

FULL BENCH

Before S. S. Sandhwalia, Man Mohan Singh Gujral, and
M. R. Sharma, JJ.

BALDEV SINGH,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 1552-M of 1974.

April 15, 1975.

Code of Criminal Procedure (Act II of 1974)—Section 167—Criminal case registered prior to the enforcement of the Code—Arrested accused person—Whether entitled to the beneficial provision of sub-clause (a) of the proviso to section 167 (2)—Release on bail of an accused being in custody for more than sixty days—Application for—Whether necessary.

Held, that the arrest and detention of an accused person for the purposes of investigation of the crime forms an integral part of the process therefor. Section 167 of the Code of Criminal Procedure, 1973 provides a step therein being the judicial sanction for the custody of an accused person either with the police or what is conveniently called 'judicial custody'. This section in general and sub-section (2) with the proviso thereto directly relates to the arrest, custody or release of an accused person and, therefore, it is clearly a procedural provision embedded firmly in the scheme of investigative process. It is, therefore, evident that this provision would be attracted only to those cases which are to be investigated under the Code of 1973. In a case which is not to be investigated under this Code, the relevant provisions of section 167 (2) thereof obviously can have no application. The date of the bail application moved by the accused after the enforcement of the Code, does not govern the attraction or applicability of section 167. Hence where an accused person is arrested in a criminal case registered prior to the enforcement of the Code of Criminal Procedure, 1973, he is not entitled to the beneficial provisions of sub-clause (a) of the proviso to sub-section (2) of section 167 of the Code.

(Para 15)

Held, that under sub-clause (a) of the proviso to sub-section (2) of section 167 of the Code of 1973, there need be no application for bail by the accused at all. This provision goes to the power and the very jurisdiction of the Magistrate to grant judicial or police custody of the person of the accused irrespective of the moving of an application on his behalf. In no uncertain terms, the statute provides that the accused person must be released on bail if he is prepared to furnish the same in case he has already been in custody for a period of sixty days. The presentation of an application is

thus irrelevant to the issue. The Magistrate is himself duty-bound and the accused is entitled as of right to be so released on furnishing bail provided the requisite condition of detention beyond sixty days is satisfied.

(Para 3)

Case referred by Hon'ble Mr. Justice Man Mohan Singh Gujral on 10th June, 1974 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Man Mohan Singh Gujral and Hon'ble Mr. Justice M. R. Sharma further referred the case on 28th November, 1974, to a Full Bench. The Full Bench consisting of Hon'ble Mr. Justice S. S. Sandhwalia, Hon'ble Mr. Justice Man Mohan Singh Gujral and Hon'ble Mr. Justice M. R. Sharma, finally decided the case on 15th April, 1975.

Application under Sections 439 and 482 Cr. P.C. paying that the petitioner be released on bail during the pendency of his trial in a case u/s 3 of the Official Secrets Act. His bail application No. 345 of 1974 was rejected by Shri O. P. Saini, Sessions Judge, Ferozepore on 10th April, 1974. F.I.R. No. 107, dated 25th March, 1974 P.S. City Ferozepore.. Petition filed on 31st May, 1974.

D. R. Puri, Advocate, for the Petitioner.

R. S. Palta, Advocate, for Advocate-General, H. N. Mehtani, Deputy Advocate-General, Haryana, for Haryana State.

JUDGMENT

SANDHAWALIA, J.—Is an accused person against whom a criminal case was registered prior to the enforcement of the Code of Criminal Procedure, 1973 (hereinafter referred to as the New Code) entitled to the beneficial provisions of sub-clause (a) of the proviso to sub-section (2) of section 167 of the said Code?

(2) The question above-mentioned is the primary and indeed the solitary issue which has been the subject-matter of debate before the Full Bench in this reference. The material facts are not in dispute and lie within a narrow compass. Baldev Singh petitioner was apprehended on suspicion by the police at about 8 a.m. on the 23rd of March, 1974, at a distance of about three furlongs from the Police Station, Ferozepore, towards the side of river Sutlej. On his personal search, incriminating documents purporting to relate to the various Army Units deployed in the Ferozepore area were recovered. On that very day a case was registered

Baldev Singh v. State of Punjab (Sandhwalia, J.)

against the accused under section 3 of the Official Secrets Act and he was taken into custody.

(3) The petitioner moved for bail before the Court of Session at Ferozepore which, however, was declined on the 10th of April, 1974. The present petition for bail was moved in this Court on the 28th of May, 1974, and was pressed mainly on the ground that he had remained in custody for more than two months and till that date no final report by the police in his case had been presented before the trial Court and he was, therefore, entitled to be released under sub-clause (a) of the proviso to sub-section (2) of section 167 of the New Code. In opposing the grant of bail, the respondent-State contended that section 167 abovesaid had no relevance to the petitioner's case which was to be investigated under the Code of Criminal Procedure, 1898 (hereinafter referred to as the Old Code) wherein no such provision existed on the statute. In view of the significance of this issue, my learned brother Gujral, J., referred the matter to a larger Bench on the 10th of June, 1974, and granted interim bail to the petitioner. The Division Bench constituted in pursuance of the reference abovesaid thereafter referred the same to a Full Bench and that is how the matter is now before us.

