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**Akash Mann T. @ Akash S/O. Trimoorathi Vs State Of Karnataka**

**Criminal Petition No.2378, 1957 Of 2019**

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**Court:** Karnataka High Court

**Date of Decision:** April 24, 2019

**Acts Referred:**

Code of Criminal Procedure, 1973 " Section 57, 167, 167(2), 167(5), 439#Indian Penal Code, 1860 " Section 302, 307#Constitution Of India, 1950 " Article 22

**Hon'ble Judges:** B.A. Patil, J

**Bench:** Single Bench

**Advocate:** Hashmath Pasha, Ranjankumar P, Namitha Mahesh B.G

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**Judgement**

1. Criminal Petition No.2378/2019 has been filed by petitioner/accused challenging the rejection of the application filed under Section 167(2) of Cr.P.C

by the VII Additional Chief Metropolitan Magistrate, Bangalore City and Criminal Petition No.1957/2019 has been filed by petitioner/accused under

Section 439 of Cr.P.C. seeking his release on bail in Crime No.368/2018 of Mahalakshmi Puram Police Station for the offences punishable under

Sections 302 and 307 of IPC.

2. I have heard the learned senior counsel Sri Hashmath Pasha for the petitioner and Smt. Namitha Mahesh B.G., the learned High Court Government

Pleader for respondent-State in both cases.

3. The gist of the complaint is that:

On 16.12.2018 at about 5.00 a.m., the deceased was cleaning the front place of his hotel with water. The water smeared on the petitioner/accused,

who came there and passing through the said road on his bike. As a result of the same, the petitioner fallen down and took up quarrel with the

deceased and the persons who were present in front of the shop have pacified the quarrel. Thereafter, petitioner/accused went from that place and

after 10 minutes, he came back on his motorbike and asked the deceased whereabouts of his helmet, to which the deceased told that he did not know

about his helmet and immediately, the petitioner/accused picked up quarrel with the deceased and stabbed on his chest and other parts of the body

with a knife, when the wife of the deceased tried to intervene and pacify the quarrel, the petitioner also assaulted her with a knife and caused grievous

injuries. In the meanwhile, Manoj the first son of the deceased came by holding iron pipe and assaulted on the leg of the petitioner and he also tried to

attack the said Manoj and at that time, the said Manoj snatched the knife from the hands of the petitioner and assaulted the petitioner and caused

injuries. Immediately, the deceased was taken to Lotus hospital in an auto. After first aid, as per advice of doctor, he was shifted to Basaveshwaranagar hospital, where he was treated and declared as dead. The complainant and her son were also treated in M.S. Ramaiah hospital.

It is further stated that the petitioner who has also suffered with the injuries was taken to hospital by respondent/police and he was also treated in the

said hospital. On the basis of the complaint, a case has been registered.

4. It is submitted by the learned senior counsel that the petitioner was brought to the hospital by the police and got him admitted in Columbia Asia

hospital on 16.12.2018 and till 10.01.2019 he was treated in the said hospital and thereafter on 11.01.2019 he was shifted to Med Care hospital and

during the said period the petitioner was in surveillance of the police and till 13.02.2019, the police surveillance was present. He further submitted that

as per Section 57 of Cr.P.C., and Article 22 of the Constitution of India, he immediately came under the police surveillance, from that date his liberty

is restricted and the said provision will be made attracted and from that time within 24 hours he ought to have been produced before the Magistrate.

But the same has not been followed.

5. He further submitted that the right of the petitioner has been restricted even though he has not been actually produced before the Magistrate. He

further submitted that on 16.12.2018 itself the clothes of the injured have been collected and seized, it shows that the investigation has been started

during the said period. It is further submitted that keeping under surveillance itself will have to be considered for the purpose of calculation of the

period of 90/60 days as contemplated under Section 167(2) of Cr.P.C., If within the said stipulated period, if the charge sheet is not filed, then under

such circumstances, the petitioner is entitled to be released on statutory bail under Section 167(2) of Cr.P.C. He further submitted that while

computing the period, it has to be kept in mind that if there is police surveillance that itself shows that the petitioner was not free and he was under the

police escort for all practical purpose and in order to exercise the power under Section 167(2) of Cr.P.C., the period of filing the charge sheet has to

be calculated from the date he was so apprehended or the right has been restricted.

