(1975) 07 AHC CK 0043

Allahabad High Court

Case No: None

Lakshmi Brahman and Another		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: July 10, 1975

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 111, 112, 116, 118, 125
- Penal Code, 1860 (IPC) - Section 302

Citation: (1975) AWC 369 : (1976) CriLJ 118

Hon'ble Judges: H.N. Seth, J; G.D. Srivastava, J

Bench: Division Bench

Final Decision: Allowed

Judgement

H.N. Seth, J.

This is an application u/s 439, Criminal P.C. by Lakshmi Brahman and Nawal Garg. The applicants pray that they may be directed to be released on bail. Since the case involved the interpretation of Section 167(2) of the Code of Criminal Procedure, 1973, and the learned single Judge thought that there was a conflict of judicial opinion in that regard, be referred the case to a Division Bench. This is bow the case has come up before us.

2. The two applicants Lakshmi Brahman and Nawal Garg were accused in a case u/s 302, I. P.C. They surrendered themselves before a Magistrate on 2nd November, 1974 and were taken into custody on the same day. However, the police failed to submit a charge-sheet against them, within 60 days of their arrest (the charge-sheet had not been submitted even upto 5th February, 1975). The applicants, therefore, moved the present application and claimed that once the police failed to submit a charge-sheet within a period of 60 days of the arrest, their detention thereafter became illegal and they were entitled to be released on bail as provided in Section 167(2) of the Code of Criminal Procedure, 1973. In their application, the applicants

further alleged that their request for being released on. bail had already been rejected by the Sessions Judge, but they did not make it clear whether their request was made and rejected before or after the expiry of 60 days of their arrest

3. When the case came up for hearing before us, learned Counsel appearing for the State admitted that in this case the police did not submit the charge-sheet against the applicants within 60 days of 2-11-1974 (the date on which the two applicants were taken into custody). He also informed us that subsequently the charge-sheet has been submitted and the Magistrate has already taken cognizance of the offence. However, by the time this application came up for hearing before us, the learned Magistrate, could not, due to certain unavoidable reasons, make an Older committing the applicants to the Court of Session. He contended that once the charge-sheet has been submitted and cognizance of the offence taken, Section 167(2) of the Code ceased to apply and in such circumstances an accused could not claim to be released on bail as of right His prayer for bail had to be considered in accordance with the provisions of Section 437 of the Code of Criminal Procedure.

4. Relevant portion of Section 167, which falls in Chapter XII of the Code dealing with the information of police and their powers to investigate, reads thus:

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(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 be has no jurisdiction to try the case or commit it for trial, and consider further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that

(a) the Magistrate may authorise 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- section for a total period exceeding sixty days, and on the expiry of the said period , of sixty days 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 section shall be deemed to be so released under the provisions of Chap. XXXIII for the purposes of that Chapter.

(b) ...

5. learned Counsel for the applicants submitted that proviso (a) to Section 167(2), in so many words laid down that the Magistrate shall not authorise the detention of an accused person in custody for a total period exceeding 60 days. Accordingly, once that period has expired, the Magistrate loses jurisdiction to keep the accused in custody arid any subsequent detention of the accused under the provisions of that section would be illegal. We are unable to accept this submission. According to Section 167, whenever any person is arrested and is detained in custody and it appears that the investigation cannot be- completed within a period of 24 hours fixed by Section 57 and there are grounds for believing that the accusation or information are well founded the officer in-charge of the police station is required to forthwith transmit to the nearest judicial Magistrate a copy of case diary entries and also to forward the accused to such Magistrate. The Magistrate, to whom an accused person is forwarded can either enlarge the accused on bail in accordance with the provisions of Section 436 of the Code or he can direct that the accused be placed in such custody as he thinks fit, for a term not exceeding 15 days. In case the Magistrate to whom the accused is forwarded happens to be a Magistrate competent to try the accused or to commit him for trial, he can further authorise the detention of such an accused otherwise than in police custody, even for a period beyond 15 days, subject, however the condition that the total period of detention is not to exceed 60 days, whereafter, the accused, if he is prepared to furnish bail, becomes entitled to be released from custody. It is evident that an order u/s 167 of the Code, remanding the accused to custody, is made in order to facilitate the investigation and that such power to remand an accused to jail custody or to release him on bail is to be exercised during the investigation of an offence by the Police. The section contemplates that in case the investigation is not completed within 60 days and the accused person is prepared to offer bail he shall be released on bail and it will be considered that he has been .so released in accordance with the provisions contained in Chapter XXXIII of the Code. In the context, what the expression, "but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding 60 days and on the expiry of the said period of 60 days the accused person shall be released on bail if he is prepared to and does furnish bail" in Section 167(2)(a) means is that a Magistrate cannot during investigation, remand an accused to custody beyond a period of 60 days if the accused is prepared to and does furnish bail. This necessarily implies that even after expiry of 60 days if the accused does not offer and furnish bail, the magistrate will have to make the order remanding him to custody. Accordingly, it cannot be said that u/s 167(2) of the Code, the Magistrate can, in no case, authorise the detention of an accused person beyond a period of 60 days. Since in this case it has not been shown by the applicants that they made any application to the learned Magistrate for being released on bail after the period of 60 days was over, it cannot be said that the remand orders made during the investigation, but after the expiry

