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BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

Cr. M.P. No. 395/2015

PETITIONER

(In Jail)

Ashok Gupta @ Aryan S/o Madan Gupta, aged about 22 years, R/o Gorkha Nawapara, Police Station Kotra Road, Raigarh, Civil & Revenue District Raigarh (C.G.) ✓

10305/15
A.No.
Presented by Shri. Shivendu
pendlyg.
dated
12/5/15

VERSUS

RESPONDENT

State of Chhattisgarh, through -
District Magistrate, Raigarh, District
Raigarh (C.G.)

**PETITION UNDER SECTION 482 OF THE CRIMINAL
PROCEDURE CODE**

Being aggrieved by the impugned order dated 18.03.2015 (Annexure P/1) passed by learned Special Judge, Raigarh (C.G.) in Criminal Revision No. 13/2015, in which Criminal Revision filed by the petitioner has been dismissed. Hence this petition on the following facts and grounds amongst others:-



9/12/15

HIGH COURT OF CHHATTISGARH : BILASPUR

Cr.M.P.No.395/2015

Petitioner
(In Jail)

Ashok Gupta

Versus

Non-applicant

State of Chhattisgarh

**[Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava]
(Petition under Section 482 of Cr.P.C.)**

Present: -

Shri Shivendu Pandya, counsel for the petitioner.
Shri Ashish Shukla, G.A. for the State.

ORAL ORDER

(Passed on 14-05-2015)

Heard.

2. This petition is directed against order dated 18-03-2015 passed by the Special Judge, Raigarh, by which, the petitioner's application under Section 167(2) of Cr.P.C. which were earlier allowed on 23-01-2015 has also been cancelled.
3. A short issue arising for consideration in this revision, whether the petitioner was entitled to benefit as default bail as provided under Section 167(2) of Cr.P.C. सत्यमेव जयते
4. The facts stated in the petition, which are also reflected from the impugned order passed by the revisional Court, are that the applicant was arrested and sent on remand on 30-10-2014 for alleged commission of offence under Section 399, 402 of IPC and Section 25 of the Arms Act under Crime No.145/2014 registered by Police Station Punjipathra.
5. As no charge sheet was filed within a period of 60 days, the application for grant of default bail under Section 167(2) of Cr.P.C. was filed by the applicant before the Magistrate, wherein it was stated

that in view of the maximum punishment which could be provided under Section 399, 402 of IPC and Section 25 of the Arms Act, the case of the applicant could be governed under Section 167(2)A(II) of Cr.P.C., and therefore, in the absence of any charge sheet filed within a period of 60 days, the applicant is entitled to grant of default bail.

6. The application of the applicant was considered and allowed holding that even after 86 days, charge sheet has not been filed. The Court directed release of the applicant on bail on furnishing personal bond of Rs.10,000/-

7. On 27-01-2015, when the applicant was produced to furnish bail for his release and was prepared to offer bail, charge sheet was also presented before the Court. The Court below held that as charge sheet has been presented, the bail offered by the applicant cannot be accepted and his application for release is accordingly rejected.

8. Learned counsel for the applicant argued that as the applicant had already moved an application for grant of default bail on account of non-filing of charge sheet within a stipulated period of 60 days which was allowed by the Court on 23-01-2015 and on 27-01-2015, the applicant offered bail, he had availed of his right to be released on account of non-filing of charge sheet within a prescribed period of 60 days. Therefore, the Court below ought to have released him by accepting bail bond offered by him.

9. On the other hand, learned State counsel submits that as charge sheet was filed on 27-01-2015, by that time, the petitioner's application under Section 167(2) of Cr.P.C. was allowed, till that time, bail bonds were not offered to be submitted, therefore, the Court below has rightly rejected the application.



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10. 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-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

¹ (2001) 5 SCC 453

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. सत्यमेव जयते

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. ^{सहस्रो जयते}

11. 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.

12. Applying the aforesaid enunciation of law, it is clear that on account of non-filing of the charge sheet within a period of 60 days, the applicant moved an application for grant of default bail under

(29)

Section 167(2) of Cr.P.C., which was allowed by the Court below on 23-01-2015. On 27-01-2015, the applicant offered to furnish bail bonds, on that date itself, charge sheet was presented in the Court. However, in view of the aforesaid decision of the Supreme Court, once the applicant is prepared to offer bail, the fact that no charge sheet has been filed within a period prescribed from the date of arrest of the accused, it has to be held that the accused is availed of his indefeasible right.

13. In view of above, the impugned order cannot be sustained in law, and therefore, set aside. The petitioner's application for grant of default bail has already been allowed by the Court below vide order dated 23-01-2015. On applicant's furnishing personal bond of Rs.10,000/- as directed by the Court below vide order dated 23-01-2015, he shall be released on bail.

14. Accordingly, the petition is allowed.

सत्यमेव जयते

Sd/-
Manindra Mohan Shrivastava
Judge