

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 330 of 2017

Ashish Sinha, S/o. A. K. Sinha, Aged About 37 Years, R/o. H-2/97, Narmada Nagar, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh. Through : Smt. Anupriya Sinha, Wife of Ashish Sinha, Age About 36 Years.

---- Petitioner

Versus

State Of Chhattisgarh, Through : S. H. O. Civil Line, Bilaspur, District Bilaspur, Chhattisgarh.

-----Respondent

For Petitioner : Mr. Hemant Gupta, Advocate
For Respondent/State : Mr. Neeraj Sharma, Dy. Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

06/10/2017

Heard.

1. This petition under Article 226 of the Constitution of India has been brought praying for issuance of writ, directing to release the petitioner from custody under the provision of Section 167 (2) Cr.P.C..
2. It is submitted by the learned counsel for the petitioner, that the petitioner was arrested on 09.06.2017 and produced before the Magistrate on 10.06.2017, on which date he was remanded to jail. It is submitted that as per the FIR, offences

under Section 420, 406 & 407 of Indian Penal Code was registered. According to that the period of imprisonment as provided in these penal provisions, the petitioner had entitlement to be released on bail, if the prosecution failed to produce the charge-sheet within 60 days from the date of first remand.

3. Petitioner moved an application under Section 167 (2) Cr.P.C. on 10.08.2017 on the basis of this entitlement as the charge-sheet was not filed by investigation agency within 60 days. The application of petitioner was rejected arbitrarily by the Chief Judicial Magistrate, Bilaspur, stating that offences under Section 467, 468 of I.P.C. have been added in the case against the petitioner, because of which according to the period of remand provided for these offences, investigation agency has time of ninety days from the date of first remand for filing the charge-sheet. Hence, the application filed was premature.
4. Learned counsel for the petitioner submits that offences under Section 467, 468 of Indian Penal Code were added to frustrate the entitlement of the petitioner for his release on bail after 60 days of remand. It is submitted that Magistrate has passed the order of remand on 31.07.2017 without application of mind. It is submitted that before passing the impugned order, the Magistrate should have applied his mind as to whether the offences included under Section 467, 468 of Indian Penal Code are supported with material on record. Referring to the

judgment passed in case of ***Wahid Siddiqui and Another Vs. State of Madhya Pradesh***, reported in ***2011 LawSuit (MP) 389***, it is submitted that Hon'ble High Court of M.P. has in similar matter given a finding, that on the basis of the material of charge-sheet, the commission of offence under Section 467, 468, 471 is not made out, hence the matter falls under Clause -2 of proviso to Section 167 (2) of Cr.P.C. Reliance has been placed on the judgment of High Court of Madras in case of ***State Vs. Sundaramoorthy***, reported in ***2007 Law Suit (Mad) 218***.

5. It is further submitted that application of mind while authorizing further detention is essential. It has been held in case of ***Mantoo Majumdar and another Vs. State of Bihar***, reported in ***(1980) 2 SCC 406*** and ***Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau & Anr.*** reported in ***2009 Law Suit (SC) 1919***. Petitioner has also placed reliance on the judgment of ***Ravindranath Singh Vs. State of C.G.***, reported in ***2017 (2) CGLJ 498*** and the judgment of Supreme Court in case of ***Mantoo Mazumdar & Anr. Vs. State of Bihar***, reported in ***(1980) 2 SCC 406***, hence prayed that the petitioner has been wrongfully and erroneously denied bail under Section 167 (2) of Cr.P.C.
6. Counsel for the State has opposed the petition and the submission made in this respect. It is submitted that in remand application dated 31.07.2017, it is specifically mentioned that offence under Section 467, 468, 34 of Indian Penal Code were

added to be investigated, hence, the case was clearly under Clause-1 of proviso to Section 167 (2) of Cr.P.C. authorizing detention of accused in custody up to 90 days. Hence this petition may be dismissed.

7. I have heard the learned counsel for the parties and perused the documents placed on record.
8. As all the documents of the concerned case have not been produced on record, hence, this Court is unable to scrutinize the material of the investigation for the purpose of consideration whether the offence under Section 467, 468 of Indian Penal Code were made out or not on the date of remand dated 31.07.2017.
9. It is true that while passing the order of remand on 31.07.2017, the Magistrate has not made any mention regarding addition of offence under Section 467, 468 of Indian Penal Code. Clause-(a) of proviso to section 167 (2) provides that Magistrate may authorize the detention of accused persons beyond the period of 15 days, if he is satisfied that adequate grounds exists for doing so. This position has been discussed in case of Sanjay Kumar Kedia (Supra) and State Vs. Sundaramoorthy (supra), hence in view of the legal position as settled and the requirements of the provisions, it is amply clear that clause – (a) to proviso to Section 167 (2) has to be complied with before authorizing the detention of accused persons beyond the period of 15 days in judicial remand.

10. In case of ***Hitendra Vishnu Thakur & Ors. Vs. State of Maharashtra & Ors.***, reported in **(1994) 4 SCC 602**, Supreme Court has held that right under Section 167 (2) of Cr.P.C. is indefeasible right of an accused person to be enlarged on bail and obligation is casted upon the Court passing order of remand to inform the accused of his right for being released on bail. Reference has been made to the judgment of Supreme Court in case of ***Hussain Aara Khatoon, AIR 1979 SC 1369, Aslam Babalal Desai Vs. State of Maharashtra, AIR 1993 SC 1***, wherein it was held that Court has left with no description in such a case, this position has remained intact and reiterated by the Supreme Court in recent judgment passed in ***Rakesh Kumar Paul Vs. State of Assam***, in Special Leave to Appeal (Cri.) 2009/2017, passed on 16.08.2017.
11. In view of this legal position existing presently, firstly it was the duty of the remand Magistrate to consider whether authorization for detention in light of the material on the case diary beyond the period of 60 days was justifiable and in case in absence of any material on record to substantiate the offence added, which are punishable for life imprisonment, then as per the decision of the M.P. High Court in case of Wahid Siddiqui (Supra), the remand Magistrate was empowered to grant bail if no substance is available in the case diary to justify the addition of offence.
12. After due consideration and on the basis of the reasons as aforementioned, the right course in such case would be to

allow the petition and remand the matter to the concerned Magistrate to examine the facts and circumstances of the case on the date the prayer was made under the provisions of Section 167 (2) of Cr.P.C. and pass orders in accordance with law.

13. Resultantly, this petition is allowed. The order passed by the Judicial Magistrate First Class, Bilaspur dated 10.08.2017 is set-aside. The concerned Magistrate is directed to consider on the application of the petitioner under Section 167 (2) of Cr.P.C. afresh keeping in view the observation made in this order.

Sd/-
(Rajendra Chandra Singh Samant)
Judge