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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.17 of 2017

Arpit @ Deepak Singh Chouhan, S/o Shankar Singh Chouhan, aged about 27 years, R/o H.No.51, Gopal Nagar, Yashodanagar, Kanpur, P.S. and Post Kanpur, District Kanpur (U.P.)

(Applicant) (In Jail)
---- Petitioner

Versus

State of Chhattisgarh, through Police Station Balod, District Balod (C.G.)
(Non-applicant)
---- Respondent

For Petitioner: Mr. Prasoon Agrawal, Advocate.
For State/Respondent: Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/05/2017

1. The petitioner is an accused standing trial for commission of offence under Sections 420, 467, 468 and 471 read with Section 34 of the IPC. He was taken into custody on 17-8-2016 by the jurisdictional police. On 15-11-2016, charge-sheet was filed before the jurisdictional criminal court by registering Criminal Case No.1619/2016 and since that day was the 91st day of first remand, the petitioner filed an application under Section 167 (2) of the CrPC for grant of bail on default. That application was rejected by the jurisdictional criminal court on 16-11-2016 holding that charge-sheet has been filed on 15-11-2016. Questioning that order, the petitioner preferred a revision before the revisional court but he remained unsuccessful. Now, calling in question the order of the

trial Court affirmed by the revisional Court, this petition under Section 482 of the CrPC has been filed by the present petitioner stating that he is entitled to be released on bail under Section 167 (2) of the CrPC, therefore, the petition be allowed and he be released on bail.

2. Mr. Prasoon Agrawal, learned counsel appearing for the petitioner, would submit that though the learned trial Court has recorded in the order dated 15-11-2016 that charge-sheet has been filed on that day, but no copy of charge-sheet was supplied to the accused person on that day and even it does not bear the signature of the accused or his counsel on 15-11-2016 and as such, it was filed on 16-11-2016 and it was backdated and on that day, the petitioner has already filed application under Section 167 (2) of the CrPC at 4.40 p.m. which is supported by the affidavit of Shri Suraj Patel, Advocate, that at 4.40 p.m., application under Section 167 (2) of the CrPC has been filed. Therefore, it is absolutely a clear case in which the petitioner / accused is entitled for the benefit of Section 167 (2) of the CrPC.
3. On the other hand, learned State counsel opposes the petition.
4. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also perused the entire record with utmost circumspection.
5. Before proceeding further, it would be appropriate to notice that this Court while entertaining his petition on 7-3-2017 directed to call for the report of the District and Sessions Judge, Balod, seeking

relevant information relating to filing of charge-sheet, central filing number as generated from the computer system in the central filing of the establishment of the District and Sessions Judge, Balod, pursuant to which the District and Sessions Judge, Balod has sent a report in which it has been mentioned that charge-sheet against the petitioner was filed in the Central Filing System on 15-11-2016 at 12:07:28 p.m. and registered on 15-11-2016 (State v. Arpit alias Deepak Singh Chauhan and others). The said report is taken on record.

6. Now, the question is whether the petitioner is entitled to be released on bail under Section 167 (2) of the CrPC.
7. Admittedly, the petitioner was arrested / taken into custody on 17-8-2016 and 15-11-2016 was the 91st day on which, charge-sheet was filed by the jurisdictional police at 12:07:28 p.m., as stated in the computer generated report submitted by the District and Sessions Judge, whereas it is the case of the petitioner that by filing affidavit of Advocate he had filed application under Section 167 (2) of the CrPC on 15-11-2016 at 4.40 p.m. and challan has been produced on the next day. Order sheet clearly indicates that the charge-sheet has been filed on 15-11-2016 which is supported by the Central Filing System Report which is a computer generated one and it was filed on 15-11-2016 at 12:07:28 p.m.. Admittedly, thereafter, application under Section 167 (2) of the CrPC was filed at 4.40 p.m. as stated by counsel for the petitioner who appeared before the trial Court and also filed his affidavit

8. Right of the accused to get default bail under Section 167 (2) of the CrPC is well settled way back in the year 2001 by Their Lordships of the Supreme Court in the matter of **Uday Mohanlal Acharya v. State of Maharashtra**¹ and following six conclusions were drawn for regulating the application for grant of default bail under Section 167 (2) of the CrPC: -

“(1) Under sub-section (2) of [Section 167](#), a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days on the whole.

(2) Under the proviso to the aforesaid sub-section (2) of [Section 167](#), the Magistrate may authorise detention of the accused otherwise than in the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.

(3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

(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 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 the default on the part of the investigating

¹ (2001) 5 SCC 453

agency in completing the investigation within the period stipulated.

(5) If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of [Section 167](#), the continued custody of the accused even beyond the specified period in para (a) will not be unauthorised, and therefore, if during that period the investigation is complete and the 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 case² 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 para (a) of the proviso to sub-section (2) of [Section 167](#) if 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."

9. The aforesaid decision of the Supreme Court has been considered, reiterated and reaffirmed in the matter of **Union of India Through Central Bureau of Investigation v. Nirala Yadav alias Raja Ram Yadav alias Deepak Yadav**³ holding that right of the accused to get bail on expiry of the prescribed period without charge-sheet having been filed is indefeasible, non-discretionary and mandatory. Their Lordships further held that the courts must dispose of the bail application of accused under Section 167 (2) of the CrPC on the same day itself and should not adjourn the matter for another day and observed as under: -

"47. ... He was obliged on that day to deal with the application filed by the accused as required under

² Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433

³ (2014) 9 SCC 457

Section 167(2) CrPC. We have no hesitation in saying that such procrastination frustrates the legislative mandate. A court cannot act to extinguish the right of an accused if the law so confers on him. Law has to prevail. The prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused. Such an act is not permissible. If we permit ourselves to say so, the prosecution exhibited sheer negligence in not filing the application within the time which it was entitled to do so in law but made all adroit attempts to redeem the cause by its conduct.”

10. In the instant case, charge-sheet was filed on 15-11-2016 at 12:07:28 p.m. whereas, subsequently at 4.40 p.m., application under Section 167 (2) of the CrPC was filed for release on bail as per own showing of the petitioner by filing affidavit before the trial Court. Therefore, the petitioner had no right to be released on bail in view of the fact that charge-sheet had already been filed on 15-11-2016 at 12:07:28 p.m. and immediately after filing of charge-sheet, the petitioner has filed application for release on bail at 4.40 p.m.. It is not the case where the application was filed prior in time and thereafter, charge-sheet was filed. Therefore, the petitioner's right to be released on bail on default is lost once charge-sheet is filed on 15-11-2016 at 12:07:28 p.m., as admittedly, the petitioner has filed application for release on bail thereafter at 4.40 p.m. on that day. Therefore, this plea of the petitioner has rightly been rejected by the trial Court and rightly been upheld by the revisional Court.

11. In view of the aforesaid legal analysis, I do not find any good ground to entertain this petition and consequently, the petition under Section 482 of the CrPC deserves to be and is accordingly dismissed. However, the trial Court would do well to consider and

expedite the trial of the criminal case and conclude it expeditiously.

No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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