

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-38620-2015

Date of Decision: November 27, 2015

Sunil @ Bablu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Jai Vir Yadav, Advocate,
for the petitioner.

Mr. Pawan Gaur, DAG, Haryana,
for the respondent.

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| 1. | <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the Reporters or not?</i> | YES |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | YES |

NARESH KUMAR SANGHI, J (Oral)

Prayer in this petition, filed under Section 439, Cr.P.C., is for grant of bail to the petitioner, Sunil @ Bablu, son of Mange Ram, resident of village Bagdana, Tehsil Kanina, District Mohindergarh, who has been booked for having committed the offences punishable under Sections 201, 302 and 377 read with Section 34, IPC, and Section 4 of the Protection of Children from Sexual Offences Act, 2012, in a case arising out of FIR No. 246,

dated 5.9.2013, registered at Police Station, Kanina, District Mohindergarh.

At the very outset, it was submitted by learned counsel for the petitioner that the petitioner, Sunil @ Bablu, was arrested on 17.7.2015 and thereafter sent to judicial custody on 18.7.2015. After expiry of more than ninety days, on 23.10.2015 the petitioner moved an application before learned Area Judicial Magistrate for grant of bail under Section 167(2), Cr.P.C. Learned Area Judicial Magistrate in his order dated 23.10.2015 (Annexure P-2), mentioned that the case was pending investigation, however, in view of the letter received from learned District and Sessions Judge, Mohindergarh at Narnaul, referred the said application alongwith other relevant documents to the Court of learned Special Judge/Additional Sessions Judge, Narnaul, for disposal. The petitioner was remanded to the judicial custody till then.

Learned Special Judge/Additional Sessions Judge, Narnaul, declined the prayer of the petitioner for grant of bail to him on the premise that the charge-sheet (report under Section 173, Cr.P.C.) was presented before filing of the application before the Magistrate and, as such, he (petitioner) was not

entitled to indefeasible right under Section 167(2), Cr.P.C. Learned Special Judge also held that the allegations against the petitioner were serious in nature.

Learned counsel for the petitioner, in support of his contentions, has placed reliance on the judgments of Hon'ble the Supreme Court delivered in the cases of **Uday Mohanlal Acharya v. State of Maharashtra**, 2001 (2) R.C.R. (Criminal) 452; **Suresh Kumar Bhikamchand Jain v. State of Maharashtra and another**, 2013 (2) R.C.R. (Criminal) 170; and **Union of India through C.B.I. v. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav**, 2014 (3) R.C.R. (Criminal) 534.

Learned counsel for the State on instructions from ASI Satpal Singh of Police Station, Kanina, District Mohindergarh, has fairly conceded that the charge-sheet (report under Section 173, Cr.P.C.) was presented before learned Court below on 26.10.2015 and certainly the embargo of ninety days of filing of the charge-sheet had expired. He further fairly admitted that the application for releasing the petitioner on bail was presented before learned Area Judicial Magistrate on 23.10.2015 and the charge-sheet was presented thereafter. However, he submitted that the allegations levelled against the petitioner were of

serious nature and during pendency of the investigation the petitioner was also declared as a proclaimed offender and, as such, he is not entitled to bail.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

Section 167(2) of the Code of Criminal Procedure, 1973, reads as under:-

“167. Procedure when investigation cannot be completed in twenty-four hours.-

(1) *xxx xxx xxx*
 xxx xxx

(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, authorise 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 authorise 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 authorise 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 authorise 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 authorise detention in the custody of the police.*

Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person

through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.”

In the matter of **Uday Mohanlal Acharya (supra)**, Hon'ble the Supreme Court held that if the charge-sheet is not presented within the stipulated period, then the accused gets an indefeasible right to get bail and the Magistrate has to grant bail. It was further held that subsequent filing of the challan during pendency of the bail application would not extinguish the indefeasible right of the accused to get bail.

In the matter of **Suresh Kumar Bhikamchand Jain (supra)**, Hon'ble the Supreme Court held that if the investigation could not be completed within the stipulated period of sixty days or ninety days, then the accused acquires an indefeasible right to be granted bail, provided he offers to furnish bail bonds.

In the matter of **Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav (supra)**, it was held by Hon'ble the Supreme Court that if the accused has filed an application for bail under

Section 167(2), Cr.P.C., and on the next day an application for extension of time is filed by the prosecution, in that situation also an indefeasible right of bail accrued to the accused and the said right is not lost on the filing of application for extension.

There is no doubt that the allegations levelled against the petitioner are of serious nature. In ordinary circumstances, the petitioner might not have been entitled to bail, but the right has accrued to him for non-compliance of Section 167(2) Cr.P.C., for grant of bail.

It is conceded position that the petitioner was sent to judicial custody on 18.7.2015 and after expiry of more than ninety days, he presented an application for grant of bail before learned Area Judicial Magistrate on 23.10.2015. The said application alongwith other papers was referred to the Court of learned Special Judge/Additional Sessions Judge, Narnaul, who dismissed the bail application saying that the charge-sheet had already been presented. But the said fact appears to be against the material available on record. Learned counsel for the State on instructions from ASI Satpal Singh of Police Station, Kanina, District Mohindergarh, and after going through the police file, has very fairly admitted that the charge-sheet was presented

after presentation of the application by the petitioner for grant of bail.

In view of above circumstances, this Court has no other option but to accept the prayer of grant of bail to the petitioner and, as such, the present petition is accepted. The petitioner, Sunil @ Bablu, son of Mange Ram, resident of village Bagdana, Tehsil Kanina, District Mohindergarh, is directed to be released on bail subject to his furnishing bail bond in the sum of ₹2,00,000/- (Rupees two lacs only) with two sureties in the like amount, to the satisfaction of learned Special Judge/Additional Sessions Judge, Narnaul.

It is made clear that the observations made here-in-above are only for the limited purpose of deciding the present petition for bail.

(NARESH KUMAR SANGHI)
JUDGE

November 27, 2015
Pkapoor