6. He further submitted that even the SHD clearly goes to show that two constables have been deputed to have a surveillance over the petitioner

immediately after the incident that itself clearly goes to show that there was detention of the petitioner and under such facts and circumstances, the

Court ought to have exercised the power under Section 167(2) of Cr.P.C., to release him on bail. He further by relying upon the decision in the case

of Manoj vs. State of Madhya Pradesh reported in AIR 1999 SC 140,3 further submitted that the benefit of the bail under Section 167(2) of Cr.P.C.

cannot be denied only because the petitioner has not been produced before the Court below. The police officer who conducts the investigation cannot

obviate the legal obligation to perform the requisite, if he knows that investigation cannot be completed within the stipulated time as contemplated

under Section 57 of the Cr.P.C., then accused has to be produced before the Magistrate.

7. He further submitted that if the police officer is forbidden from keeping an arrested person beyond 24 hours without an order of a Magistrate, then

under such circumstances, it can be held that the petitioner though under surveillance has been apprehended. He further submitted that though the

provisions of Section 167(2) of Cr.P.C. do not state that there must be a remand of the accused to the judicial custody, if the accused is in detention,

the same amounts to remand of the accused to the custody and in such an event the police should have filed the charge sheet within the stipulated

period of 90/60 days as contemplated under Section 167(2) of Cr.P.C. On these grounds, he prays to allow the petition and release the

petitioner/accused on statutory bail under Section 167(2) of Cr.P.C. In order to substantiate the said arguments, he has also relied upon the decisions

in the case of Ramu v. State of Karnataka reported in ILR 1991 Kar 1861; in the case of Sri Harish Tholar v. State of Karnataka in Criminal Petition

No.6544/2009 disposed of on 29.12.2009; in the case of Rakesh Kumar Paul v. State of Assam reported in (2017) 15 SCC 67; in the case of Ravi

Rana Singh v. State of Karnataka by HSR Layout Police Station, Bangalore City reported in 2012 SCC Online Kar 5622.

8. It is his further alternative submission that the accused/petitioner is a stranger to the deceased as well as the complainant and his son. When the

first incident took place, there was no intention and when the water was smeared, at that time the quarrel took place and while he was going back, he

left his helmet and key and came to the house and after 10 minutes he came back only to pick the helmet. He further submitted that the contents of

complaint also clearly goes to show that he came and asked the deceased whereabouts of the helmet to which the deceased told that he did not know

about the helmet, that itself clearly goes to show that he had no intention to cause the death of the deceased. He further submitted that key of the

house was also there at the place of the alleged incident and only because of the same, he came back and he has not come back with an intention to

harm or to do anything with preparation. Under such circumstances, it cannot be held that the accused/petitioner was having an intention to cause the

death of the deceased.

9. He further submitted that the petitioner/accused has also sustained grievous injuries in the said assault and that itself clearly goes to show that it is

the deceased, complainant and his son are aggressors and in the said aggression he has also suffered with grievous injuries. He submitted that when

the petitioner/accused was produced before the Magistrate, he was unable to stand and he was also under treatment and his statement has been

recorded. Even the Magistrate has directed the petitioner/accused to be treated with a proper medication. He further submitted that the prosecution is

duty bound to explain the injuries suffered by the petitioner/accused but in the instant case, the Investigating Officer has not made any efforts to

explain the injuries though the petitioner/accused has sustained grievous injuries and still is under treatment. He further submitted that after an

altercation took place, the alleged incident has taken place. Whether it is the deceased who was an aggressor or the petitioner/accused was an

aggressor is a matter which has to be considered and appreciated only at the time of trial. Under such circumstances, it cannot be held that

petitioner/accused was having an intention to cause the death of the deceased.

10. He further submitted that son of the complainant has also come with iron rod and has assaulted the petitioner/accused that itself clearly goes to

show that they were also having intention to cause the death of petitioner/accused. Only because of the proper medical care of the petitioner/accused,

he has survived. It is further submitted that petitioner/accused is working as a software engineer and he is ready to abide by the conditions imposed by

this Court and ready to offer sureties. On these grounds, he prays to allow the petition and release the petitioner/accused on bail.