of 60 days, were illegal as such, or that the Magistrate was bound to enlarge them on bail even though they did not apply for it.

6, learned Counsel for the applicants then argued that even if it be assumed that the applicants did not during the investigation and after the expiry of 60 days of their arrest, move the magistrate concerned u/s 167(2)(1) for being released on bail the learned Magistrate could not, in the exercise of his power u/s 167(2)(a) of the Code, authorise the detention of the applicants in jail custody after the investigation was over and the police had submitted the charge-sheet against them and pointed out that even according to the Government counsel the provisions of Section 167 ceased to apply after the charge-sheet had been submitted and cognizance of the offence taken by the Magistrate. After cognizance of the offence had been taken, the power to remand the accused to custody, in a case exclusively triable by court of Session, could be exercised only either u/s 209 or u/s 309 of the Code which pro- visions too are not attracted in the case. There being no other provision in the Code justifying applicant''s detention at the present stage this is a fit case in which they .should be admitted to bail.

7. As explained above once the police has submitted the charge sheet and investigation of the case is over, the magistrate cannot authorise the detention of an accused u/s 167 of the Code. His authority to remand an accused to custody, after he has taken cognizance of an offence, will have to be gathered from other provisions of the Code.

8. Section 209 of the Code runs thus: "When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the court of session, he shall -

(a) commit the case to the Court of Session;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of the trial;

(c ...

The power to remand the accused to custody under this section could be exercised only while making an order committing the accused to court of Session. There is nothing on the record to indicate that such a contingency has arisen in this case so far. Accordingly, the Magistrate could not after taking cognizance of the offence remand the two applicants to custody under this section.

9. Section 309 of the Code runs thus:

(1) (n every enquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have

been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded,

(2) If the Court, after taking cognizance of an offence, or commencement of trial finds it necessary or advisable to postpone the commencement of, or adjourn any enquiry or trial it may from time to time, for reasons to be recorded postpone or adjourn the same on such terms as it thinks fit. for such time as it considers reasonable, and may by a warrant remand the accused if in custody;

Provided that no Magistrate shall remand the accused person to custody under this section for a term exceeding fifteen days at a time....

The power to remand the accused to custody u/s 309(2) can be exercised only when a Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any enquiry or trial. It is a common ground that in this ease, no question regarding commencement or postponement of any trial by the Court, taking cognizance of the offence, is involved. Only question, therefore, that remains to be considered is whether or not in a case which is exclusively triable by a court of session, the Magistrate, while proceeding to commit an accused u/s 209 of the Code, conducts an enquiry, as contemplated by Section 309 of the Code.

10. The expression "inquiry" has been defined in Section 2(g) of the Code thus:--

Inquiry means every enquiry, other than a trial, conducted under this Code by a Magistrate or Court.

