

## IN THE HIGH COURT OF DELHI AT NEW DELHI

CRLMM 4672/2003

The State ... Petitioner  
Through: Mr.Pawan Sharma, Advocate

Vs.

Through:Mr.Ramesh Gupta with Mr.Manish,  
Advocates.

12.03.2004  
DATE OF RESERVE: 10.2.2004  
DATE OF ORDER: 12.3.2004

CORAM:

HON'BLE MR.JUSTICE O.P.DWIVEDI

- 1.Whether Reporters of Local papers may be allowed to see the judgment ?
- 2.To be referred to the Reporter or not ? Yes
- 3.Whether the judgment should be reported in the Digest ?

CRLMM 4672/2003

This is a petition u/s 439 (2) read with Section 482 Cr.P.C for cancellation of bail granted to the respondents in FIR No. 118/2003, u/s 498-A/ 304B / 406/ 34 IPC, P.S. Inderpuri, Delhi.

Vide impugned order dated 27.8.2003, learned ASJ has granted bail to the respondents under the proviso (a) (ii) to section 167 (2) Cr.P.C being of the view that for an offence u/s 304B IPC the Magistrate can authorise detention during investigation only for a period of sixty days.

Admittedly, challan in this case was not filed within a period of sixty days from the date of arrest of the respondent. The only point canvassed before me by the learned counsel for the State is that in case of State of Maharashtra Vs. Ketan Seth report ed in 2003 1 AD (Cr.) BOM. 412 and in case of State of H.P. Vs. Lal Singh- 2003 CRI.L.J. 1668 view taken by the respective High Courts is that if for the alleged offence the accused can be convicted for more than ten years the period of detention would b 90 days as provided in proviso (a) (i) to section 167 (2) Cr.P.C. Earlier in the case of GPS Rana Vs. The State ( NCT of Delhi)- CRLMM 3341/2002 decided on 1.11.2002, I have taken the view that in cases where punishment could be for less than ten y ars, the period of detention during investigation could be only up to 60 days and not ninety days. This view of mine was based on the decision of the Supreme Court in the case of Rajeev Chaudhary Vs. State (NCT of Delhi-(2001) 5 SCC 34. This judgment h s been referred to in the Bombay case as well as H.P. Case cited above. The answer, therefore, will depend upon correct understanding of judgment of the Supreme Court in the case of Rajiv Choudhary (Supra) Therefore, the relevant facts of the case and he observation made by the Supreme Court on law point have to be taken note of in depth and detail.

In Rajiv Choudhary case (supra) the facts were that appellant was arrested in connection with an offence punishable u/s 386/ 506/ 120B IPC. He was produced before MM, Delhi on 31.10.1998 and was released on bail vide order dated 2.1.99 on the ground t hat charge sheet was not submitted within sixty days as provided in the proviso a(ii) to 167 (2) Cr.P.C. That order was challenged before Sessions Judge in revision which was accepted by the learned ASJ vide order dated 18.8.99. Learned ASJ was of the view that for offences u/s 386 IPC, the period of sentence could be up to ten years' RI and hence the period of detention could be upto ninety days in view of clause (1) of the proviso (a) to section 167(2) Cr.P.C. The order of the learned ASJ was chall nged before the High Court. High Court referred to some earlier decisions and held that expression " an offence punishable with imprisonment for a term of not less than ten years" in clause a (1) of the proviso to 167 (2) Cr.P.C would mean any offence unishable with imprisonment which period would not be less than ten years. High Court, therefore, set aside the order passed by the learned ASJ against which appeal was preferred before Supreme Court. After re-producing section 167 and section 386 Cr.P.

Hon'ble Supreme Court observed as under:-

n custody for not more than 90 days. For rest of the offences, the period prescribed is 60 days. Hence in case where offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days. In this context the expression " not less than " would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. Under Section 386 punishment provided is imprison ent of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context a so if we consider 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 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

A bare reading of para 6 re-produced above, would clearly show that Supreme Court laid emphasis on the fact that Magistrate could authorise detention upto 90 days only in cases where punishment could not be less than ten years. In section 386 IPC punish ment could be up to ten years or less. For offence of dowry death u/s 304-B IPC punishment prescribed is seven years minimum which may extend to imprisonment for life. The fact that punishment could extend to imprisonment for life would not make it an ffence where punishment is 'not less than ten years'. In case where punishment could extend up to ten years or life the imprisonment sentence of a term less than ten years can be awarded. As observed by the Supreme Court in para 6 above cases where pun shment could be less than ten years would not be covered under clause (a) (i) of the proviso to section 167 (2) Cr.P.C. Such cases would fall under clause (a) (ii). There are various other offences under IPC under section 121A, 122, 128, 130, 131, 225, 2 2, 238, 304, 305, 307, 326, 329, 389, 436, 438, 459, 472, 477, 489A for which punishment could extend to life imprisonment but no minimum term of sentence is prescribed. The punishment in such cases could be less than ten years also and generally it is so. Such cases do not fall within the ambit of proviso (a) (i). The period of detention of ninety days is available only in cases where punishment prescribed is not less than ten years. It could be 'life imprisonment' or death but there should be a mi imum term prescribed

and that minimum term should not be less than ten years. This is what apex court meant by saying that accused could be detained upto ninety days in cases where sentence is for ten years or more. In other words, that term of sentence should not be less than 10 years. The Apex Court clarified the position by observing that although punishment u/s 386 IPC could extend upto ten years or fine but that does not make the proviso (a) (i) to section 167 (2) Cr.P.C applicable because sentence could be less than ten years also, no minimum term being prescribed.

In this context, the distinction between the cases where the sentence prescribed is 'Life imprisonment' and the cases where sentence could extend upto life imprisonment should be taken note of. For offences under Section 302 IPC or Section 121 IPC the punishment prescribed is 'Death' or 'Imprisonment for Life'. In such cases the court while awarding sentence has to award either the sentence of death or sentence of Life Imprisonment. The court has no option to award a sentence of lesser severity. But in cases where the sentence prescribed is for a term which may extend to life imprisonment, the courts have the option to award less severe sentence, even less than 10 years. Former type of cases will fall within the ambit of proviso (a) (i) to Section 67(2) Cr.P.C. whereas the later type of cases will be covered by proviso (a) (ii) to Section 167(2) Cr.P.C. For an offence under Section 304B, the courts have the option to award sentence of less than 10 years. Obviously such cases will not fall in the category of case for which the sentence could be 'imprisonment' for a period of not less than 10 years.

For these reasons, I am unable to subscribe to the view taken by the Bombay High Court and H.P. High Court.

In view of my discussion above, I find no ground to take a different view than that taken by learned ASJ. In the result, application for cancellation of bail is hereby dismissed.

Sd/-  
March 12 2004 O.P.DWIVEDI J.  
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