

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.57149 of 2015

Arising Out of PS.Case No. -131 Year- 2015 Thana -GOPALPUR District- BHAGALPUR

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Pawan Yadav son of Late Bharu Yadav alias Mahesh Yadav, Resident of
Village Latra, Police Station- Gopalpur, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. N.K.Agrawal, Sr. Advocate
Mr. Vikram Singh, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH**
ORAL ORDER

2 18-01-2016 Heard learned counsel for the petitioner and learned
counsel for the State.

By way of the present application preferred under
Section 482 of the Code of Criminal Procedure (for short ‘CrPC’),
the petitioner seeks quashing of the order dated 28.09.2015 passed
in Gopalpur P.S.Case No. 131 of 2015 whereby the prayer of the
petitioner under Section 167(2) CrPC has been rejected by the
learned Additional Chief Judicial Magistrate, Naugachia,
Bhagalpur.

The petitioner has been made accused in a case under
Section 302/34 of the Indian Penal Code and Section 27 of the
Arms Act. He was remanded to judicial custody on 30th June,

2015. He filed an application before the learned Additional Chief Judicial Magistrate, Naugachia, Bhagapur on 28th September, 2015 seeking his release on bail as the investigating agency failed to submit the report under Section 173 CrPC within 90 days.

The learned Additional Chief Judicial Magistrate called for a report from his office on the same day. It would appear from the impugned order that on 28th September, 2015 itself, the Investigating Officer of the case submitted charge-sheet at 1.05 p.m. in the Court. After perusing the record, the learned Magistrate has rejected the application on the grounds that the charge-sheet has been submitted on the 90th day excluding the date on which the petitioner was remanded to judicial custody and that even before an order could have been passed on the application filed under Section 167(2) CrPC, the Investigating Officer had already submitted charge-sheet in the Court.

Learned counsel for the petitioner has submitted that 28th September, 2015 was the 91st day from the date of remand and the moment the petitioner filed an application for his release, a vested right had been created in him and simply because few hours latter the police submitted charge-sheet, the Court could not have rejected his application on the ground that a report under Section 167(2) CrPC has already been submitted.



On the other hand, learned counsel for the State has contended that Section 167(2) CrPC confers a right to be released on bail in case the investigating agency fails to file charge-sheet before expiry of 60/90 days, as the case may be. However, in the present case, even before an order on the application of the petitioner could have been passed by the Court, the police submitted charge-sheet and therefore, it cannot be said that the Court was wrong in rejecting the application filed on behalf of the petitioner.

I have heard the respective counsel for the parties and perused the record.

For the purpose of granting bail under the default clause, the date of filing the charge-sheet is relevant. Admittedly, in the present case charge-sheet was filed on 91st day from the date of remand. The learned Magistrate was justified in authorizing the detention of the petitioner for 90 days in terms of sub-clause (ii) of proviso (a) to sub-section (2) of Section 167 CrPC and on the 91st day the investigating officer has already filed the charge-sheet in the court when the matter of further detention was being considered by the learned Magistrate. Once the report under Section 173 CrPC had already been submitted in the court, the Magistrate had no jurisdiction to release the petitioner on default

of the prosecution in filing the charge-sheet. In my considered opinion, the order impugned does not suffer from any illegality.

In that view of the matter, the application, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J)

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