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SINGLE BENCH

IN THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

Cr.M.P. No. 901 /2014 (S.B.)

PETITIONERS : 1. Hitesh Choubey S/o Ashok
(In Jail) Chobey, aged about 27 years,
R/o Ketar Police Station
Rahela, District Palamu
(Jharkhand).

2. Rakesh Kumar Rao S/o Late
Bholaram rao, aged about 32
years, R/o Nayapara Rajim,
Tahsil and District - Raipur
(C.G.)

P.R.No. 901/14
 Presented by Shri Keshore Narayan
 dated 25.9.14

VERSUS

RESPONDENT : State of Chhattisgarh,
through Police Station
Bankimongra, District Korba
(C.G.)



PETITION UNDER SECTION 482 OF THE CODE OF
CRIMINAL PROCEDURE.

Being aggrieved with order passed by learned Additional Session Judge, Katghora, District Korba (C.G.) who dismissed the criminal revision no. 56/2014 on 25.08.2014 arising out of the order passed by Judicial Magistrate First Class, Katghora, District Korba (C.G.) in criminal case no. 205/2014 dated 15.07.2014. Certified copy of the order dated 25.08.2014 is filed as **ANNEXURE P/1.**

The petitioners named above most respectfully beg to submit as under:-

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HIGH COURT OF CHHATTISGARH : BILASPUR

S.B.: HON'BLE SHRI MANINDRA MOHAN SHRIVASTAVA, J.

Cr.M.P.NO.901 of 2014

PETITIONERS
(In Jail)

Hitesh Choubey and another

Versus

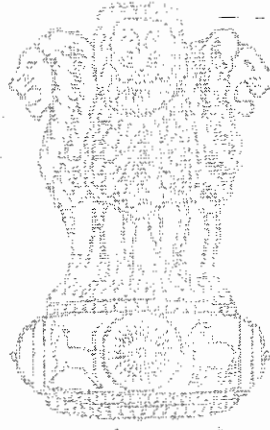
RESPONDENTS

State of Chhattisgarh

FOR PRONOUNCEMENT OF ORDER ON 24th DECEMBER, 2014

Sd/-
Manindra Mohan Shrivastava
Judge

23/12/2014



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HIGH COURT OF CHHATTISGARH: BILASPUR

Cr.M.P.NO.901 of 2014

PETITIONERS
(In Jail)

Hitesh Choubey and another

Versus

RESPONDENTS

State of Chhattisgarh

Petition under Section 482 of the Cr.P.C. of Criminal Procedure

(Single Bench: Hon'ble Shri Manindra Mohan Shrivastava, J.)

Present:-

Shri Kishore Narayan, counsel for the petitioners.

Shri Ashish Shukla, Government Advocate for the State.

ORDER

(Pronounced on this 24th day of December, 2014)

This petition under Section 482 of the Cr.P.C. of Criminal Procedure (In short "the Cr.P.C." has been preferred by the petitioners against order dated 25-08-2014 passed in Criminal Revision No.56/2014, dismissing revision of the petitioners.

2. Police Station Bakimongra, District Korba registered crime under Crime No.76/2014 against the petitioners on the allegation that they have committed offence under Section 420/34 IPC and Section 4, 5 of the Prize, Chit and Money Circulation Schemes (Banning) Act, 1978 (In short "the Act"). The petitioners were arrested on 14-05-2014 and produced before the Magistrate on the same date for remand up to 16-05-2014. As according to the petitioners, charge sheet was not filed within a period of 60 days from the date of remand i.e. on or before 13-07-2014, an application for grant of default bail under Section 167(2) of the Cr.P.C. was filed. That application was, however, rejected on 15-07-

2014. Aggrieved by rejection of application, revision was preferred before the Sessions Judge, which too has been dismissed, giving rise to this petition.

3. Submission of learned counsel for the petitioners is that the petitioners were charged for commission of offence under Section 420/34 of IPC and Section 4, 5 of the Act. The investigation related to aforesaid offence only which are not offences punishable with death, imprisonment for life or imprisonment for a term not less than 10 years. Therefore, upon failure to file charge sheet within a period of 60 days as provided in Section 167(2) of the Cr.P.C., the petitioners were entitled to default bail as they had applied for grant of bail under Section 167(2) of the Cr.P.C. on 15-07-2014 itself before filing of charge sheet and were prepared to furnish bail.

