

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.10014 of 2015

ORDER:

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This Criminal Petition is filed by the petitioners-accused under Sections 437 & 439 Cr.P.C. seeking to grant bail to them in Crime No.85 of 2013 on the file of Ramagundam Police Station registered for the offence punishable under Sections 10(a), 13(1)(a) and (2) of Unlawful Activities Prevention Act and Section 8(i)(ii) of A.P. Public Security Act.

Heard and perused the material available on record.

Learned Counsel for the petitioners submitted that the above crime was registered in the year 2013 and even after completion of two years, no charge sheet was filed and therefore, bail may be granted to the petitioners. In support of his contentions, the learned Counsel for the petitioners relied upon the judgment of the Apex Court reported in **UNION OF INDIA THROUGH CENTRAL BUREAU OF INVESTIGATION VS. NIRALA YADAV ALIAS RAJA RAM YADAV ALIAS DEEPAK YADAV^[1]**.

In the said judgment referred to above at paragraph No.47, the Apex Court held as follows:

Coming to the facts of the instant case, we find that prior to the date of expiry of 90 days which is the initial period for filing the charge-sheet, the prosecution neither had filed the charge-sheet nor had it filed an application for extension. Had an application for extension been filed, then the matter would have been totally different. After the accused respondent filed the application, the prosecution submitted an application seeking extension of time for filing of the charge-sheet. Mr. P.K. Dey, learned counsel for the appellant would submit that the same is permissible in view of the

decision in Bipin Shantilal Panchal (1996 SCC (Cri.) 200) but on a studied scrutiny of the same we find the said decision only dealt with whether extension could be sought from time to time till the completion of period as provided in the Statute i.e., 180 days. It did not address the issue what could be the effect of not filing an application for extension prior to expiry of the period because in the factual matrix it was not necessary to do so. In the instant case, the day the accused filed the application for benefit of the default provision as engrafted under proviso to sub- Section (2) of Section 167 CrPC the Court required the accused to file a rejoinder affidavit by the time the initial period provided under the statute had expired. There was no question of any contest as if the application for extension had been filed prior to the expiry of time. The adjournment by the learned Magistrate was misconceived. He was obliged on that day to deal with the application filed by the accused as required under Section 167(2) CrPC. We have no hesitation in saying that such procrastination frustrates the legislative mandate. A Court cannot act to extinguish the right of an accused if the law so confers on him. Law has to prevail. The prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused. Such an act is not permissible. If we permit ourselves to say so, the prosecution exhibited sheer negligence in not filing the application within the time which it was entitled to do so in law but made all adroit attempts to redeem the cause by its conduct.

In the above decision, it is observed that when the prosecution has not filed either the charge sheet or the petition for extension of time prior to expiry of 90 days, which is the initial period for filing the charge sheet, then the petitioner is entitled for bail.

In the present case, the facts are totally different. It is informed by the learned Public Prosecutor that charge sheet was also filed before the concerned Court.

Considering the above submission, this Court is of the view that after filing of the charge sheet, the petitioner cannot have any right to invoke the provision under Section 167(2) Cr.P.C. Hence, this petition is liable to be dismissed. However, the petitioner is at liberty to move an application for regular bail before the Court below under Chapter XXXIII of the Criminal Procedure Code.

Accordingly, the Criminal Petition is dismissed.

JUSTICE RAJA ELANGO

Dated: 26.10.2015

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