2013 S C M R 1326

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J., Ijaz Ahmed Chaudhry and Gulzar Ahmed, JJ

HASEEBA TAIMOR AFRIDI---Petitioner

Versus

The STATE and another---Respondents

Criminal Petition No.170 of 2013, decided on 5th June, 2013.

(a) Criminal Procedure Code (V of 1898)---

----Ss. 497 & 167---Ad interim bail, grant of---Female accused arrested and detained despite non-availability of incriminating evidence against her---Legality---Prosecution conceded that so far it had not collected incriminating evidence against the accused to justify her involvement/detention---When there was no incriminating evidence then question was as to why the police caused the arrest of the accused, who was stated to be of 15 years of age---Despite accused being subjected to investigation no evidence was brought on record but still she was sent to judicial lockup---Supervisory Officer, responsible to monitor the investigation of the subordinate officers, was equally responsible---Magistrate who had been granting remand, should have looked into the file instead of remanding the accused to police custody without any justification---Accused was allowed ad interim bail in circumstances with the directions that explanation should be called from the concerned police officials to state reasons for causing arrest and detention of accused, and that concerned Magistrate should also send his explanation through the Sessions Judge, to explain as to why without adhering to the relevant provisions of law, in a mechanical manner, permission of police remand was granted followed by judicial remand.

(b) Criminal Procedure Code (V of 1898)---

----S. 167---Investigation not completed within twenty four hours---Giving accused in custody of police--- Scope--- Under S.167, Cr.P.C. it was the duty of the Magistrate to satisfy himself that there were grounds for believing that the accusation or information was well founded for justifying custody of an accused with the police.

Malik Waheed Anjum, Advocate Supreme Court and Arshad Ali Chaudhry, Advocate-on-Record for Petitioner.

Asjad Javed Ghurral, Additional P.G. along with Imtiaz Ahmed Butt, SHO and Asghar Ali, S.-I. for the State.

Zulfiqar Ahmed Bhutta, Advocate Supreme Court for the Complainant.

Date of hearing: 5th June, 2013.

ORDER

Heard learned counsel for the parties. Learned Additional Prosecutor-General candidly conceded that so far prosecution has not collected incriminating evidence against the petitioner to justify her involvement/detention.

2. We fail to understand that when there was no incriminating evidence as to why the police caused the arrest of the petitioner who is stated to be of 15 years of age and subsequent thereto despite of subjecting her to investigation no evidence was brought on record then why she was sent to judicial lockup. In this behalf the Supervisory Officer, responsible to monitor the investigation of the subordinate officers, is equally responsible. Not only this, the Magistrate Raja Faisal Rasheed who had been granting remand, should have also looked into the file instead of remanding the petitioner to police custody without any justification. Under section 167, Cr.P.C. it is the duty of the Magistrate to satisfy himself that there are grounds for believing that the accusation or information is well founded for justifying custody of an accused with the police.

3. In the circumstances we allow ad-interim bail to the petitioner Haseeba Taimoor Afridi daughter of Taimoor Afridi subject to her furnishing personal bond in the sum of Rs.5,000 (Rupees five thousand) only to the satisfaction of the Ilaqa Magistrate.

4. Explanation be called for from the SSP In-charge of Investigation, the SHO as well as the Investigating Officer/Officers, named above, to state the reason for causing arrest and detention of the petitioner.

5. The Magistrate shall also send his explanation through the Sessions Judge, Rawalpindi, to explain as to why without adhering to the relevant provisions of law, noted hereinabove, in a mechanical manner police remand was granted permission of judicial remand was granted followed by judicial remand as presently she is in custody in Adiala Jail. Put up on 7th June, 2013.

MWA/H-10/SC Bail granted.

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