4. On the other hand, learned State counsel opposed the prayer made in the petition by submitting that the petitioners are not entitled to grant of bail because the investigating agency had later on, also registered offence under Section 467, 468 of IPC. In such cases, the petitioners would not be entitled to be released on default bail, upon expiry of 60 days because in such cases, the Magistrate is empowered to authorize detention up to 90 days.

5. The order passed by the Court below goes to show that the petitioners were arrested on 14-05-2014 and on that date itself, they were produced before the Magistrate for taking remand. This is clear from order sheet dated 14-05-2014. The Magistrate granted remand till 5 P.M. of 16-05-2014.

51

6. As is reflected from the records, the petitioners moved an application for grant of default bail on 15-07-2014. The order sheets which have been placed on record would show that till 15-07-2014, offence under Section 467, 468 was not registered against the petitioners. The petitioners have also placed on record the order sheet dated 16-05-2014, by which, further remand up to 29-05-2014 was granted. In this order also, remand was sought for investigation into alleged commission of offence under Section 420/34 IPC and Section 4, 5 of the Act and there is no reference in the order that the police sought remand in connection with investigation for the offences under 467, 468 of IPC. In the aforesaid factual premise, it has to be seen whether the petitioners were entitled to default bail on account of non-submission of charge sheet within the stipulated period, by giving the benefit of provisions under Section 167(2) of the Cr.P.C.

7. Section 167 of the Cr.P.C. lays down the procedure when investigation cannot be completed in 24 hours, it cast duty upon the police officer to produce any person arrested and detained in custody before the nearest Magistrate, if investigation cannot be completed within a period of 24 hours as fixed by Section 57 of the Cr.P.C. In sub section (2) of Section 167 of the Cr.P.C., 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, authorize 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. Proviso to sub section (2), however, puts rider on the maximum period of detention. The provision being relevant is reproduced hereinbelow:-

167. "Procedure when investigation cannot be completed in twenty-four hours.— (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(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, authorize 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 authorize the detention of the accused person, otherwise than in the 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 authorize the detention of the accused person in custody under this paragraph for a total period exceeding,—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, 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 sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorize detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;]

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police.

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3. ----- xxx -----

4. ----- xxx -----

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8. The statutory scheme of Section 167 for grant of default bail came up for consideration before the Supreme Court in the case of **Uday Mohanlal Acharya vs. State of Maharashtra**¹, wherein it was held by the Supreme Court as under:-

“Section 167 is in fact supplementary to Section 57,

¹ (2001) 5 SCC 453

59

in consonance with the principle that the accused is entitled to demand that justice is not delayed. The object of requiring the accused to be produced before a Magistrate is to enable the Magistrate to see that remand is necessary and also to enable the accused to make a representation which he may wish to make. The power under Section 167 is given to detain a person in custody while the police goes on with the investigation and before the Magistrate starts the enquiry. Section 167, therefore, authorizes the Magistrate to permit detention of an accused in custody and prescribes the maximum period for which such detention could be ordered. Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence, can authorize detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days on the whole.

Having prescribed the maximum period what would be the consequences thereafter has been indicated in the proviso to sub-section (2) of Section 167. On the expiry of the said period 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 the completion of the investigation within the period prescribed and the accused is entitled to be 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 'compulsive bail' and such bail would be deemed to be a bail under Chapter 33. The proviso to sub-section (2) of Section 167 is a beneficial provision for curing the mischief of

(5)

indefinitely prolonging the investigation and thereby affecting the liberty of a citizen."

The words "if he is prepared to and does furnish bail" have also been interpreted by the Apex Court in **Uday Mohanlal Acharya** (supra) as under:-

"If, however, the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorized, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.

The indefeasible right of the accused does not survive or remain enforceable on the Charge sheet being filed, if already not availed of, as has been held by the Constitution Bench of the Supreme Court in **Sanjay Dutt's case**, 1994 SCC (Cri.) 1433 (Sanjay Dutt v. State). The expression "if not already availed of" used in Sanjay Dutt case must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in para (a) of the proviso to sub-section (2) of Section 167 if the accused files an application for bail, alleging that no Charge sheet has been filed and he is prepared to offer the bail that is ordered, and it is found as a fact that no Charge sheet has been filed within the period prescribed from the date of the arrest of the accused, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail and the accused has not furnished the same. With the aforesaid interpretation of

the expression "availed of", if the charge sheet is filed subsequent to the availing of the indefeasible right by the accused then that right would not stand frustrated or extinguished. Necessarily therefore, if an accused entitled to be released on bail by application of the proviso to sub-section (2) of Section 167, makes the application before the Magistrate, but the Magistrate erroneously refuses the same and rejects the application and then the accused moves the higher forum and while the matter remains pending before the higher forum for consideration, a charge sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby and on the other hand, the accused has to be released on bail."

