

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION Nos.4112 of 2015 & 4115 of 2015

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COMMON ORDER:

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These two Criminal Petitions are preferred by Central Bureau of Investigation (for short 'CBI') challenging the orders passed by XIV Additional Chief Metropolitan Magistrate, Hyderabad both dated 15.4.2015 whereby the trial Court allowed the applications under Section 167(2) Cr.P.C. filed by A.1 and A.2 in CrI.M.P.Nos.1177 and 1178 of 2015 respectively, and enlarged them on bail.

The brief facts of the case are as under:

In connection with a complaint lodged by the Deputy General Manager of Canara Bank, Prime Corporate Branch, Secunderabad the respondents-A.1 and A.2 were arrested by the petitioner on 14.2.2015 and since then they were in judicial custody. The respondents-A.1 and A.2 preferred CrI.M.P.Nso.1177 and 1178 of 2015 during their judicial custody on 15.4.2015 for their release by invoking the provision under Section 167(2) Cr.P.C. on the ground that the petitioner-C.B.I. failed to file charge sheet within 60 days and therefore, they are entitled for statutory bail. The learned trial judge granted bail to the respondents-A.1 and A.2 on the ground that the petitioner-CBI failed to file the charge sheet within the statutory period. Hence, the present petitions are preferred by the petitioner-CBI mainly on two grounds i.e. (1) the bail applications filed by A.1 and A.2 are dated 15.4.2015, that on the said date the period of 60 days is not completed, that the charge sheet was also filed on that date by 1.30 p.m. and the said fact was also informed to the trial judge. Therefore, it is contended that since the charge sheet was filed on 60th day, the respondents-A.1 and A.2 are not entitled for bail under the provision under Section 167(2) Cr.P.C. Further as against one of the respondents herein a crime was registered for threatening one person/witness after their release on bail.

On the other hand, the respondents-A.1 and A.2 submitted that the date on

which the applications filed by them under Section 167(2) Cr.P.C. is on 61st day of their detention. On 14.4.2015 itself the 60 days period is completed. In this connection, the learned standing counsel appearing for the CBI submitted that the date of remand i.e. 14.2.2015 should be excluded as per the judgments of the Apex Court and therefore, if the said remand date is excluded, 15.4.2015 will be the 60th day. It is further contended that even if it is assumed that 15.4.2015 is the 61st day, since the charge sheet was filed on that date, the respondents-A.1 and A.2 are not entitled for bail under Section 167(2) Cr.P.C.

The learned counsel for the respondents-A.1 and A.2 submitted that in view of Criminal Rules of Practice, which is in practice in the State, it is specifically stated that the date of remand should also be included while reckoning the period of detention of accused in judicial custody. The said fact was not disputed by the standing counsel for the petitioner. The calculation of dates concerned, it is nowhere mentioned in the Code, how it should be calculated. The Apex Court in different decisions directed the trial Courts to exclude the date of remand and also in some other cases include the date of remand. But, in view of Criminal Rules of Practice, which is in practice in the State of Andhra Pradesh, the date of remand i.e. 14.2.2015 should also be included. When a question is posed to the learned counsel for the respondents-A.1 and A.2 whether the provisions of Criminal Rules of Practice have a statutory value, the learned counsel submitted that the provisions of Criminal Rules of Practice are framed by the State with an intent to regulate the Criminal Courts in the State and therefore, the said provisions have a statutory validity in view of Article 227 of Constitution of India.

When the provisions of Criminal Rules of Practice are taken into consideration, the date on which the charge sheet is filed i.e. 15.4.2015 will be the 61st day of the judicial remand of the respondents-A.1 and A.2. The further contention of the learned standing counsel for the petitioner that even assuming that 15.4.2015 is the 61st day of remand period, yet the respondents-A.1 and A.2 are not entitled for bail under the provisions of Section 167(2) Cr.P.C. in view of the fact that the charge sheet was filed on that date.

The learned Special Public Prosecutor for CBI was present before the trial Court and opposed the bail on the ground that the CBI filed the charge sheet today i.e. 61st day but not within the prescribed period. The said submission made by the prosecution before the trial Court necessitated the trial judge to proceed with the matter regarding filing of bail application and charge sheet, which is first in point of time. Accordingly, the learned trial judge relying on the decisions of the Apex Court and the High Courts granted the relief.

The fact remains that the respondents-A.1 and A.2 preferred the applications under Section 167(2) Cr.P.C. informing their willingness for being released on bail by executing sureties on 15.4.2015 by 10.30 a.m. The charge sheet was filed by 1.30 p.m. on 15.4.2015 itself and the same was informed to the trial judge. In that view of the matter, now the controversy remains that in view of filing of applications under Section 167(2) Cr.P.C. and also filing of the charge sheet on the same date, which is to be taken into consideration. Dealing with the same, the learned trial judge relied on the decisions of Madras High Court and also the decision reported by Apex Court in **Union of India through Central Bureau of Investigation v. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav**. In the said decision, the Apex Court categorically considered the said position and observed that once the accused preferred a petition for the purpose of his informing that he is inclined to go on bail by executing sureties and at the time of filing such a petition, when there is no final report and there is a subsequent report filed on the same day, the petition which is filed first in point of time should be taken into account.

There is no dispute by both the counsel regarding the dates and time concerned as far as filing of applications under Section 167(2) Cr.P.C. and charge sheet. In view of the decisions rendered by the Apex Court and also the Rules framed by the erstwhile State of A.P. in connection with calculating the date of judicial remand is concerned, 15.4.2015 would be the 61st day. Admittedly, no charge sheet was filed on 60th day. Hence, the said point is answered accordingly holding that the respondents-A.1 and A.2 availed their remedy at the first point of time by informing their intention to be released on bail. The second contention raised by the learned standing counsel for the petitioner is that that after release on

bail, one of the respondents threatened a person. This Court perused the record and also F.I.R. But it does not disclose the name of the person against whom the accused committed the offence.

Further apart from the dispute regarding the grant of bail by invoking the provision under Section 167(2) Cr.P.C. the CBI has not ventured to challenge the order on the ground that the release of the respondents-A.1 and A.2 will cause prejudice to the investigating agency and also it is not the case of the CBI that the respondents are not entitled for bail on merits.

In view of the above discussion, this Court is of the view that the impugned orders passed by the trial Court are in accordance with law and no ground is made out to interfere with the impugned order of bail granted by the trial Court by invoking the provision under Section 167(2) Cr.P.C.

In the result, both the petitions fail and the same are accordingly dismissed.

Consequently, miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE RAJA ELANGO

09.06.2015

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