

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.162 of 2017

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Nagendra Rai @ Narendra @ Narendra Rai, Son of Sri Yogendra Rai,
Resident of Village-Habaspur, P.S.-Shahpur District-Patna

.... Petitioner/s

Versus

1. The State of Bihar through Superintendent of Police, Patna
2. The Deputy Inspector General of Police, Patna
3. The Superintendent of Police, Patna,
4. The Officer-in-Charge, SC/ST Police Station, Patna.
5. The Investigating Officer of SC/ST Police Station (Patna) Case no 14/2013

.... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Usha Kumari Singh

For the Respondent/s : Mr. Sheo Shankar Prasad (SC-8)

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

2 17-03-2017 This writ application has been filed for quashing the order dated 15.12.2016 passed in Special Case No.306 of 2016, whereby the learned Special Judge, Patna under the provisions of the SC/ST Act has refused to accept the bail bond of the petitioner on the ground that the charge-sheet has already been submitted in the case and as such the petitioner lost his indefeasible right under Section 167(2) Cr.P.C. to get bail.

The petitioner is an accused in connection with SC/ST P.S. Case No.14 of 2013. The petitioner filed a petition on 12.12.2016 before the learned Additional District Judge-cum-Special Judge, SC/ST, Patna under the provisions of the SC/ST Act for mandatory bail under Section 167(2) Cr.P.C. as the



investigation was not completed and charge-sheet was not submitted by the police till that date. The bail petition was not disposed of on the very same day by the learned Special Judge, rather it was disposed of on 13.12.2016 and bail was granted to the petitioner which would be evident from the order at Annexure-7. The petitioner produced the bail bond on the same day which would be evident from the bail bond signed by the petitioner in jail and enclosed as Annexure-6. The bail bond of the petitioner was not entertained on 13.12.2016, rather the same was entertained on 15.12.2016 and prior to that the charge-sheet was received on the basis whereof cognizance was taken on 14.12.2016 and thereafter, the learned Special Judge refused to accept the bail bond on 15.12.2016 on the ground that since charge-sheet has already been received and cognizance taken hence the petitioner lost his indefeasible right of bail under Section 167(2) Cr.P.C. in view of the judgment of the Hon'ble Apex Court in **Uday Mohan Lal Acharya Vs. State of Maharashtra reported in 2001(3) PLJR SC 81**. The learned court below has quoted the relevant conclusions in the impugned order, which reads as follows:-

“4. 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



it of 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 the default on the part of the investigating agency in completing the investigation within the period stipulated.

5. If the accused is unable to furnish bail, as directed by the Magistrate, then the conjoint reading of Explanation 1 and proviso to sub-section 2 of Section 167, the continued custody of the accused even beyond the specified period in paragraph (a) will not be unauthorized, and therefore, if during that period the investigation is complete and charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.

6. The expression 'if not already availed of' used by this Court in Sanjay Dutt's case (supra) must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in paragraph (a) of proviso to sub-section (2) of Section 167 of the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same."

From bare perusal of the aforesaid conditions it reveals that the learned court below did not comply the direction no.4 and 6 aforesaid as the court below did not dispose of the prayer for bail on the very same day. In the circumstances, the indefeasible right of the petitioner could not have been defeated by



the subsequent order. Secondly, the bail bond of the petitioner at Annexure-6 reveals that the same was ready on 13.12.2016 itself. Hence, there was no reason for the petitioner to not to file said bail bond to get his immediate release. The court below has again committed error in not accepting the bail bond before charge-sheet was filed in the case on 14.12.2016 and cognizance was taken. The bail bond of the petitioner was considered on 15.12.2016 which is also against the mandate of judgment in **Uday Mohan Lal Acharya Vs. State of Maharashtra (supra)**.

Learned counsel for the State though has opposed the prayer of the petitioner, but does not dispute that the prayer of the petitioner was not disposed of on that very day by the learned court below which was against the direction in **Uday Mohan Lal Acharya Vs. State of Maharashtra (supra)**.

In view of the discussion made above, it is apparent that the impugned order is not sustainable in law. Hence, the same is hereby quashed.

Let the petitioner be released at once on furnishing bail bond to the satisfaction of the learned court below.

Arvind/-

(Birendra Kumar, J)

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