

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 833 of 2015

Navin Chandra Sahu S/o Late Mayalal Sahu Aged About 24 Years
R/o Gurda, Police Station Kharsia, District Raigarh Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh Through The District Magistrate Raigarh,
District Raigarh Chhattisgarh.

---- Respondent

For Petitioner – Shri B.L. Sahu, Advocate.
For Respondent/State – Shri Ashish Shukla, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

1/10/2015

1. Heard.
2. This instant petition is against the order dated 18/03/2015 whereby order passed by the JMFC on 27/01/2015 was affirmed wherein the bail granted to the petitioner under Section 167 (2) of the Cr.P.C. was annulled.
3. Briefly stated facts are that the petitioner was charge sheeted for an offence under Section 399, 402 of IPC and Section 25 of the Arms Act. Petitioner was arrested on 30/10/2014. Consequently, charge sheet was not filed till 23/01/2015 and that being beyond period of 60 days as the offence for which the petitioner was arrested punishment prescribed was for 10 years under section 399 of IPC, seven years under section 402 of IPC and for three years under section 25 of the Arms Act, on application furnished petitioner was granted bail under section 167 (2) of the Cr.P.C. on 23/01/2015. Admittedly, no bail could be furnished on the same day

and charge sheet was filed on 24/01/2015 i.e. a day after bail was granted. Subsequently, bail was furnished on 27/01/2015, however the trial court refused to accept the bail and cancelled the same on the ground that petitioner could not avail bail granted under section 167 (2) of Cr.P.C.

4. Learned counsel for the petitioner submits that once bail has been granted it could not have cancelled and the petitioner should have been released irrespective of the fact that charge sheet has been filed. He submits that once bail has been granted being indefeasible right has accrued to the petitioner to be released. Consequently, order of both the courts below are wrong.

5. I have gone through the order. Dates has been projected are not in dispute. Petitioner has been arrested on 30/10/2014. 60 days certainly expired on 23/01/2015 when the petitioner was granted bail under section 167 (2) of the Cr.P.C.. Perusal of the order of the trial court dated 27/01/2015 would show that on 24/01/2015 charge sheet was filed i.e. a day after bail was granted.

6. Consequently, till charge sheet is filed bail granted to the petitioner he could not avail the benefit of order of bail.

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** reported in **(2001) 5 SCC 453**, 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 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 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.”

8. Therefore, reading of the aforesaid principle laid down by the Hon'ble Supreme Court would show that indefeasible right of the accused does not survive or remain enforceable i.e. bail granted under section 167 (2) of Cr.P.C. if charge sheet is filed. Further more, petitioner failed to avail the benefit thereof. Consequently, the case will fall within the expression the bail if already not availed of. In this case charge sheet has been filed on 24/01/2015 and the bail which was furnished on 27/01/2015 it can be stated that petitioner did not avail and furnish bail before the charge sheet is filed.

9. In the result, petition has no merit and it is dismissed.

Sd/-
(Goutam Bhaduri)
JUDGE