There are various provisions in the Code wherein the proceedings before a Magistrate or court have been described as ''inquiry''. Section 84 lays down that "if any claim is preferred to, or objection made to the attachment of, any property attached u/s 83, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment u/s 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part." Section 116, which finds place in Chapter VIII dealing with the security for keeping the peace and for good behaviour, lays down that when an order u/s 111 has been read or explained u/s 112 to a person present in court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of a summon or warrant issued u/s 118. the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary. Subsection (2) thereof lays down that such enquiry, shall be made, as early as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases. Section 125. which finds place in Chapter IX providing for right of maintenance to wives, etc, lays down that if any person having sufficient means neglects or refuses to maintain wife, legitimate or illegitimate minor children or his

father or mother, the magistrate of the first class may. upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole. Although, the section does not, in so many words, describe the proceedings which the Magistrate has to conduct u/s 125 as an ''inquiry'' but as the proceedings have to be conducted in order to make the order for the maintenance of wife etc. after ascertaining facts and as these proceedings do not result in a trial, they can be said to be covered by the definition of the word inquiry as defined in Section 2(g). Sections 137 and 138 which fall in Chapter X relating to maintenance of public order and tranquillity provide for an inquiry in a case where an order is made u/s 133 for the purpose of preventing construction, nuisance or danger to the public in. the case of any way, river, channel or place. These sections lay down that the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding u/s 137 inquire into the matter. Similarly, Section 145 of the Code contemplates conducting of an enquiry in respect of dispute regarding immovable property. Section 176 of the Code provides that when any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquest shall, and ins any other case mentioned in Sub-section (1) of Section 174, any Magistrate so empowered may, hold an inquiry into the cause of death either instead of. or in addition to, the investigation held by the Police Officers; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. Various provisions mentioned above are directed towards holding of enquiry in respect of matters other than that which concern offences.

11. The Code further contemplates holding of inquiries in connection with offences also. Section 159 empowers a Magistrate, receiving report u/s 157 from an officer in charge of a police .station either to direct the police to investigate the case or if he thinks fit to proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry. Similarly, Section 202 provides that any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him u/s 192, may if he thinks fit, postpone the issue of process against the accused and either inquire into the case himself or direct investigation by the police officer.

12. If the provision contained in Section 2(g) is interpreted in the light of the aforementioned provisions of the Code (relating to inquiries), it becomes obvious that ''inquiry'' is the name given to a proceeding conducted under the Code by a Magistrate or a Court, other than a trial, for ascertaining or verifying facts with a view to take some action under the Code.

13. A case which is triable exclusively by a court of session and of which cognizance has already been taken by a magistrate, is to be dealt with in the manner laid down in Sections 204, 207 to 209 of the Code. Section 204 makes provision for the types of processes and lays down the conditions subject to which such processes are to issue. Section 207 provides that in proceedings initiated on the basis of a police report the Magistrate shall, without any delay, furnish to the accused free copies of the documents mentioned therein. Similarly Section 208 makes provision for the supply of copies of certain documents to the accused in cases which are triable exclusively by Court of Session and which have been initiated otherwise than on a police report. Section 209 lays down that where in a case instituted on a police report or otherwise, the accused appears or in brought before a magistrate and it appears to that magistrate that the offence is triable exclusively by Court of Session he shall commit the case to Court \\of Session. It follows that in a case instituted on a police report and which is triable exclusively by a Court of Session, what the Code requires the magistrate taking cognizance of the offence to do is to commit the case to Court of Session as soon as the accused appears or is brought before him and to arrange to supply to him the copies of the documents mentioned in Section 207, without any delay. These sections do not contemplate that before committing the case to Sessions the magistrate should conduct some proceeding with a view to ascertain or verify facts. Section 209 of the Code merely requires the magistrate, taking cognizance of an offence on the basis of a police report, to look into the report and if he finds that the case is triable exclusively by Court of Session to make an order committing the case to Sessions. Since in such a case the Magistrate taking cognizance of the offence is not required to conduct any proceeding for ascertaining or verifying facts with a view to commit the case to sessions, it cannot be said that the provisions contained in Sections 204, 207 to 209 of the Code contemplate an inquiry under the Code.

