

SAYED MOHD. AHMAD KAZMI v. STATE (GNCTD) & OTHERS

(If chargesheet comes before bail application, the right to statutory bail is lost)

Bench: Altamas Kabir, CJ and S. S. Nijjar, J. Chelameswar, JJ.

Appellant: Sayed Mohd. Ahmad Kazmi

Respondent: State (Government of NCT of Delhi) & Others

Citation: (2012) 12 SCC 1

Issue:

I. Whether right to statutory bail can be exercised after chargesheet is filed.

Facts:

- An FIR was filed on 13.2.2012 in respect of an explosion in a public place for offences u/s. 307, 427 and 120B of IPC, which were later amended to cover s. 16 and 18 of Unlawful Activities Prevention Act, 1967.
- The appellant was arrested on 6.3.2012 on apprehension and his custody was extended from time to time by CMM. Appellant's period of 90 days of custody without chargesheet having been filled was to expire on 3.6.2012.
- He was produced before CMM on 2.6.12 for extending custody by 90 days which was first granted but declared illegal on revision.
- The same day, the appellant moved an application for statutory bail u/s 167(2) proviso, CrPC which was listed for hearing the same day. However, instead of hearing the CMM renotified the hearing for 18.7.2012.
- On 18.7.12, State filed a fresh application for custody extension which was granted retrospectively on 20.7.12. On 31.7.12, prosecution filed a chargesheet.
- This order dated 20.7.12 was challenged by appellant before ASJ and HC who refused to interfere and hence an SLP was filed in Supreme Court u/Art. 136.

Appellant's Contention:

- Once the 90 days period of custody u/s. 167(2) proviso a(i) CrPC expired, the right of the person arrested to be released on statutory bail commenced and could not be extinguished by a subsequent application for custody extension.
- The fact that the hearing of bail application was renotified for further date does not mitigate the fact that the bail application was pending since 2.6.12 when not only the 90 days period of custody expired but also had been declared illegal.

Respondent's Contention:

- Once the application for extension of custody was filed on 18.7.12, the right to statutory bail of accused stood extinguished and there was no beach of s.167(2)
- If the accused did not avail the remedy u/s. 167 before chargesheet was filed, the same stands extinguished.

Judgment:

The SC allowed the appeal and directed the release of the accused on conditional bail.

Relevant Paragraphs:

Para 20

So long as an application for default bail u/s. 167(2)CrPC was pending before a chargesheet had been filled after the expiry of the stipulated period for filling of chargesheet, the accused had an indefeasible right to be released on statutory bail, as contemplated under the proviso to s.167(2) CrPC.

Para 25& 26

Not only the retrospectivity of the order of CMM dated 20/7/12 untenable, it could not also defeat the statutory right which had accrued to the appellant on the expiry of 90 days from the date when the appellant was taken into custody. Such right could only be extinguished once the chargesheet had been filled in the case and no application had been made prior thereto for grant of statutory bail. It is well established that if an accused does not exercise his right to grant of statutory bail before the chargesheet is filed, he loses his right to such benefit once such chargesheet is filed and can, thereafter, only apply for regular bail. The circumstances in this case are different however, in that the appellant has exercised his right to statutory bail on the very same day on which his custody was held to be illegal and such an application was left undecided by the CMM till after the application filed by the prosecution for extension of time to complete investigation were taken up and orders were passed thereupon.

Para 27& 28

The procedure adopted by the CMM which has been endorsed by the High Court cannot be approved. The appellant acquired the right to grant of statutory bail on 17/7/2012, when his custody was held to be illegal by the ASJ since his application for statutory bail was pending at the time when the application for extension of time for continuing investigation was filed by the prosecution. The right of the appellant to grant of statutory bail remained unaffected by the custody and both CMM and HC have erred in holding otherwise.