11. Per contra, the learned High Court Government Pleader vehemently argued and submitted that the records which have been produced clearly

goes to show that at no point of time petitioner/accused has been arrested only security measures have been taken as petitioner/accused is also

involved in a serious offence and he has also suffered with grievous injuries. Though SHD goes to show that two police constables have been deputed

it is only for the purpose of security they have been posted and at no point of time, petitioner/accused arrested and remanded to the judicial custody.

She further submitted that the father of the petitioner/accused got admitted the petitioner in the hospital and subsequently, he got discharged and got

him admitted in the Med Care hospital that itself clearly goes to show that movement of the accused was not restricted and he was free and only for

the purpose of security, the police were there and his rights were not restricted. Under the said facts and circumstances of the case, the decisions

quoted by the learned senior counsel are not applicable to the present facts of the case by referring to remand application. She further submitted that

the remand application itself clearly goes to show that the accused has been apprehended only on 13.02.2019 and thereafter he has been remanded

and the date of remand has to be taken into consideration. While considering statutory bail under Section 167(2) of Cr.P.C., and considering its

provisions if after the remand, within 90/60 days, if the charge sheet has not been produced, then the petitioner/accused is entitled to be released on

statutory bail. In order to substantiate her said contention, she has relied upon the decision in the case of Chaganti Satyanarayana & Others v. State of

Andhra Pradesh reported in (1986) 3 SCC 141. She also relied upon the decision in the case of State of Karnataka v. Babu reported in ILR 1993

KAR 3585.

12. It is her further submission that the son of the deceased is an eye witness, who has categorically stated that the petitioner/accused came by taking

knife and in the said altercation he has assaulted the deceased and even the post mortem report indicates that the deceased has suffered with grievous

injuries and he died because of the said injuries, that itself clearly goes to show that the petitioner/accused has got back with premeditated mind with

an intention to take away the life of the deceased. She further submitted that the said altercation has not been taken place immediately after he fallen

down from the bike when the deceased smeared water. She further submitted that he went back and after 10 minutes he came back with knife and

after asking whereabouts of his helmet, he has assaulted the deceased with the knife and thereby, the deceased succumbed to the injuries that itself

clearly goes to show that the petitioner/accused with an intention to cause the death of the deceased has assaulted and even he has assaulted the

complainant and her son. All these materials go to show that the petitioner/accused has involved in the serious offence which is punishable with death

or imprisonment for life and as such, he is not entitled to be released on bail. On these grounds, she prays to dismiss the petition.

13. I have carefully and cautiously gone through the submissions of both the learned counsel appearing for the parties and perused the records.

14. The first and foremost contention which has been taken up by the learned senior counsel is that the period of surveillance has to be taken into

consideration for the purpose of computing the days and not from the date of the arrest and remand of the accused. In order to substantiate his

contention he has relied upon the decision in the case of Ramu v. State of Karnataka (cited supra), wherein at paragraph No.8. it has been observed

as under:

“A man can be in custody without his being formally arrested when restriction is imposed on his movements either by police surveillance or some

other restriction by the police. Arrest commences with the restraint placed on the liberty of the accused and not with the time of the formal arrest

recorded by the Arresting Officer.”

15. He has also relied upon the decision of this Court in the case of Sri Harish Tholar v. State of Karnataka (quoted supra), wherein at paragraph

Nos. 6 and 7 it has been observed as under:

“6. Keeping this in mind, we have to compute the period. It is borne from the record and not in dispute that in the incident on 14.6.2009 the

petitioner was shot and for the injuries sustained in the police fire he was admitted to the hospital on the same day and was kept in confinement in the

hospital under police escort. The Police Officer had not applied to the jurisdictional Magistrate seeking his remand. This by itself will not show that the

petitioner was free..

7. This itself makes it clear that authorising detention is subject to proviso [a] and [b] of Section 167 and there was no question of the Magistrate

authorising detention after the period of 90 days. Sub-section [1] postulates whenever any person is arrested and detained in custody,..

16. He has also relied upon the decision in the case of Manoj v. State of Madhya Pradesh (cited supra) at paragraph Nos. 8, 9 10, 11 and 12 that it

has been observed as under:

8. But here the position is slightly different because appellant is not continuing in custody pursuant to any order passed under Section 167(2) of

the Code. Sub-section(2) would apply only to an accused who was forwarded to a magistrate as per sub-section (1) because further detention of the

accused can be made only if it is so authorised by such Magistrate. Proviso to sub-section (2) contains the interdict that "no magistrate shall

authorise the detention of the accused person in custody under this paragraph for a total period exceeding 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

The proviso further mandates that "on the expiry of the said period of ninety days, the accused person shall be released on bail if he is

prepared to and does furnish bail. It is further provided that "every person released on bail under this sub-section shall be deemed to the so

released under the provisions of Chapter XXXIII for the purposes of that Chapter.