(4) The salient feature that here stands is the fact that the case against the petitioner was registered on the 23rd March, 1974, that is, 8 days prior to the enforcement of the New Code. However, the present application for bail in this Court made on the 28th of May, 1974 (as also the application made before the Sessions Judge on the 6th of April, 1974) was made after the enforcement of the New Code. The core of the matter, therefore, is whether the petitioner's case for the purposes of section 167 is to be governed by the Old Code or by the New Code.

(5) The relevant provision to determine the abovesaid issue is obviously section 484(2) of the New Code which is in the following terms:—

“484(1) The Code of Criminal Procedure, 1898, is hereby repealed.

(2) Notwithstanding such repeal:—

(a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending then, such

appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure 1898, as in force immediately before such commencement, (hereinafter referred to as the Old Code), as if this Code had not come into force:

Provided that inquiry under Chapter XVIII of the Old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code;

(b)	*	*	*	*	*
(c)	*	*	*	*	*
(d)	*	*	*	*	*
	*	*	*	*	*

(6) Relying upon the abovesaid provision, Mr. D. R. Puri on behalf of the petitioner contended that admittedly the present application for bail having been made after the coming into force of the New Code should, therefore, be determined under the provisions thereof and, as a necessary consequence, section 167 of the New Code would come into play.

(7) The above contention, to my mind, suffers from two patent fallacies. There is no dispute that the bail application now before this Court having been presented after the commencement of the New Code has to be disposed of in accordance therewith. This, however, would imply no more than this that Chapter XXXIII relating to bail and bonds and its provisions would be attracted to the petitioner's case. Merely because that is so would not necessarily imply that the beneficial provisions of the proviso to section 167(2) of the New Code would automatically be applicable to the petitioner's case. As is apparent, section 167(2) does not fall at all within Chapter XXXIII. I would presently show that the section abovesaid is intimately related to the investigative process. To bring in section 167(2) of the New Code, it would have to be shown that the investigation of the case registered against a particular accused is also to be governed by the New Code and not by the Old Code.

Baldev Singh v. State of Punjab (Sandhawalia, J.)

(8) Then again, the argument resting on the date of the bail application stems from a misapprehension because the proviso to section 167(2) of the New Code is not related thereto. For facility of reference, this may first be set down:

“167. Procedure when investigation cannot be completed in twenty-four hours.

- (1) * * * * *
- (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 he has no jurisdiction to try the case or commit it for trial, and considers 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 Chapter XXXIII for the purposes of that Chapter;

(b) * * * * *;

(c) * * * * *;

Indeed, a bare reference to the above-quoted provisions would indicate that under this provision there need be no application for bail

by the accused at all. This provision goes to the power and the very jurisdiction of the Magistrate to grant judicial or police custody of the person of the accused irrespective of the moving of an application on his behalf. In no uncertain terms, the statute provides that the accused person must be released on bail if he is prepared to furnish the same in case he has already been in custody for a period of sixty days. The presentation of an application is thus irrelevant to the issue. The Magistrate is himself duty-bound and the accused is entitled as of right to be so released on furnishing bail provided the requisite condition of detention beyond sixty days is satisfied. Therefore, to contend that the date of the bail application would govern the attraction or applicability of section 167 of the New Code appears to me as patently fallacious.

(9) It was also contended by Mr. Puri that the power to grant bail is no part of the process of investigation and hence the matter of bail is unrelated to the date of the registration of the case and the fact that the investigation thereof may have to be completed under the provisions of the Old Code despite its repeal. There is no quarrel with the proposition that the grant of bail by a court of law is certainly no part of an investigation of a criminal case. However, I am unable to see how this innocuous proposition can, in any way, be of some aid to the petitioner. To repeat, the issue before us is not whether the bail application would be disposed of under the relevant procedural provisions of the New Code but whether section 167(2) of the New Code is expressly attracted to the case of the petitioner or not.

(10) Now viewing the matter in the correct perspective, it deserves recollection that the case against the petitioner was registered on the 23rd of March, 1974, that is, 8 days prior to the coming into force of the New Code on the 1st April, 1974. It was stated before us at the bar that even up to date, the sanction for the prosecution of the petitioner under the Official Secrets Act had not been obtained and, therefore, no final report had been filed in the trial Court. It consequently follows therefrom that the investigation of the case as such has not been completed. That being so, by virtue of section 484(2) (a) of the New Code the investigation of the case against the petitioner shall be continued and completed in accordance with the Old Code. Indeed, Mr. Puri fairly and frankly conceded that so far as the investigation of the case against the petitioner is concerned, it must proceed under the Old Code.

