Dharamvir Singh @ Deepak Vs The State (NCT of Delhi)

Criminal Revision Petition No. 317 of 2011

Court: Delhi High Court

Date of Decision: Aug. 25, 2011

Acts Referred:
Arms Act, 1959 â€" Section 27#Criminal Procedure Code, 1973 (CrPC) â€" Section 167(2), 401, 482#Penal Code, 1860 (IPC) â€" Section 120B, 34, 392, 397, 411

Citation: (2011) 125 DRJ 471

Hon'ble Judges: Ajit Bharihoke, J

Bench: Single Bench

Advocate: Rajiv Khosla with Mr. O.P. Sharma and Mr. S.C. Jha, for the Appellant; Pawan Narang, APP, for the Respondent

Final Decision: Dismissed

Judgement

Ajit Bharihoke, J.
This revision petition u/s 401 read with Section 482 Cr.P.C. is directed against the order dated 10th May, 2011 passed

by learned Special Judge, Karkardooma Court, Delhi in case FIR No. 538/2010, P.S. Anand Vihar titled ""State v. Dharamvir Singh and Anr.

whereby the learned Special Judge dismissed the application of the petitioner u/s 167(2).Cr.P.C. and declined to admit him on bail.

2. Facts relevant for the disposal of this petition are that the petitioner along with his co-accused was arrested on 15.12.2010 in case FIR No.

538/2010 P.S. Anand Vihar for allegedly having committed offences under IPC and the Arms Act. He was produced before the court and

remanded to judicial custody.

3. During investigation, involvement of the petitioner in 31 other criminal cases was revealed. Thus, on 24.01.2011, Assistant Commissioner of

Police sent a proposal for invoking MCOCA against the petitioner. On 04.02.2011, requisite sanction u/s 23(1)(a) of MCOCA for invoking

Section 3(2) and 3(4) of Maharashtra Control of Organized Crime Act, 1999 (as extended to NCT of Delhi) against the petitioner and

investigation by Shri Prem Singh Hooda, ACP, Vivek Vihar was accorded by the Joint Commissioner of Police, New Delhi Range.

4. On 08.02.2011, the petitioner moved a bail application seeking his release on bail in case FIR No. 538/2010. On 10.02.2011, learned APP

informed learned Additional Sessions Judge about invoking of MCOCA against the petitioner. Consequently, the petitioner withdrew his bail

application.

5. Investigating agency failed to file charge sheet against the petitioner within 60 days of his arrest in the case, as such, on the application of the

petitioner seeking bail u/s 167(2) CrPC proviso (a) (ii), learned M.M. vide order dated 26.03.2011 directed release of the petitioner on bail.

6. However, despite of the bail order, the jail authorities did not release him because of production warrants issued by the Special Court,

MCOCA on the application moved by the prosecution, intimating that Section 3(2) and Section 3(4) MCOCA has been added in FIR No.

538/2010 P.S. Anand Vihar.

7. Since supplementary charge sheet pertaining to the offences u/s 3(2) and 3(4) MCOCA was not filed within 90 days of his arrest, the petitioner

moved an application u/s 167(2) Cr.P.C. read with Section 21 of MCOCA before the Special Court MCOCA, seeking his release on bail. Bail

application u/s 167(2) was dismissed on 10.05.2011 by the learned Special Judge, taking a view that period of detention of the petitioner was to

be computed from 31.03.2011 when the petitioner was formally arrested for the offence under MCOCA on being produced before the Special

Court pursuant to the production warrants issued on 28.03.2011.

8. Learned counsel for the petitioner has submitted that the learned Special Judge, MCOCA has committed a grave error in law in holding that

instead of the actual date of arrest of the petitioner, date of his formal arrest for the offence under MCOCA would be relevant for computing the

period of detention of the petitioner for the purpose of Section 167(2) proviso (a) as modified by Section 21 MCOCA. In support of this

contention, the petitioner has relied upon the judgment of the Supreme Court in the matter of State of Maharashtra Vs. Bharati Chandmal Varma

@ Ayesha Khan, .

9. Learned APP, on the contrary, has pressed for dismissal of revision petition and submitted that the learned Additional Sessions Judge, Special

Court MCOCA has rightly rejected the bail application u/s 167(2) Cr.P.C. as being premature. He submitted that initially the FIR No. 538/2010

was registered for offences of Indian Penal Code and the Arms Act. Only during the course of investigation, it came to the knowledge of the

investigating agency that the petitioner was involved in 31 other criminal cases, including cases of organised crime. Thus, because of the

restriction/safeguard provided u/s 23 of the Maharashtra Control of Organised Crime Act, 1999, the Investigating Officer/Assistant Commissioner

of Police moved for requisite permission u/s 23(1)(a) & (b) for invoking offences under Sections 3(2) & 3(4) of MCOCA and investigating the

same. After the receipt of requisite sanction, an application was moved in the Special Court for formally arresting the petitioner under MCOCA.

The petitioner was arrested for the offences under MCOCA on 31.03.2011 and till then, there was no charge under the provisions of MCOCA

against the petitioner. Thus, learned Additional Sessions Judge has rightly held that the period of 90 days as envisaged u/s 167(2) Cr.P.C. as

modified by Section 21 MCOCA has to be computed from 31.03.2011. Learned APP submitted that supplementary charge sheet incorporating

provisions of MCOCA was filed on 27.06.2011, within the period of 90 days from the date of formal arrest of the petitioner on 31.03.2011, as

such, learned Special Judge rightly declined the plea of the petitioner for release on bail. Second limb of argument of learned prosecutor is that

admittedly, the charge sheet has been filed in the court before the release of the petitioner on bail under proviso (a) to Section 167(2) CrPC read

with Section 21 MCOCA, as such in view of the judgment of Supreme Court in Uday Mohanlal Acharya Vs. State of Maharashtra, , the right of

the accused to seek bail u/s 167(2) proviso (a) stands extinguished.