9. Here the prayer for bail is opposed on the ground that detention is without such authorisation. Can the benefit of bail be denied on such a ground?

Section 167(1) of the Code is relevant in this context as it enjoins on the police officer concerned a legal obligation to forward the arrested accused to

the nearest magistrate. That sub-section reads thus:

"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.

10. The police officer who conducts investigation cannot obviate the legal obligation to perform two requisites if he knows that investigation cannot be

completed within 24 hours after arrest of the accused. One requisite is, to transmit a copy of the case diary to the nearest judicial magistrate.

The other is, to forward the accused to such magistrate simultaneously. The only exceptional ground on which the police officer can avoid producing

the arrested person before such magistrate is when the officer concerned is satisfied that there are no grounds for believing that the information or

accusation was well-founded. In such a case, the accused must be released from custody to which he was interned pursuant to the arrest.

11. In this context Section 57 of the Code is also relevant and hence it is extracted below:

“57. Person arrested not to be detained more than twenty-four hours.- No police officer shall detain in custody a person arrested without warrant

for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a

Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the

Magistrate's Court.

12. If the police officer is forbidden from keeping an arrested person beyond twenty four hours without order of a magistrate, what should happen to

the arrested person after the said period. It is a constitutional mandate that no person shall be deprived of his liberty except in accordance with the

procedure established in law. Close to its heels the Constitution directs that the person arrested and detained in custody shall be produced before the

nearest magistrate within 24 hours of such arrest. The only time permitted by the Article 22 of the Constitution to be excluded from the said period of

24 hours is “the time necessary for going from the place of arrest to the Court of the magistrate. Only under two contingencies can the said

direction be obviated. One is when the person arrested is an “enemy alien. Second is when the arrest is under any law for preventive detention.

In all other cases the Constitution has prohibited peremptorily that “no such person shall be detained in custody beyond the said period without the

authority of a magistrate.

17. He has also relied upon the decision in the case of Ravi Rana Singh v. State of Karnataka by HSR Layout Police Station Bangalore City (cited

supra), wherein at paragraph No.5, it has been observed as under:

“5. From the remand application now produced, it is revealed that, authorization is sought by the court to keep the accused in hospital, proviso to

Section 167(2) Cr.P.C., does not state that there must be remand of the accused to the judicial custody, what it says that, if accused is under

detention, the same amounts to remanding the accused to the custody. In such event, the Police should have filed the Charge Sheet in 90 days from

the date of authorisation. This Court similarly in Criminal Petition No.6544/2009 has observed thus: This by itself will not show that the petitioner was

free. on the other hand, it is seen that the petitioner's liberty was totally curtailed when he was taken into custody on 14.6.2009 while he was

being treated under police escort.

This case also reveals the similar facts. Even otherwise also, the material reveals that the incident occurred in a quarrel. Both the deceased and

accused were injured. Further, the petitioner is a student. Having regard to the same, I find that the petitioner could be enlarged on bail.

18. I have given my thoughtful consideration to the above decisions and I have carefully gone through the said decisions. In the said decisions it is not

elaborately discussed the point in issue. As such, they will not help the case of the petitioner/accused. But the point in issue has been elaborately

discussed and decided by the Hon'ble Apex Court in the case of Chaganti Satyanarayana & Others v. State of Andhra Pradesh (quoted supra) at

paragraph Nos.22 and 23 it has been observed as under:

"22. The intention of the legislature can also be gathered by comparing proviso (a) of sub-section (5) of Section 167. Sub-section (5) of Section 167

is in the following terms:

If in any case triable by a magistrate as summons case the investigation is not concluded within a period of six months from the date on which the

accused was arrested, the magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation

satisfies the magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is

necessary.

