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HIGH COURT OF CHHATTISGARH : BILASPUR

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

Cr.M.P.NO.946 of 2014

PETITIONER
(In Jail)

Ratan Lal Rajak

Versus

RESPONDENT

State of Chhattisgarh

Cr.M.P.NO.947 of 2014

PETITIONER
(In Jail)

Ratan Lal Rajak

Versus

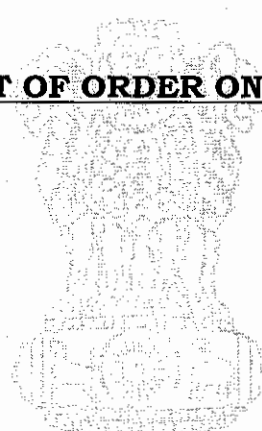
RESPONDENT

State of Chhattisgarh

FOR PRONOUNCEMENT OF ORDER ON 24th DECEMBER, 2014

Sd/-
Manindra Mohan Shrivastava
Judge

23/12/2014



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

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

Present:-

Shri Abhijit Sarkar, counsel for the petitioner/s.

Shri Ashish Shukla with Shri Chitranjan Patel, Government
Advocates for the State.

ORDER

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

Both the petitions (Cr.M.P.Nos.946 & 947 of 2014) are being disposed off by a common order, as they involve identical issues based on similar facts.

2. Two criminal cases were registered against Ratan Lal Rajak, the petitioner in both the cases, by the police of Police Station Balco Nagar on 28-03-2014. One case was registered under Crime No.106 of 2014 for alleged commission of offence under Section 420, 467, 468/34 of IPC and another case was registered under Crime No.107/2014 for alleged commission of offence under Section 420, 467, 468/34 of IPC.

In both the cases, the petitioner was produced before the Magistrate on 28-03-2014, on which date, first remand was granted to the investigating agency. On 26-06-2014, the petitioner preferred an application for grant of default bail under Section 167(2) of Cr.P.C. in both the cases. On that very day, the police also filed charge sheet in both the cases before the Court. These facts are not disputed.

3. The learned Magistrate rejected petitioner's application under Section 167(2) of the Cr.P.C. in both the cases which led to filing of revision, which has also been dismissed. Thus, the aforesaid two petitions have been filed before this Court.

4. Learned counsel for the petitioner in both the cases argued that as the charge sheet could not be filed by the prosecution within a period of 90 days from the date of first remand i.e. within a period of 90 days from 28-03-2014, the petitioners having availed the benefit of default bail by moving an application under Section 167(2) of Cr.P.C. on 26-06-2014 i.e. on 91st day, filing of charge sheet on that very date is of no consequence and the petitioner is entitled to bail under Section 167(2) of Cr.P.C.

5. On the other hand, learned State counsel opposed the prayer for grant of bail and submitted that the petitioner is not entitled to grant of bail, even if, charge sheet was not filed within 90 days, because the petitioner did not apply for grant of bail on the 90th day, when no charge sheet was filed. He moved application on 91st

day, on which date, the charge sheet was filed. Thus, filing of charge sheet and moving application for grant of bail under Section 167(2) of Cr.P.C. being simultaneous on the same date, the benefit of default bail could not be granted to the petitioner.

6. 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.. Under 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 -----

5. ----- xxx -----

6. ----- xxx -----

7. 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, 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-

¹ (2001) 5 SCC 453

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 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.”

8. 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.

9. 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”, “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”.

² AIR 1986 SC 2130

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.

10. Now reverting to the facts of the present two cases, it is clear that though the charge sheet was not filed within a period of 90 days, the petitioner moved an application for grant of default bail under Section 167(2) of the Cr.P.C. in both the cases on 26-06-2014. It is also not in dispute that simultaneously, on the date of moving an application for grant of default bail, charge sheet was also filed. Therefore, the present is not a case where the benefit of grant of default bail under Section 167(2) of Cr.P.C. was availed by the petitioner in two cases before filing of charge sheet.

11. In that view of the matter, the petitioner in both the cases is not entitled to grant of bail under Section 167(2) of Cr.P.C., as it cannot be said to be a case of having availed benefit of default bail before filing of charge sheet, as held by the Supreme Court in the case of **Uday Mohanlal Acharya** (supra).

12. On the other hand, in the facts and circumstances of the present two cases, the ratio of the judgment of the Supreme Court in the case of **Sadhwi Pragyna Singh Thakur** (supra) is applicable wherein it has been held that once charge sheet has been filed, the bail cannot be granted on the ground of default of

³ (2011) 14 (ADDL.) S.C.R. 617

filing of charge sheet and it can only be granted on the merits of the case. The Supreme Court in the case of **Sadhwi Pragyna Singh Thakur** (supra) held as under:-

21. "There is yet another aspect of the matter. The right under Section 167(2) CrPC to be released on bail on default if charge-sheet is not filed within 90 days from the date of first remand is not an absolute or indefeasible right. The said right would be lost if charge-sheet is filed and would not survive after the filing of the charge-sheet. In other words, even if an application for bail is filed on the ground that charge-sheet was not filed within 90 days, but before the consideration of the same and before being released on bail, if charge-sheet is filed, the said right to be released on bail would be lost. After the filing of the charge-sheet, if the accused is to be released on bail, it can be only on merits. This is quite evident from the Constitution Bench decision of this Court in *Sanjay Dutt (2) v. State*⁸ [paras 48 and 53(2)(b)]. The reasoning is to be found in paras 33 to 49. This principle has been reiterated in the following decisions of this Court:

- (1) *State of M.P. v. Rustam*⁷, SCC para 4;
- (2) *Bipin Shantilal Panchal v. State of Gujarat*⁹, SCC para 4. It may be mentioned that this judgment was delivered by a three-Judge Bench of this Court;
- (3) *Dinesh Dalmia v. CBI*¹⁰, SCC para 39; and
- (4) *Mustaq Ahmed Mohammed Isak v. State of Maharashtra*¹¹, SCC para 12.

In *Uday Mohanlal Acharya v. State of Maharashtra*¹² a three-Judge Bench of this Court considered the meaning of the expression "if already not availed of" used by this Court in the decision rendered in *Sanjay Dutt*⁸ in para 48

and held that if an application for bail is filed before the charge-sheet is filed, the accused could be said to have availed of his right under Section 167(2) even though the court has not considered the said application and granted him bail under Section 167(2) CrPC. This is quite evident if one refers to para 13 of the reported decision as well as the conclusion of the Court at p. 747.

22. It is well settled that when an application for default bail is filed, the merits of the matter are not to be gone into. This is quite evident from the principle laid down in *Union of India v. Thamisharasi*¹³, SCC para 10, placita *c-d*.

23. From the discussion made above, it is quite clear that even if an application for bail is filed on the ground that charge-sheet was not filed within 90 days, before the consideration of the same and before being released on bail if charge-sheet is filed, the said right to be released on bail, can be only on merits. So far as merits are concerned the learned counsel for the appellant has not addressed this Court at all and in fact bail is not claimed on merits in the present appeal at all."

13. In view of the above, no relief can be granted to the petitioner in both the cases, because the application under Section 167(2) of Cr.P.C. and filing of charge sheet was simultaneous being done on the same date.

14. In the result, the aforesaid two petitions are dismissed.

Sd/-
Manindra Mohan Shrivastava
Judge