

E.O.W. MAIL E.O.W. BAIL ORDER 2/11

IN THE COURT OF ADDL. CHIEF METROPOL.
19th Court, Laxmanade, Mumbai.

State (E.O.W.) ... Complainant.
V/s.
Sanjay H. Agarwal ... Accused.
465/BA/02

The present application came to be preferred u/s. 167 (2) (1) of Cr.P.C., for bail, on the ground that the chargesheet has not been submitted within prescribed period of 90 days. The application came to be filed before Court hours in the evening on 31.10.2002.

On 1.10.02, the chargesheet came to be filed in the second session. The application was kept on 1.11.02 for filing say by GB CB: CID and for order. by Id. A.P.P. It is argued that today i.e. 1.11.2002, is 90th day from the detention of accused and since now the chargesheet has been filed, application preferred on behalf of accused cannot be considered.

It is to be mentioned that the accused has already exercised his right by presenting application on 31.10.2002 contending that chargesheet has not been filed within 90 days and therefore, he is entitled for bail u/s. 167(2)(1) of Cr.P.C.

It is settled law (Uday Mohanlal Acharva v. State of Maharashtra, reported in 2001 SCC (Cri) 760) that on expiry of 90 days/as the case may be, or 60 days an infeasible right accrued in favour of accused.

for being released on bail, if he is prepared to and does furnish the bail as directed by the Magistrate. The proviso is unambiguous and clear and stipulates that the accused shall be released on bail if he is prepared to and does furnish the bail which has been termed by judicial pronouncement to be "compulsory bail" and such ~~ba~~ bail would be deemed to be a bail under Chapter 33. ✓ If accused had already exercised his right in filing application for bail u/s.167(2) (1) of Cr.P.C. for not filing chargesheet within 90 days or 60 days, subsequent act of police in filing chargesheet before the order is passed on his application, would not make accused disentitled to claim the bail as of right. In view of this settled legal position even though now the chargesheet is filed, the right of accused to be released on bail, ~~if he~~ is not defeated, if his case is covered by the provision. Admittedly, in the instant case, accused came to be arrested on 2.8.2002. He was produced on 3.8.2002 on which day he came to be remanded to police custody. ^{It is} as held by Hon'ble Supreme Court in the case of CEI, Spl. Investigation Cell-I, New Delhi v. Anupam J. Kulkarni reported in 1992 Supreme Court Cases (Cri.) 554, the period of 90 days or 60 days has to be computed from the

date of detention as per order of Magistrate and not from the date of arrest by the police. So in the instant case period has to be computed from the date of his detention that is, 3.8.02 which has to be included while computing 90 days. It is to be mentioned that the offences alleged against him beside other, are u/s. 409, 467 of I.P. C. which offences are punishable with imprisonment for life. Therefore, prescribed period of limitation for filing chargesheet would be 90 days.

Thus, computing the * period from 3.8.02, 90 days completes on 31.10.02. On the same day, before court hours, present application came to be preferred by accused. It is contention of A.P.P. that the 90 days completes on 1.11.02, on which day chargesheet has been filed. In view of the above ~~given~~ period computed from the date of his detention since 3.8.02, 90 days completes on 31.10.02 only and not on 1.11.02. Thus, there is no force in the contention of A.P.P. on this point. Since no chargesheet came to be filed within 90 days i.e. before 31.10.02, in view of the abovementioned settled legal position accused is entitled to be released on bail.

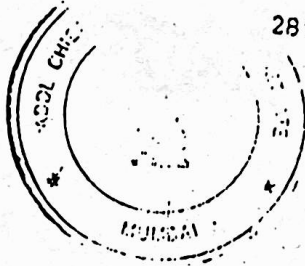
In view of the above, I accept contention of accused
for releasing him on bail u/s. 167 258(2)(1) of Cr.P.C.
Hence, the order.

ORDER

The accused Sanjay H. Agarwal is ordered to be
released on bail in the sum of Rs. 30,000/- (Rs. thirty thousand) ^{three lakhs} with one solvent surety in the like amount, ~~xxxxxxxxxxxxxxxx~~

Dt. 2.11.02

mgm.



(B.A. Shelar)
Metropolitan Magistrate,
28th Court 1/c. 19th Court, Esplanade, Mur

Applied on - 17/12/02
Granted on - 17/12/02
Ready on - 20/12/02
Delivered on - 20/12/02
Charges :- P.S. G.I. Period
20/12/02

TRUE COPY

Shankar
20-12-02
Judicial Clerk,
Addl. Chief Magistrate,
18th Court, Esplanade, Bangalore.