



(REPORTABLE)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No(s) . 608/2021

STATE (NCT) OF DELHI ...Appellant(s)

VERSUS

RAJEEV SHARMA ...Respondent(s)

JUDGMENT

1. The present Appeal is directed against the impugned judgment and order dated 04.12.2020 passed by the High Court of Delhi in Criminal Revision Petition No. 363/2020 whereby, the High Court had disposed of the said petition by granting the respondent bail subject to the conditions mentioned therein.

2. The broad facts leading to the present Appeal are that,

- i. a case being FIR No.230/2020 came to be registered on 13.09.2020, at Police Station-Special Cell, Delhi against the Respondent - Accused for the offence punishable under Section 3,4 and 5 of the Official Secrets Act, 1923 (hereinafter referred as "the Act") and the investigation was taken up by the Special Cell, Delhi Police.
- ii. During the course of the investigation, Section 120B of the Indian Penal Code was also added.
- iii. The Respondent - Accused was arrested on 14.09.2020.
- iv. A Bail Application was filed by the Respondent, along with the other accused and the same came to be dismissed by the Chief

Metropolitan Magistrate, Patiala House Courts vide the order dated 28.09.2020. The subsequent application seeking regular bail moved by the Respondent - Accused, was also dismissed by the learned ASJ, Patiala House Courts vide the order dated 19.10.2020.

- v. It appears that the subsequent bail applications filed by the Respondent - Accused, were also not granted by the concerned Courts.
- vi. Ultimately, on 14.11.2020, the Respondent - Accused moved an application under Section 167(2) of Code of Criminal Procedure (for short 'Cr.P.C.') in the Court of Chief Judicial Magistrate/ Duty Magistrate, Patiala House Courts, Delhi seeking his release on bail on the ground that 60 days period

had expired since he was arrested, and the charge-sheet against him, was not filed.

vii. The said Application filed under Section 167(2) of Cr.P.C., also came to be dismissed by the Chief Judicial Magistrate/ Duty Magistrate, Patiala House Courts on 14.11.2020 by observing that the 60 days period was yet to be completed, however, it was observed in the order that in terms of the clause(ii) to proviso(a) of Section 167(2) of Cr.P.C., the statutory bail would have to be considered, if 60 days had elapsed since the day of the remand.

viii. It appears that in view of the said observations made in the order dated 14.11.2020, the Appellant - State (NCT) of Delhi on 15.11.2020, filed a Revision Petition being CR No. 57/2020

before the ASJ, Patiala House Courts.

- ix. Pending the Revision Petition filed by the Appellant - State (NCT) of Delhi, the Respondent - Accused, on 15.11.2020, filed a fresh petition under Section 167(2) of Cr.P.C. on similar grounds as that of the earlier one before the Chief Judicial Magistrate/ Duty Magistrate, Patiala House Courts, Delhi.
- x. The fresh petition filed by the Respondent also came to be dismissed by the concerned Court on 16.11.2020.
- xi. Being aggrieved by the said Order, Respondent approached the High Court of Delhi by filing Criminal Revision Petition No. 363/2020 under Sections 397 read with Sections - 401 and 482 of Cr.P.C. The said Criminal Revision Petition came to be

allowed by the High Court.

xii. Aggrieved by the said Order, the Appellant - State (NCT of Delhi) has filed the present Appeal.

3. Heard learned counsels appearing for the parties and perused the material on record.

4. The short question that falls for consideration before this Court is, whether the term imprisonment for a term "not less than 10 years" in clause(i) of the proviso(a) to Section 167(2) Cr.P.C would include an offence where the punishment of 14 years of imprisonment is prescribed, but no minimum period of imprisonment is prescribed for such offence?

5. The relevant provision of Section 167(2) reads as under: -

“167. Procedure when investigation cannot be completed in twenty-four hours.”

—
(1)

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that —

(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but 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, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) to (c)

(3) to (6)"

6. From the bare reading of the said clause(i) of the proviso(a) to Section 167(2), it clearly appears that the accused would be entitled the benefit of default bail if the investigation has not been completed

in ninety days when it relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and in sixty days when it relates to any other offence.

7. In the instant case, the FIR against the respondent, was registered for the offence punishable under Sections 3,4 and 5 of the Act read with Section 120B of IPC. Section-3 of the said Act though, prescribes maximum punishment up to 14 years, there is no minimum punishment provided under the said provision. The punishment prescribed for the offence punishable under Section-5 of the said Act, is maximum up to three years. Since, the investigation was not completed in sixty days, the Respondent had become entitled to the default bail under Section 167(2) (a) of Cr.P.C.

8. In our opinion, the present case is squarely covered by the majority decision of three Judge Bench in *Rakesh Kumar Paul vs. State of Assam*¹. The relevant part thereof reads as under: -

"24. In the context of the word "punishable" occurring in clause (i) and the meaning attached to this word taken from several dictionaries, this Court held in *Bhupinder Singh [Bhupinder Singh v. Jarnail Singh, (2006) 6 SCC 277: (2006) 3 SCC (Cri) 101]* that where a minimum and maximum sentence is prescribed, both are imposable depending upon the facts of the case. Therefore, if an offence is punishable with imprisonment that may extend up to or beyond or including 10 years, then the period available for completing investigations would be 90 days before the provision for "default bail" kicks in. It was said in para 15 of the Report: (SCC p. 282)

"15. Where minimum and maximum sentences are prescribed, both are imposable depending on the facts of the cases. It is

¹ (2017) 15 SCC 67

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."

25. While it is true that merely because a minimum sentence is provided for in the statute it does not mean that only the minimum sentence is imposable. Equally, there is also nothing to suggest that only the maximum sentence is imposable. Either punishment can be imposed and even something in between. Where does one strike a balance? It was held that it is eventually for the court to decide what sentence should be imposed given the range available. Undoubtedly, the legislature can bind the sentencing court by laying down the minimum sentence (not less than) and it can also lay down the maximum sentence. If the minimum is laid down, the sentencing Judge has no option but to give a sentence "not less

than" that sentence provided for. Therefore, the words "not less than" occurring in clause (i) to proviso (a) of Section 167(2) CrPC (and in other provisions) must be given their natural and obvious meaning, which is to say, not below a minimum threshold and in the case of Section 167 CrPC these words must relate to an offence punishable with a minimum of 10 years' imprisonment."

9. The said ratio laid down in *Rakesh Kumar Paul* (supra) has been further followed by this Court in the case of *M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence* (Criminal Appeal No. 699 of 2020).
10. In view of the afore-stated legal position, which clinches the issue raised in the present Appeal, we are of the opinion that the High Court has rightly followed the aforestated decisions and released the Respondent on bail.
11. It may also be noted that this

Appeal is pending before this Court since last four years and the benefit of default bail granted to the Respondent - Accused by the High Court has continued till this date.

12. In view of the above, we do not find any merit in this Appeal. However, since the matter is pending before the Trial Court for framing of charge, the Trial Court is directed to proceed further with the trial as expeditiously as possible and in accordance with law.
13. The Appeal is dismissed accordingly.
14. Pending application(s), if any, shall stand closed.

.....J.
(BELA M. TRIVEDI)

.....J.
(PRASANNA B. VARALE)

New Delhi;
03.04.2025

