENKATASWAMI, JJ.]

Code of Criminal Procedure, 1973/Terrorist and Disruptive Activities (Prevention) Act, 1987 :

C

S.167/20(4)—Right to bail on failure of prosecution to complete investigation within period prescribed—Held, does not survive on challan being filed—Period of limitation—To be computed from date of arrest in connection with relevant case.

D

The respondent was arrested under the Terrorists and Disruptive Activities (Prevention) Act, 1987 in connection with F.I.R. No. 14 of 1991 and F.I.R. No. 56 of 1991. The date of arrest in respect of the latter case was 17.4.1992 and the prosecution submitted the challan in respect thereof on 23.12.1992. The Designated Court by its order dated 9.5.1994 released the respondent on bail in terms of s.167, Cr.P.C. accepting the case of the respondent that the prosecution failed to submit the challan within the period prescribed. Aggrieved, the State filed the appeal.

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Allowing the appeal, this Court

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HELD : 1. The Designated Court erred in releasing the respondent on bail. The right of the respondent to bail indefeasible on the expiry of the period of one year is enforceable only prior to filing of the challan and it does not survive or remain enforceable on the challan being filed. Once the challan has been filed, the question of grant of bail has to be considered and decided on merits. [301-G-H, 302-A]

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Sanjay Dutt v. State, reported in [1994] 5 SCC 410, followed.

H

2. The Designated Court also erred in computing the period of one year. In the instant F.I.R. No. 56 of 1991 the respondent was arrested on 17.4.1992, but his date of arrest for the purpose of computing the period of limitation was taken as the date of the original arrest in the earlier F.I.R. No. 14 of 1991. The limitation has to be computed from the later date. [302-D]

Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. *Anupam J. Kulkarni*, [1994] 5 SCC 141, relied on. A

3. In the circumstances, the bail granted to the respondent is cancelled. He shall be arrested, but subject to the condition that he may of his own appear before the Designated Court and surrender himself and pray for bail on merits. [303-C] B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1708 of 1995.

From the Judgment and Order dated 9.5.94 of the Presiding Officer, Designated Court Jammu & Kashmir in F.No. 336 of 1993. C

K.T.S. Tulsi, Additional Solicitor General, A.S. Bhasme, V. Pahwa and P. Parmeswaran for the Appellant.

S.K. Bhattacharya for Respondent No. 1. R.C. Pathak for Respondent No. 2. D

The following Order of the Court was delivered :

Leave granted. E

This is an appeal against the order dated 9.5.94 of the Presiding Officer, Designated Court established under the Terrorists & Disruptive Activities Act, in the State of Jammu and Kashmir, whereby the first respondent was released on bail in terms of Section 167 Cr.P.C. in as much as the prosecution failed to submit police report (challan) within the period prescribed. It transpires that the prosecution submitted the police report on 23.12.92, when the period of one year assigned for the purpose stood expired. It is noteworthy that when claim for bail by the respondent was being examined, the police report indeed stood filed. Yet the Designated Court granted bail to the respondent on the mere fact that the police report had been filed belatedly. It apparently considered the right of the respondent to bail indefeasible on the expiry of the period of one year. F G

Patently, the Designated Court was in error. A Five Member Bench of this Court in *Sanjay Dutt v. State*, reported in [1994] 5 SCC 410 has ruled at page 442 as follows : H

A "The indefeasible right accruing to the accused in such a situation
is enforceable only prior to the filing of the challan and it does not
survive or remain enforceable on the challan being filed, if already
not availed of. Once the challan has been filed, the question of
grant of bail has to be considered and decided only with reference
B to the merits of the case under the provisions relating to grant of
bail to an accused after the filing of the challan. The custody of
the accused after the challan has been filed is not governed by
section 167 but different provisions of the Code of Criminal Pro-
cedure. If that right had accrued to the accused but it remained
unenforced till the filing of the challan, then there is no question
C of its enforcement thereafter since it is extinguished the moment
challan is filed because section 167 Cr.P.C. ceases to apply."

The second error committed by the Designated Court was with
regard to computation of period of one year. It appears that the respondent
D stood arrested earlier in another F.I.R. No. 14 of 1991. In the instant F.I.R.
No. 56 of 1991, his date of arrest, for the purposes of computing the period
of limitation, was taken as the date of the original arrest in the earlier F.I.R.
No. 14 of 1991. In the instant F.I.R. No. 56 of 1991 the respondent was
arrested later on 17.4.1992. It is from the later date the period of limitation
had to be computed.

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This Court in *Central Bureau of Investigation, Special Investigation
Cell-I New Delhi v. Anupam J. Kulkarni* reported in [1994] 5 SCC- 141 had
the occasion to clarify the position of law on the subject referred at pgs.
158 & 159 as follows :

F "There cannot be any detention in the police custody after the
expiry of first fifteen days even in a case where some more offences
either serious or otherwise committed by him in the same trans-
action come to light at a later stage. But this bar does not apply
G if the same arrested accused is involved in a different case arising
out of a different transaction. Even if he is in judicial custody in
connection with the investigation of the earlier case he can formally
be arrested regarding his involvement in the different case and
associate him with the investigation of that other case and the
Magistrate can act as provided under section 167(2) and the
H proviso and can remand him to such custody as mentioned therein

during the first period of fifteen days and thereafter in accordance with the proviso as discussed above. If the investigation is not complete within the period of ninety days or sixty days then the accused has to be released on bail as provided under the proviso to section 167(2). The period of ninety days or sixty days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police. Consequently the first period of fifteen days mentioned in section 167(2) has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody."

These two fatal errors committed by the Designated Court would warrant side its order, and cancelling the bail granted to the respondent. He shall be arrested forthwith, but subject to the concession that he may of his own appear before the Designated Court and surrender himself and pray for bail on the merit of the matter if it is due to him. If he approaches the Court for the purpose, the Designated Court may put the Public Prosecutor to notice immediately and thereafter examine whether the respondent is due for bail in the facts and circumstances of the case, subject to the limitations imposed in the statute.

The appeal stands allowed accordingly.

R.P.

Appeal allowed.