14. It is significant to note that under the Criminal Procedure Code of 1898, the magistrate taking cognizance of an offence, triable exclusively by a Court of Session was, u/s 207-A, required to hold an inquiry before making an order committing the case to sessions. The object behind the provision requiring the Magistrate to hold the enquiry was to see that the accused was committed only when there was a triable case against him, so that he was not harassed unnecessarily. However, that procedure has been specifically given up under the 1973 Code. Under the present Code, the Magistrate taking cognizance of the case is merely required to look into the charge-sheet and if he finds that the facts stated therein constitute an offence triable exclusively by a Court of Session he has got to make an order committing the case to Sessions. He is not to inquire into the case and to see whether or not there is a triable case against the accused. Instead, that function has now been entrusted to Sessions Court itself by Section 227 which runs thus:

If upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in

this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

15. Since in a case which is exclusively triable by the Court of Session, the Code does not contemplate that after taking cognizance, the Magistrate should conduct any proceeding for ascertaining or verifying facts on the basis of which he is to decide whether or not to commit the case to the Court of Session, it cannot be said that the Magistrate taking cognizance holds any inquiry under the Code. Accordingly, in a case where, for some reason, the Magistrate defers the making of an order committing the case to the court of session, he does not postpone the commencement of or adjourn any inquiry contemplated by Section 309(2) of the Code.

16. We are, therefore, of opinion that in this case the order remanding the applicants to custody, made after the police has submitted the charge-sheet, cannot be justified even u/s 309(2) of the Code.

17. Learned Government Advocate contends that under the Code, before the Magistrate, taking cognizance, makes an order committing a case which is triable exclusively by a Court of Session, he has to see that the necessary copies mentioned in Section 207 of the Code are supplied to the accused. In many cases, it will not be possible for the magistrate to see that all the copies are supplied to the accused on the very first day when he appears or is brought before him, and as such he will have to postpone the date for making the order committing the case to the court of session. In case such proceedings before the magistrate are not considered to be inquiry and the postponement necessitated because of non-availability of requisite copies as adjournment of inquiry, there would invariably be a hiatus and the Magistrate will not be able to detain a person who is accused of a serious offence. Certainly, the court should not interpret the word ''inquiry'' in such a manner so as to create this anomalous situation.

18. As we read Sections 207 and 209 of the Code, we do not find any basis for the submission made by the learned Government Advocate. Section 207 merely provides that in a case where the proceedings are instituted on a police report, the Magistrate shall without delay furnish free of cost a copy of each of the documents mentioned therein. These copies are to be furnished to the accused free of cost and without delay i.e. it has to be seen that steps are taken to get the copies prepared and supplied to the accused expeditiously. If in some case, it is not possible to get the copies prepared and supplied to the accused, when he appears or is produced before the Magistrate taking cognizance of the offence, the Magistrate will, under the section, have all the reasonable time for getting the copies prepared and supplied to the accused. This section nowhere lays down that the copies have to be supplied to the accused before making an order u/s 209 committing the case to the court of Session. In our opinion the making of an order committing the case to the

Court of Session Is not dependent upon the supplying of the copies, mentioned in Section 207 to the accused person. The Magistrate is not debarred from complying with the provisions of Section 207, even after the order committing the case to Sessions has been made. Accordingly, if there be a practice prevailing in the lower courts whereby the making of an order u/s 209 committing the case to court of Session is deferred so as to enable the Magistrate to get the necessary copies u/s 207 prepared and supplied to the accused, that practice is not in consonance with the law. In a case where the Magistrate takes cognizance on a police report that report would invariably be there before him, and he can always, on its basis, form an opinion whether or not the case is triable exclusively by the court of Session. In making an order committing the case to the court of Session the Magistrate is not to hold any inquiry. There is no reason why such Magistrate should not make an order committing the case on the same day on which the accused appears or is brought before him. If the Magistrate defers the making of an order committing the case to Sessions because the necessary copies have not been prepared and supplied to the accused, he does not do so with a view to proceed with an inquiry on a future date. He does so for getting the copies prepared and supplied and this has nothing to do with the conduct of an inquiry. In such a case the question of postponing any inquiry or trial, simply does not arise. If, as required by Section 209 of the Code, the Magistrate had, when the applicants appeared or were brought before him, made an order committing the case to Sessions he would have had ample jurisdiction to remand the applicants to custody for the duration of the trial. In such circumstances there would not have been any hiatus and no anomaly as suggested by the Government advocate would have arisen. In this case the difficulty in justifying the detention of the applicants is arising not because there is some lacuna in the Code, but because the Magistrate did not, as required by Section 209, proceed to make an order committing the case to Sessions when the applicants appeared or were brought before him, after he had taken cognizance of the offence.