9. The aforesaid exposition of law entitles the accused to be released on bail under proviso to sub-section (2) of Section 167 of the Cr.P.C., if the charge sheet is not filed within a period of 60 days or 90 days, as the case may be, depending upon the nature of offence.

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10. As to whether the period of 60 days or 90 days would commence from the date of arrest or from the date of remand, the issue is no longer res integra, in view of the authoritative pronouncement of the Supreme Court in the case of **Chaganti Satyanarayana and others vs. State of Andhra Pradesh**², wherein the Supreme Court held as under:-

"The words used in proviso (a) to Section 167(2) are "no Magistrate shall authorize the detention of the accused person in custody", "under this paragraph",

² AIR 1986 SC 2130

“for a total period exceeding i.e. 90 days/60 days”. Detention can be authorized by the Magistrate only from the time the order of remand is passed. The earlier period when the accused is in the custody of a public officer in exercise of his powers under Section 57 cannot constitute detention pursuant an authorization issued by the Magistrate. It, therefore, stands to reason that the total period of 90 days or 60 days can begin to run only from the date of order of remand”.

In a later decision in the case of **Sadhwi Pragyna Singh Thakur v. State of Maharashtra**³, the aforesaid legal position has been reiterated by the Supreme Court that it is the date of first remand and not the date of arrest which is relevant date for counting the period of detention.

11. Now reverting to the facts of the present case, it is explicitly clear that first remand order was passed on 14-05-2014 relating to investigation for commission of offence under Section 420/34 IPC and Section 4 & 5 of the Act. None of these offences are punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. Therefore, per force, the provision contained in proviso (a) (ii) of Section 167 of Cr.P.C., the period, within which, the charge sheet has to be filed would be sixty days. The period of 60 days expired on 13-07-2014. In the remand application filed by the investigating agency on 14-07-2014, further remand up to 15-07-2014 was sought and granted by the Court in connection with Crime No.76 of 2014 for commission of offence under Section

³ (2011) 14 (ADDL.) S.C.R. 617

420/34 IPC and Sections 4, 5 of the Act. It would thus be clear that till 13-07-2014, neither charge sheet was filed nor offence under Section 467, 468 IPC was registered by the investigating agency. The period of 60 days expired on 13-07-2014. The petitioners availed the right to grant of bail on the default of investigating agency to file charge sheet within a period of 60 days by moving an application under Section 167(2) of the Cr.P.C.. Therefore, in these circumstances, the petitioners were entitled to grant of bail by default. Subsequent registration of offence under Section 467, 468 of IPC, after expiry of 60 days after 13-07-2014, would not take away the right of accused to get default bail provided he is prepared to furnish bail to the satisfaction of the Magistrate. The petitioners having availed right under Section 167(2), as laid down by the Supreme Court in the case of **Uday Mohanlal Acharya** (supra), the Magistrate committed the error of law in rejecting the application.

12. Learned State counsel strenuously urged to submit that the Supreme Court in the case of **Sadhwi Pragyna Singh Thakur** (supra) has held that once charge sheet is filed, the applicant cannot seek to set at liberty on the ground of non-compliance of Section 167(2) of the Cr.P.C. and bail can be granted upon consideration of merits of the case.

That was a case where an application for grant of bail under Section 167(2) of the Cr.P.C. was filed subsequent to filing of charge sheet. The Supreme Court, on the facts also, found that

charge sheet was filed before expiry of 90 days from the date of first remand. In this context, it was held that right, if any; to get default bail is lost, once charge sheet is filed. Thus, in a case where the charge sheet has not been filed within a period of 60/90 days, as the case may be, and filed later on and the accused, till filing of charge sheet, does not avail right to be released under Section 167(2) of the Cr.P.C., in that case, as authoritatively pronounced by the Supreme Court in the case of **Uday Mohanlal Acharya** (supra), right would be lost.

13. The petition is accordingly allowed. The impugned order dated 25-08-2014 passed in revision petition is set aside. The petitioners are entitled to bail under Section 167(2) of the Cr.P.C. on such terms and conditions as may be imposed by the learned trial Court, before which, the trial is pending upon submission of charge sheet.

Sd/-
Manindra Mohan Shrivastava
Judge

