

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.48019 of 2013

=====

1. Ravi Prakash Singh @ Arbind Singh S/O Late Prem Singh Resident Of Village- Kanta, P.S.- Saiyad Raja, District- Chandauli (U.P.). Presently Residing At Village- Pasauli, P.S.- Kudra, District- Kaimur (Bihar)

2. Abhay Singh @ Lallu Singh @ Arun Pd. Singh Son Of Ravi Prakash Singh @ Arbind Singh Resident Of Village- Kanta, P.S.- Saiyad Raja, District- Chandauli (U.P.). Presently Residing At Village- Pasauli, P.S.- Kudra, District- Kaimur (Bihar)

3. Ajay Singh @ Guddu Singh Son Of Ravi Prakash Singh @ Arbind Singh Resident Of Village- Kanta, P.S.- Saiyad Raja, District- Chandauli (U.P.). Presently Residing At Village- Pasauli, P.S.- Kudra, District- Kaimur (Bihar)

.... Petitioners.

Versus

The State Of Bihar Through Collector Kaimur

.... Opposite Party.

=====

Appearance :

For the Petitioners : Mr. Ravi Shankar Sahay, Advocate.
For the informant : Mr. Prabhakar Singh, Advocate.
For the State : Mr. R.P.S. Singh, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

5 24-12-2013 This order shall dispose of this quashing petition filed under Section-482 of the Criminal Procedure Code for quashing the order dated 22-10-2013 passed by learned Sessions Judge, In-charge, Kaimur at Bhabua in B.P. No. 542 of 2013 by which and whereunder, he refused to release the petitioners on bail u/S 167(2) of the Criminal Procedure Code.

Petitioners were remanded to Judicial Custody on 05-07-2013 in Chainpur P.S. Case No. 89 of 2013 registered under Sections-302, 120(B)/34 of the Indian Penal Code and 27 of the



Arms Act. The investigation of the aforesaid Chainpur P.S. Case No. 89 of 2013 could not be completed till 02-10-2013 i.e. even after completion of 90 days. Thereafter, a petition u/S 167(2) of the Criminal Procedure Code was filed before learned Chief Judicial Magistrate, Kaimur at Bhabua on behalf of the petitioners praying therein to release them on bail under the above-said provision and on being receipt of the above-said petition, learned Chief Judicial Magistrate, Kaimur at Bhabua called for a report from his office. The office of learned Chief Judicial Magistrate, Kaimur at Bhabua reported on the same day that charge sheet has already been submitted by Investigating Officer and taking note of the office report, the learned Chief Judicial Magistrate, Kaimur at Bhabua rejected the aforesaid petition of the petitioners on 03-10-2013. After rejection of their prayer by learned Chief Judicial Magistrate, Kaimur at Bhabua, petitioners filed B.P. No. 542 of 2013 before learned Sessions Judge, Kaimur at Bhabua and the said Bail Petition was rejected by learned Sessions Judge, In-charge, Kaimur at Bhabua, passing impugned order against which, this quashing petition has been filed.

Learned counsel for the petitioners submits that the impugned order of learned Sessions Judge, in-charge, Kaimur at Bhabua is erroneous and illegal because the petitioners had



already availed their right u/S 167(2) of the Criminal Procedure Code. Learned counsel for the petitioners referred a decision of **Umesh Roy & Ors. Vs The State of Bihar & Anr. reported in 2005(3) PLJR 757** in which, a Division Bench of this court held that *“the accused person’s indefeasible right to bail u/s 167 (2) of the Code cannot be defeated only on the ground that the charge sheet was filed when the application for default bail was taken for hearing and the accused was not released on bail by that time”*. Learned counsel for the petitioners also relied upon the decision of **SAYED MOHD. AHMAD KAZMI Vs STATE (GOVERNMENT OF NCT OF DELHI) AND OTHERS** reported in (2013) 2 SCC (Cri) 488 in which, it has been held by Apex Court that the right to default bail under S. 167(2) proviso arises as soon as maximum statutory period for detention without charge sheet has expired and if application for default bail is filed thereafter by accused, and no charge sheet has been filed, if Magistrate is satisfied that accused has been in custody for the specified period and is prepared to furnish bail bond, the Magistrate is obliged to grant bail, even if after filing of application for default bail by accused, charge-sheet has been filed”.

Learned counsel for the petitioners heavily relied upon



the decision of **UDAY MOHANLAL ACHARYA Vs STATE OF MAHARASHTRA** reported in 2001 SCC (Cri) 760 in which, the Apex Court held that *“accused has an indefeasible right to be released on bail when investigation is not complete within the specified period and in order to avail of such right accused is only required to file an application before the Magistrate seeking release on bail alleging that no challan has been filed within the period prescribed and he is prepared to offer bail on being directed by the Magistrate and the Magistrate has to dispose of such application forthwith and on being satisfied that the accused has been in custody for the specified period, that no charge sheet has been filed and that accused is prepared to furnish bail, Magistrate is obliged to grant bail even if after filing of the application by accused, a charge sheet has been filed”*.

On the strength of aforesaid decisions, Learned counsel for the petitioners submits that learned Sessions Judge committed error in rejecting the bail petition filed on behalf of the petitioner u/s 167(2) of the Criminal Procedure Code.

On the other hand, learned Additional Public Prosecutor submits that in the case of *Vijay Sah Vs The State of Bihar* reported in 2004(2) PLJR 485, it was observed that mere availing right of bail on expiry of stipulated period for filing charge sheet

shall not entitled an accused to be enlarged on bail and such rights can be extinguished by submission of charge sheet in certain circumstances. Learned Additional Public Prosecutor also submits that in the above-said case of Vijay Sah, the court took notice of **UDAY MOHANLAL ACHARYA** (*supra*) case and came to the above-said conclusion.

Certain facts are admitted in this case:

Petitioners were made accused in a case registered under Sections-302, 120(B)/34 of the Indian Penal Code and 27 of the Arms Act. They were remanded to judicial custody in the aforesaid case on 05-07-2013. It is also an admitted position that police did not submit charge sheet till 02-10-2013 and later on, on 03-10-2013, a petition u/S 167(2) of the Criminal Procedure Code was filed on behalf of the petitioners, praying therein to release them on bail under the provision of Section-167(2) of the Criminal Procedure Code. It is also an admitted position that on the same day, learned Chief Judicial Magistrate, called for a report from his office and it was reported by the office on the same day that charge sheet against the petitioners had already been submitted by the police. Therefore, it is obvious from perusal of the above-said facts that before consideration of bail petition of the petitioners, the police had already submitted charge sheet against the

petitioners.

No doubt, Section-167(2) of the Criminal Procedure Code says that “On expiry of 90 days or 60 days as the case may be, an indefeasible right accrues in favour of the accused, for being released on bail on account of default by the investigating agency in completion of investigation within the period prescribed and the accused is entitled to be released on bail, if, he is prepared to do and does furnish the bail as directed by the Magistrate but in the present case, admittedly, before consideration of bail petition filed on behalf of the petitioners u/S 167(2) of the Criminal Procedure Code, the charge sheet had already been submitted and the aforesaid right of the petitioners had already been ceased when charge sheet was filed before the court. Therefore, in my view, the decisions, cited on behalf of the petitioners, are not applicable in the present case.

On the basis of aforesaid discussions, this quashing petition stands dismissed.

(Hemant Kumar Srivastava, J)

A.K.V./-