19. As in this case the order remanding the applicants to custody, made after the cognizance of the offence was taken, cannot be justified under Sections 167(2), 209 and 309 of the Code, and no other provision under which the applicants could be remanded to custody at this stage, has been indicated by the learned Government Advocate, we feel that it would be proper to accede to the request made by the applicants and to direct that they should be released on bail on their furnishing adequate security to the satisfaction of the Chief Judicial Magistrate Banda.

20. We now proceed to consider the various decisions of this Court which led the learned single Judge to refer this case to a Division Bench.

21. In Criminal Misc. Bail Appln. No. 4253 of 1974 Madho Singh v. State, decided on 24-9-1974 (All) by K. B. Asthana, j. (as he then was) it is observed thus:

Apart from other matters on merits emerging from the affidavit of the applicant, which remains uncontroverted a feature of this case is that the applicant has been

detained in jail custody for more than 60 days during the investigation. The Magistrate concerned did not appreciate the requirements of Section 167, Criminal P.C. The applicant ought to have been released on bail by the Magistrate. According to the applicant he has not yet been charged for any offence. At least he has not been informed of it. Learned Government Advocate submitted that if a charge-sheet has been submitted against the applicant by now he is not entitled to the benefit of Section 167, Criminal P.C. I do not think that the submission of the learned Counsel really meets the requirement of Section 167, Criminal P.C. If such a contention is accepted the object behind Section 167, Criminal P.C. would always be frustrated.

I direct that the applicant be released on bail to the satisfaction of the Chief Judicial Magistrate Etah.

From the referring order, it appears that in one case Bakshi, J. also took the view similar to that expressed by Asthana, J. in the aforementioned case. It appears that the applicant in the case before Asthana, J. had applied for being released on bail u/s 167, Criminal P.C. after he had been under detention in jail custody for more than 60 days while the case was still under investigation and before any charge-sheet had been submitted. Clearly that application deserved to be allowed as of right as provided u/s 167 of the Code. In our opinion Asthana, J. was right in observing that the Magistrate concerned did not appreciate the requirement of Section 167, Cri. P.C. and he should have admitted the applicant on bail. We also agree with Asthana, J. when he observed that in a case where the accused has, during the investigation, applied to the Magistrate concerned for being released on bail u/s 167, Cri. P.C. on the ground that he had been in the jail custody for more than 60 days, his prayer cannot be turned down merely because subsequently the police submits a charge-sheet against the accused. The observations made by Asthana, J. cannot be interpreted as laying down that an accused who could not, or did not apply for being released on bail while the case was under investigation he would still be entitled to be released on bail as of right u/s 167(2) of the Code, even where he makes the application for bail after the submission of the charge-sheet and after he has been remanded to custody either u/s 209 or 309 of Code. We, therefore, find that the view expressed by Asthana, J. is in consonance with the view expressed by us.

22. In Criminal Misc. Case No. 388 of 1975 Heeraman v. State decided on 13-3-1975 : reported in Heeraman Vs. State of U.P., it is observed thus:

Before parting with this case it may be observed that the interpretation of Section 167(2)(a) of the Code by the learned Counsel for the applicant does not appear to me to be correct. This section, if T may say so, has not been properly worded and a casual reading of the relevant provision gives the idea that a magistrate cannot authorise detention of an accused person during investigation beyond a total period exceeding sixty days and that detention of an accused during investigation beyond that period is illegal. The relevant portion of the section is as follows:

...But no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, the accused person shall be released on bail if he is prepared to and does furnish bail...."

