

**GAUTAM NAVLAKHA V. NATIONAL INVESTIGATION AGENCY (MAY 12, 2021)**

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**Purva Kamlesh Todankar\***

**INTRODUCTION**

The appellant, Gautam Navlakha is a human rights activist and journalist who was accused in the Bhima Koregaon violence case which was organized by Elgar Parishad on 1<sup>st</sup> January 2018. On 31<sup>st</sup> December 2017 Elgar Parishad held a cultural event took place for the celebration of the 200<sup>th</sup> anniversary of the Bhima Koregaon Battle fought between Dalits (the depressed class of the society) and Marathas (upper caste people) in which Dalits had won the war. Inflammatory speeches were made due to which on 1<sup>st</sup> January 2018 people came together for the celebration but it took the form of case-based violence between Dalits and Marathas. Several people were injured.

Navlakha and several other activists were arrested by the police in connection with the Bhima Koregaon violence case. He was arrested on 28<sup>th</sup> August 2018 (seven months after the incident).

Given that the appellant had been under house arrest for 90 days, he requested a default bail under section 167 of CrPc. According to section 167 CrPc, default bail must be given to the accused if he is detained for 90 days and the investigating body has not finished the inquiry. Gautam Navlakha's bail was refused by both the lower courts; the High Court and the NIA special court. He approached the Supreme Court for bail.

**FACTS OF THE CASE**

1. After the initial investigation, the police found that hateful speeches to provoke the public were made, because of which riots happened. It was even found that the Communist Party of Maoist and other extremist wings were involved in it. Several people were arrested and majorly five activists were arrested including Gautam Navlakha on 28<sup>th</sup> August 2018.
2. As Navlakha was a resident of Delhi, police filed a Transit Remand application

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before the CMM Delhi (the FIR was filed in Pune). Navlakha on the same day appealed before the Delhi High Court for impugning the legality of arrest. The Delhi High Court put a stay on transit remand order and ordered a house arrest. On the same day before the decision of the Delhi High Court, CMM ordered transit remand to Navlakha to be kept under police custody for 2 days. Later it was set aside by the Delhi High Court that it was illegal and impermissible to detain after two days.

3. On 29<sup>th</sup> August a writ petition was filed before the Supreme Court by public-spirited people regarding the house arrest of the five activists including Gautam Navlakha and pleaded for an independent investigation. Supreme Court denied the plea of independent investigation and extended the house arrest for 4 weeks from the date of judgment so that the activist could bail in the lower court. Navlakha filed an appeal in the Supreme Court. He requested that the 34-day period of house arrest be considered custody to seek default bail.
4. On 1<sup>st</sup> October 2018, Navlakha's house arrest came to an end by the order of the Delhi High Court. He approached the Bombay High Court for quashing of FIR, but the plea was dismissed. Bombay High Court found incriminating evidence against him and his bail plea was dismissed.
5. In January 2020 the case was handed over to the National Investigation Agency for re-investigation. On 14<sup>th</sup> February 2020, Navlakha approached the Bombay High Court for anticipatory bail, which was declined. He filed a Special Leave Petition before the Supreme Court, challenging the decision of the High Court, which was disposed of. The court noticed that the appellant enjoyed the protection for one and half years and three weeks was extended to surrender to NIA. On April 14, 2020, the appellant surrendered to NIA.
6. In the present case, Navlakha appealed for default bail before the NIA special court as NIA's failure to file a charge sheet or request an extension of time during his 90-day statutory custody period on July 12 was denied. Against the Decision of NIA, he appealed before the High Court. On 9<sup>th</sup> October 2020 NIA filed a voluminous charge sheet. The Bombay High Court denied his appeal under section 21 of the NIA Act.
7. The appellant while appealing for a default bail calculated the time period of his detention which included 34 days of house arrest also as custody. The 90-day

timeframe for default bail release was exceeded, which included 34 days of house arrest, 11 days of police detention under the NIA in April 2020, and a period of court detention from April 25 to June 28, 2020. The NIA filed a motion with the NIA Special Court to extend the deadline for filing the charge sheet. As a result, the appellant petitioned the Supreme Court for the issuance of default bail and the inclusion of 34 days of house arrest in calculating the time frame for submitting a charge sheet under the Unlawful Activities Prevention Act.

### **ISSUE OF THE CASE**

Whether the period of detention in house arrest should be regarded as, “custody” and be included for seeking default bail under Section 167 of CrPc.

### **CONTENTIONS RAISED BY THE APPELLANT**

- Learned Counsel for Appellant contended that there was no stay on the investigation, the conditions required to attract Section 167 of CrPc are as follows:-
  - ❖ Person arrested under Section 57 of CrPc while investigating a cognizable offence.
  - ❖ A person should be produced before the Magistrate after arrest. (Both the conditions were fulfilled by the appellant).
- It is contended that the authorities were allowed to interrogate and investigate the appellant after obtaining Delhi High Court’s leave under house arrest.
- According to section 43 D (2) (b), of the Unlawful Activities (Prevention) Act, police detention can be requested at any time.
- Delhi High Court only changed the type of detention, from police custody to house arrest. If the term of custody is found to be unconstitutional, it cannot be struck down. According to section 167, the entire term of custody does not have to be continuous and can contain break intervals.

### **CONTENTIONS RAISED BY THE RESPONDENT**

- Learned Counsel Argued that the House Arrest does not cover police custody or

detention under section 167 of CrPc.

- The police are authorized by Section 167 of the CrPc to question the accused and if this authority is not granted, the detention time is not covered by Section 167.
- Any detention can only 'end' if the accused is either acquitted or given bail. In this case, the appellant was not granted bail and not remanded to Judicial Custody at the end of the House arrest; this would not qualify as custody, as a result, the court ordered them to surrender before NIA.

## **JUDGMENT**

The Supreme Court's ruling in this case expanded the meaning of custody under section 167 CrPc by holding that house arrest may be ordered rather than traditional imprisonment that is judicial custody or police custody. House arrest can be issued only in certain circumstances with the criteria of age, nature of crime committed, and health taken into consideration.

The court determined that it was not conceivable to interpret section 167 (2) of CrPc that every detention that deprives the accused of his/her constitutional rights is an authorized detention.

The bench concurred with NIA that an accused person in remand cannot be released until he/she is acquitted or granted bail under section 167 (2) of CrPc. The court declared that police custodial remand beyond the period of thirty days would be inconsistent.

The Supreme Court held that if the house arrest was ordered by the magistrate under section 167 of CrPc then such period of house arrest would compound for default bail. However, in the present case the 90 days specified under Section 167 of the CrPc, the house arrest period would not be considered "custody" since it was ordered by the Delhi High Court and not by the magistrate. Moreover, it was concluded by the Supreme Court that the Delhi High Court did not claim to act under section 167 of CrPc. Therefore the period of house arrest cannot be included in the period of 90 days for default bail under section 167 of CrPc.

## **CONCLUSION**

The court ruled that house arrest is permitted to be issued under certain specific

circumstances and it forms custody under the provisions of section 167 of CrPc. The court viewed that there was no need to extend the interim order of the bail as 4 years had already passed and it would take years to conclude the case and frame the charges. Therefore in December 2023, Navlakha was granted bail and it was added that he will have to pay Rs 20 lakhs towards the expenses of security provided to him during house arrest.

Though house arrest is a better form of custody and the appellant can file an anticipatory bail in the competent court still in this judgment, the freedom of especially human rights activists was limited in police or judicial custody.



# REFERENCE

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4. SCC Online.
5. Code of Criminal Procedure, 1973. Section 167
6. Unlawful Activities (Prevention) Act, 1967. Section 43 D