23. The legislature has consciously referred to the date of arrest in Section 167 (5) but has made no such reference Section 167 (2) or proviso (a)

thereto. If it was the intention of the legislature that the period of remand of 15 days in the whole envisaged in sub-section (2) or the total period of 90

days/60 days prescribed in proviso (a) should be calculated from the date of arrest then the legislature would have expressly said so as it had done

under Section 167(5).

19. Even the Hon'ble Apex Court has taken into consideration the provision of Section 57 of the Cr.P.C and at paragraph No.18 it has been

observed as under:

"18. Further remands, to facilitate the investigation, can only be for the detention of the accused in judicial custody. The restriction of the

magistrate's powers in this behalf is to be found in the words "otherwise than in the custody of the police beyond the period of 15 days" in

proviso (a).

"19. Now coming to proviso (a) itself, the proviso authorises a magistrate to order further detention of an accused person, otherwise than in police

custody which as already stated means that the maximum period under which a magistrate can place an accused in police custody is only 15 days. A

limitation to the powers of further remand is, however, placed by interdicting the magistrate from authorising the detention of an accused person in

custody beyond a total period of 90 days where the offence is punishable with death, imprisonment for life or for a term of not less than 10 years and

beyond a total period of 60 days in other cases. The interdiction will, however, operate only in those cases where the accused persons are in a position

to furnish bail.

20. On close reading of the all these paragraphs, therein it has been clearly interpreted the provisions of Section 57 and 167(2) of Cr.P.C., and in the

said paragraphs by construing the proviso in clause (2) of Section 167 of Cr.P.C., or independent paragraph it is clear that the total period of 90/60

days has to be calculated only from the date of the remand and not from the date of arrest that point has been made it clear in the above said

decisions. In the light of the above said decisions and the ratio, the submission of the learned senior counsel is not acceptable. When the said period is

not available to the petitioner/accused, then records show that petitioner/accused was arrested and remanded to judicial custody on 13.02.2019 from

that date till today 90 days has not been completed. In that light, petitioner/accused is not entitled to avail the benefit under Section 167(2) of Cr.P.C.

In the light of the discussion, the Criminal Petition No.2378/2019 is liable to be dismissed

21. Be that as it may, coming back to the merits of the case and as could be seen from the contents of the complaint and other materials, the first

incident has taken place at about 5.00 a.m. when the petitioner/accused was proceeding to his office and at that time, the deceased Manjunath was

cleaning in front of his hotel with water and water was smeared on the petitioner/accused and he fell down and some altercation took place and the

matter was pacified and he went back and when he came back after 10 minutes, he asked about the helmet and the deceased told that he does not

know about helmet and quarrel took place. At that time, the alleged incident has taken place. It is admitted fact that the petitioner/accused has also

sustained grievous injuries and the deceased, complainant and her son have also sustained the injuries. The only point which remains for consideration

of the trial court is that who are aggressors and that is the crucial point which has to be considered only at the time of the trial. If really, the petitioner

was having intention to cause the death of the deceased Manjunath he could have brought knife along with him, definitely he could not have asked

about his helmet, he could not have altercated in this behalf. Immediately, he could have assaulted the deceased Manjunath with knife. Under the said

facts and circumstances, I feel that there was no intention in this behalf to take away the life of the deceased by the petitioner.

22. Be that as it may, even as could be seen from the records, the petitioner has also sustained grievous injuries and when he was produced before the

Magistrate he was unable to stand and his head was also covered with bandage and the learned Magistrate has also directed the police to provide

proper treatment. Under all these facts, though the charge sheet has not been filed, the materials produced clearly goes to show that it was not the

intention of the petitioner/accused to cause the death of the deceased.

In the light of the discussion held by me above, Criminal Petition No.2378/2019 is dismissed with the above observations and Criminal Petition

No.1957/2019 is allowed.

Petitioner/accused is enlarged on bail in Crime No.368/2018 of Mahalakshmiapuram Police Station for the offences punishable under Sections 302 and

307 of IPC subject to the following conditions:

1. Petitioner/accused shall execute a personal bond for a sum of Rs.2,00,000/-(Rupees Two lakh only) with two sureties for the likesum to the

satisfaction of the trial Court.

2. He shall not leave the jurisdiction of the Court without prior permission.

3. He shall mark his attendance once in a month on every 1st till the trial is concluded.

4. He shall not tamper with the prosecution evidence directly or indirectly.

5. He shall not indulge in similar type of activities.