

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1053 of 2015**

- Rajiv Katiyar S/o Dr. Hriday Kumar Katiyar Aged About 50 Years R/o A 408, Ghanshyam Homes, Vyapar Vihar, P.S. Civil Lines, Bilaspur, Civil & Rev. Distt. Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

- Central Bureau Of Investigation Bhilai Branch, District Durg, Chhattisgarh.

---- Respondent

For Petitioner
For Respondent

Shri Awadh Tripathi, Advocate
Shri Kishore Bhaduri, Advocate

Hon'ble Shri Justice Pritinker Diwaker**CAV Order****13/1/2016**

The petitioner is accused in Crime No. 07/2015 pending before Special Judge, CBI Raipur for the offence punishable under sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act. He was arrested on 20.9.2015 and the date of his first remand is 21.9.2015. On 20.11.2015 the applicant moved an application under section 167 (2) of the Code of Criminal Procedure before the trial Court seeking compulsive/statutory bail mentioning therein that as till 60th day the charge-sheet was not filed, legal right has accrued in his favour for release on bail. This application was opposed by the CBI on two counts, firstly that the application filed on the 60th day was premature and secondly though the charge-sheet was already filed on 23.11.2015 yet since the learned judge considered the case as on 20.11.2015 therefore he has not committed any illegality in rejecting the application as premature and it is this order which is under challenge in this

revision.

2. Counsel for the petitioner submits that the date of arrest of the petitioner is 20.9.2015 and as such 60th day completed on 19.11.2015 and therefore his application filed under Section 167 (2) of the Code of Criminal Procedure was tenable on 20.11.2015. Alternatively, he submits that even if the date of remand i.e. 21.9.2015 is taken into consideration, excluding the said date the 60 days would be completed on 20.11.2015 and therefore also his application under section 167 (2) was tenable and the Court below ought to have passed the order on 20.11.2015 itself considering the statutory right of the applicant accruing on 20.11.2015 itself as till that date the charge sheet was not filed. He submits that the Court below has erred in law in not deciding the application on 20.11.2015 but decided the same on 23.11.2015 considering his right as on 20.11.2015. He further submits that on 20.11.2015 by 5 pm if the charge-sheet was not filed, the right bestowed by Section 167 (2) Cr.P.C. accrued in favour of the petitioner and therefore on that day itself the Court should have decided his application and released him on bail as there was no charge-sheet. According to the counsel for the petitioner, remand of the petitioner had expired on 20.11.2015 at 5 pm and undisputedly the CBI did not move an application for extension of the said remand and therefore in the absence of any order extending remand, custody of the petitioner after 5 pm of 20.11.2015 becomes illegal which gives right to him to be released on bail. In support of his submission, reliance is placed on the decisions of the Apex Court in the matter of **Uday Mohanlal Acharya v. State of Maharashtra** reported in **(2001) 5 SCC 453** and in the matter of **Union of India through CBI v. Nirala Yadav alias Raja Ram Yadav alias Deepak Yadav** reported in **AIR 2014 SCW 4298**.

3. On the other hand supporting the order impugned, it has been argued by the counsel for the respondent that on 20.11.2015 the application filed by the petitioner was not decided, on 21.11.2015 and 22.11.2015 were holidays and on 23.11.2015

at 10.40 am the charge-sheet was filed and if by that time the application was not decided and challan was filed, the petitioner had no legal right to claim compulsive/statutory bail under Section 167 (2) of the Code of Criminal Procedure. He submits that the Court below was justified in considering the application of the applicant qua 20.11.2015 i.e. the date when the application for compulsive/statutory bail was filed. He submits that the Court below was fully justified in rejecting the application under Section 167 (2) of the Code of Criminal Procedure by holding it premature as till 20.11.2015 the petitioner had no right to file the said application and his right accrued only thereafter.

4. Heard counsel for the parties and perused the documents on record.

5. Undisputedly, the petitioner was arrested on 20.9.2015 and his date of remand is 21.9.2015. Excluding the date 21.9.2015 if the days are counted, it comes to 9 days in September, 31 days in October and thus the 60th day falls on 20.11.2015 i.e. the date on which the application was filed by the petitioner under Section 167 (2) of the Code of Criminal Procedure. It is not disputed that on 21.11.2015 and 22.11.2015 neither the charge-sheet was filed (it was filed on 23.11.2015) nor any application was filed by the CBI for extension of the remand of the petitioner. This Court is not entering into the fact whether custody of the petitioner was legal or illegal after 20.11.2015 but suffice it to say that till expiry of 60th day i.e. on 20.11.2015 no charge-sheet was filed by the CBI rather it was filed on the 63rd day.

6. It is a settled legal position that when an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has

been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of default on the part of the investigating agency in completing the investigation within the period stipulated. It is further held that the Court is under obligation to decide the application filed by the accused under Section 167 (2) of the Code of Criminal Procedure on that day itself and cannot act to extinguish the right of the accused if law so confers on him.

7. Though in the application filed by the petitioner under Section 167 (2) of the Code of Criminal Procedure the date of first remand has also been included while counting 60 days but even holding this to be incorrect if the first date of remand i.e. 21.9.2015 is taken into consideration and the same is excluded, the application under Section 167 (2) of the Code was filed on 20.11.2015 and the Court was under obligation to consider and decide the same on that very day. Undisputedly, in the present case the application moved by the petitioner remained undecided till 23.11.2015 and therefore legal right for compulsive bail under Section 167 (2) of the Code of Criminal Procedure in any case accrues in favour of the petitioner on 21.11.2015 which was holiday. Thus the legal right having accrued in favour of the accused on 21.11.2015, learned Court was incorrect in taking into consideration a situation qua 20.11.2015 and rejecting the pending application as premature. Most importantly, on 20.11.2015, 21.11.2015 and 22.11.2015 there was no application by the CBI seeking extension of remand. Once the application filed by the petitioner remained undecided till 63rd day, right has already accrued in his favour to seek compulsive bail under Section 167 (2) of the Code of Criminal Procedure immediately after expiry of 60 days.

8. Learned Court below while deciding the application on 23.11.2015 has thus erred in law in holding the application filed by the petitioner on 20.11.2015 for

compulsive bail under Section 167 (2) of the Code of Criminal Procedure as premature and as such not maintainable. Being so, the order impugned dated 23.11.2015 is hereby set aside. Petitioner is directed to be released on bail on his furnishing a bond in the sum of Rs. 25,000/- with one surety for the like sum to the satisfaction of the trial Judge for his appearance before the said Court as and when directed.

9. Revision is thus allowed.

Sd/-

(Pritinker Diwaker)

Judge