10. I have considered the rival submissions and perused the material on record. In the matter of State of Maharashtra (supra), almost similar

situation came up for determination before the Supreme Court. In that case respondent was arrested on 01.04.2001 for the offences under

Sections 489A, 489B, 489C, 120B and 420 of the Indian Penal Code. She was produced before the Metropolitan Magistrate on 2.04.2001 and

he remanded the respondent to police custody first and later to judicial custody. During the investigation police discovered that organised crimes

under MCOC Act had also been committed. The investigating agency sought sanction of the authorities under the MCOC Act for conducting

investigation under the said Act. Relevant sanction was granted on 21.04.2001 and investigation into the offences under MCOC Act commenced

pursuant to the sanction. Finally the charge sheet was filed on 12.07.2001. On the above facts, Supreme Court held that the respondent accused in

that case would be entitled to bail on account of default of the investigating agency to complete the investigation within 90 days from the date of

first remand of the respondent accused. It was observed that since further investigation of the offence under MCOCA could relate to the same

arrest and period of detention envisaged u/s 167(2) proviso (a) remains unextendable.

11. The facts of the instant case are also almost similar. The petitioner accused was arrested in case FIR No. 538/2010, P.S. Anand Vihar for the

offences falling under the provisions of IPC and the Arms Act on 15th December, 2010. The offence under MCOCA was added subsequently

when it came to the knowledge of the Investigating Officer that the petitioner was involved in about 31 other criminal cases. Undisputedly, till the

date on which the petitioner moved application u/s 167(2) proviso (a) as modified by Section 21 of the MCOCA, supplementary charge sheet

relating to the offences under MCOCA was not filed, as such, in view of the judgment of Supreme Court in the matter of State of Maharashtra v.

Bharti Chandmal Varma (supra), learned Special Judge, MCOCA ought to have granted benefit of proviso to Section 167(2) as modified by

Section 21 of MCOCA to the petitioner by admitting him on bail.

12. Learned Prosecutor, canvassing in favour of the order of learned Special Judge dismissing the application of the petitioner seeking bail in view

of the proviso (a) to Section 167(2) CrPC as modified by Section 21 of the MCOCA, submitted that the learned Special Judge was right in

holding that the period of 90 days as envisaged u/s 167(2) CrPC as modified by Section 21 of the MCOCA could not be computed from the

actual date of arrest i.e. 15.12.2010 as at that time, no provision of MCOCA was involved against the petitioner. Learned Prosecutor submitted

that the learned Special Judge has thus rightly held that for the purpose of computation of the period of 90 days, relevant date is 31st March, 2011

when the petitioner was formally arrested for the offences under MCOCA.

13. This submission of learned Prosecutor is also misconceived for the reason that from the facts noted above, it is apparent that the Investigating

Officer had come to know about the involvement of the petitioner in 31 other criminal cases and he had moved a proposal for invoking MCOCA

as early as on 24th January, 2011. Admittedly, the requisite sanction u/s 23(1)(a) for invoking Sections 3(2) & 3(4) MCOCA against the

petitioner and investigating the case was accorded by the competent authority on 04th February, 2011. Thus, by any standards, on 04th February,

2011, offences under MCOCA were added in the FIR. At that time, the petitioner was in detention, as such, even if the best case of the

prosecution is taken, then also the period of 90 days for the purpose of benefit to the petitioner in view of proviso to Section 167(2) CrPC has to

be computed from 04th February, 2011. Therefore, it is obvious that as on 06th May, 2011, when the petitioner moved application u/s 167(2)

proviso (a) as modified by Section 21 MCOCA, the period of 90 days was over. Admittedly, by then, the charge sheet so far as offences under

MCOCA are concerned was not filed. Thus, in my view, learned Special Judge, MCOCA was under legal obligation to admit the petitioner on

bail by giving him benefit of proviso (a) to Section 167(2) read with Section 21 MCOCA. Thus, the order of learned Special Judge, MCOCA

dated 10th May, 2011 suffers from legal infirmity which requires correction in revision.

14. As regards the judgment relied upon by the learned prosecutor, it is suffice to say that the aforesaid judgment of Supreme Court is not

applicable to the facts of the present case, because admittedly, before the filing of supplementary charge sheet by the prosecution on 27.06.2011,

the petitioner on 06.05.2011 had exercised his right to seek bail u/s 167(2) proviso (a) and he could not reap benefit of his application because of

erroneous order of the court concerned.

15. In view of the discussion above, I find it difficult to sustain the impugned order dated 10.05.2011 of learned Additional Sessions Judge

(Special Court) MCOCA as it suffers from inherent defect and is based upon the incorrect enunciation of law.

16. Revision petition is, therefore, accepted. Impugned order dated 10.05.2011 is set aside and the petitioner is directed to be released on bail in

case FIR No. 538/2010 u/s 392/397/411/34 IPC and Section 27 Arms Act as well as Section 3(2) & 3(4) of MCOCA on furnishing a personal

bond in the sum of Rs. 50,000/-with one surety in the like amount to the satisfaction of the concerned court.

17. Petition is disposed of accordingly.