Baldev Singh v. State of Punjab (Sandhawalia, J.)

(11) It is manifest by a bare reference to section 167 of the Old Code that the same did not contain any provision directing the mandatory release of the accused person if his detention had exceeded a period of sixty days. This is a new requirement of the law introduced in the shape of a proviso to section 167(2) of the New Code. There was no corresponding provision which was in *pari materia* with the same in the Old Code. Once it is so, the crux of the matter is whether section 167 of the New Code is part and parcel of the provisions governing the investigation of crimes or not.

(12) I have no manner of doubt that the section abovesaid is a provision fully embedded in the investigative process laid down by the New Code. A bare reference to the heading of Chapter XII in which the present section finds place would show that it is related to the information given to the police and their powers to investigate. Section 2(h) of the New Code defines 'investigation' not exhaustively but by saying that the word includes all proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. Obviously, Chapter XII of the New Code lays down the procedure for the collection of the evidence and the conducting of the investigation by the police. It begins with section 154 relating to the information of a cognizable offence which usually, if not invariably, is the corner stone of the investigative process. I deem it unnecessary to advert in detail to the 23 sections contained in Chapter XII under the New Code because a bare reference to them makes it self-evident that this Chapter broadly lays down the scheme of the investigation by the police and the provisions thereof are related to and indeed prescribe in detail the mode or manner of conducting such an investigation.

(13) Now coming to the particular provisions of section 167 of the New Code, it is evident that the very heading of this section indicates that it determines the procedure when investigation cannot be completed in twenty-four hours. It is hence evident that the provisions of this section relate to matters during and in course of the investigation. It seems manifest that if the section lays down the necessary steps before the investigation can be completed, then it obviously provides for something in the course of a continuing investigation. The sequence of section 173 in Chapter XII of the New Code succeeding section 167 and others is equally meaningful.

It is only after the preceding investigative steps have been completed that the New Code obliges the police officer to file a police report before the Magistrate empowered to take cognizance of the offence disclosed by the investigation.

(14) Statutory procedural provisions apart, there appears to be little doubt on principle that the arrest of an accused person and his detention thereafter during the continuance of an investigation must form an integral part of the same. Indeed, in many matters custody is essential for the legal production or reception of evidence. This is so in particular with regard to statements made under section 27 of the Indian Evidence Act by the accused person and the recoveries which may follow therefrom. If an authority for so plain a proposition was necessary, it exists in the binding precedent of *The State of Madhya Pradesh v. Mubarak Ali* (1) where their Lordships had occasion to observe as follows:—

“Investigation starts after the police officer receives information in regard to an offence. Under the Code “investigation consists generally of the following steps: (i) proceeding to the spot; (ii) ascertainment of the fact and circumstances of the case; (iii) *discovery and arrest of the suspected offender*, (iv) * * * * *”.

(15) From the above-mentioned discussion it emerges that the arrest and detention of an accused person for the purposes of investigation of the crime forms an integral part of the process therefor. Section 167 of the New Code provides a step therein being the judicial sanction for the custody of an accused person either with the police or what is conveniently called ‘judicial custody’. This section in general and sub-section (2) with the proviso thereto directly relates to the arrest, custody or release of an accused person and, therefore, it is clearly a procedural provision embedded firmly in the scheme of investigative process. Once it is so, it is evident that this provision would be attracted only to those cases which are to be investigated under the New Code. In a case which is not to be investigated under the New Code, the relevant provisions of section 167(2) thereof obviously can have no application. It is patent and indeed is the admitted case that so far as the petitioner is concerned, the case was registered prior to the 1st of April,

(1) A.I.R. 1959 S.C. 707.

Baldev Singh v. State of Punjab (Sandhawalia, J.)

1974, and, therefore, has to be investigated under the provisions of the Old Code. The relevant provision of section 167(2) of the New Code, therefore, is not attracted at all to the case of the petitioner and he is, therefore, unable to claim the benefit thereof. I would return the answer to the question formulated in the very opening part of this judgment in the negative.

(16) Even though the petitioner has been found to be disentitled to the concession of bail under section 167(2) of the New Code, I am of the view that he can claim the grant thereof for other reasons. It is more than a year since the case against him was registered but the admitted position even today is that the sanction for initiating the prosecution under the Official Secrets Act has not yet been obtained. The learned counsel for the State was unable to hold out any assurance or fix any specific time within which it could be done. The investigation of the case has been virtually completed (or at least should have been) during this long period of time apart from the securing of sanction. The petitioner was granted interim bail as far back as June, 1974, and there is no complaint that he has abused the concession afforded to him. I find no adequate reasons for varying the earlier order of the grant of bail and would, therefore, confirm the same.

Gujral, J.—I agree.

Sharma, J.—I also agree.

K.S.K.