The whole portion quoted has to be read together. It is apparent from the portion quoted that an accused is not to be allowed to just walk out of the place of detention or of the jail after the expiry of sixty days automatically if no charge-sheet has been submitted within that period. If no charge-sheet has been submitted within sixty days, the section only empowers an accused to claim bail as of right. But the detention of an accused does not automatically become illegal if no charge-sheet has been submitted by the police within sixty days even though the accused does not apply for bail. It may be repeated that he is not to be allowed to walk out of jail and his detention will continue to be legal till he actually applied for bail or in other words he is prepared to and does furnish bail. In other words, the Magistrate shall not authorise detention of the accused person in custody for a total period exceeding sixty days provided the accused person applies for bail on the expiry of the said period of sixty days or offers to and does furnish bail."

23. We fully agree with the aforementioned observations made by Malik, J. These observations do not run counter to the observations made by Asthana, J. in Madho Singh''s case. However, Malik, J. went on to observe thus :

In my view, even if it is found that no charge-sheet within sixty days was submitted but charge-sheet was submitted before the accused applied for bail, it will not be open to the accused to claim that he is entitled to bail as of right by invoking Section 167(2)(a) of the Code because as soon as the charge-sheet has been submitted, the period of remand pending investigation came to an end and provisions of Section 167(2)(a) ceased to apply to such a case and in such a case bail can be granted under the provisions of Chapter XXXIII of the Code " These observations made by Malik. J. show that he also considered that there was a difference between a case where the accused made an application for bail after sixty days but before the charge-sheet was .submitted and a case where the accused made the application for bail after the charge-sheet had been submitted beyond a period of sixty days. While holding that in a case where no charge-sheet was submitted within a period of sixty days, but the accused applied for bail after it had been submitted, it would not be open to him to invoke Section 167(2)(a) of the Code and to claim that he was entitled to bail as of right because as soon as the charge-sheet was submitted the period of detention pending investigation came to an end and provisions of Section 167(2)(a) ceased to apply to such a case, Malik, J. did not lay down that an application made by an accused after he had been detained for more than sixty days during investigation but before submission of charge-sheet also did not deserve to be allowed as of right. As a matter of fact earlier observations made by the learned Judge clearly indicate that in such a case the accused would be entitled to be released on bail as

of right. In this regard there is no conflict between the opinions as expressed by Malik, J. in Heeraman''s case and that expressed by Asthana, J. in Madho Singh''s case. In so far as the latter observations made by Malik, J. are concerned they are in consonance with the view expressed by us in the earlier portion of the judgment.

24. Learned Government Advocate also cited two other decisions by single Judges of this Court. In the case of Mahesh Chand v. State, Criminal Revn. No. 270 of 1975 decided on 13-3-1975 (All). Bakshi, J. held that even where an accused had been released on bail u/s 167(2) of the Code the same could also be cancelled subsequently. K. N. Seth, J. also expressed a similar view in Criminal Revn. No. 1787 of 1974 Sobaran Singh v. State decided on 1-1-1975."

25. Section 167(2) in so many words lays down that an order granting bail thereunder will be deemed to be an order made under the provisions of Chapter XXXIII of the Code. It necessarily follows that a person who has been released on bail u/s 167(2) may, as provided in Section 437(5), be rearrested if the Court considers it necessary to do so. Where such a person has, after being released on bail been taken back into custody u/s 437(5), the restriction contained in Section 167(2) to the effect that he shall not be detained beyond a period of 60 days will not apply to his case. Accordingly, we agree with the decision of Bakshi, J. in Criminal Revn. (Mahesh Chandra v. State), No. 270 of 1975 decided on 13-3-1975 (All) and that of K. N. Seth, J. in the case of Shobaran Singh v. State of U.P., Criminal Revn. No. 1787 of 1974 decided on 1-1-1975 = reported in (1975) 1 All LR 99. In our opinion, there is no conflict between the aforementioned decisions and those given by Asthana, J. and Malik, J. mentioned above. All these decisions deal with different situations and, in our opinion, lay down correct law.

26. In the result, we allow this application and direct that the applicants be released on bail on their furnishing security to the satisfaction of the Chief Judicial Magistrate Banda.