

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P.No.470 of 2017**

Rakesh Kumar Nayak Son of Late Santram Nayak, age about 20 years, resident of Village Bharuwamua, Ward No.7, Police Station Chhura, District Gariyabandh (CG) Civil & Revenue District Gariyabandh.

---- Petitioner

Versus

State of Chhattisgarh, through the Police Station Gariyabandh, District Gariyabandh (CG)

---Respondent

For Petitioner	:	Mr.Shailendra Dubey, Advocate
For Respondent	:	Mr.Aditya Sharma, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**

18/05/2017

1. The petitioner is an accused standing trial for commission of offence punishable under Sections 366, 376 and 323 of the IPC and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012. He was arrested on 19.12.2016 at 9.30 p.m. by the jurisdictional police and on 88th day i.e. 17.3.2017, charge-sheet was filed before the Judicial Magistrate First Class, Gariyaband (hereinafter referred to as "JMFC"), on that day, the Chief Judicial Magistrate, Gariyaband (hereinafter referred to as "CJM") was on leave. The JMFC finding that he has no jurisdiction to take cognizance in the matter directed that the matter to be placed before the CJM on 20.3.2017. Accordingly, the matter was placed before learned CJM on 20.3.2017, in which the CJM directed that it be taken on 21.3.2017 and thereafter, on 21.3.2017 learned CJM returned the charge-sheet to the concerned Police Station seeking some report.
2. Thereafter, the petitioner filed an application under Section

167(2) of the CrPC for grant of bail on the ground that charge-sheet has been returned to the concerned Police Station and as such, there is no charge-sheet and therefore, he is entitled to be released on bail under Section 167(2) of the CrPC.

- 3.** Learned CJM by the impugned order dated 25.3.2017 rejected the said application holding that charge-sheet has already been filed on 17.3.2017 and further proceeding, if any, could not create a right in favour of the petitioner.
- 4.** Being aggrieved and dissatisfied with the said order, the petitioner has filed this petition under Section 482 of the CrPC.
- 5.** Mr.Shailendra Shukla, learned counsel appearing for the petitioner, would submit that once charge-sheet is returned without taking cognizance of that charge-sheet, then in view of provisions contained in Section 173 (2) of the CrPC no charge-sheet can be said to have been filed within time i.e. 90 days, therefore, the petitioner is entitled to be released on bail. He would further submit that finally the charge-sheet was filed on 10.4.2017.
- 6.** On the other hand, learned State Counsel oppose the petition.
- 7.** I have heard learned counsel for the parties and perused the impugned order.
- 8.** Admittedly and undisputedly, charger-sheet was filed on 88th day i.e. 17.3.2017 before the Court of JMFC who was not having jurisdiction to take cognizance, therefore, he directed the same to be placed before learned CJM and ultimately, the CJM by order dated 21.3.2017 returned it to the concerned police station for rectifying some defects and only thereafter, an application under Section 167(2) of the CrPC was filed by the petitioner on 24.3.2017 stating inter-alia that he is

entitled to be released on bail under Section 167(2) of the CrPC as the charge-sheet filed has already been returned by learned Chief Judicial Magistrate.

9. The Supreme Court in the matter of **Narendra Kumar Amin Vs. Central Bureau of Investigation and others**¹ the Supreme Court relying upon earlier decision of that Court in the matter of **CBI Vs. R.S.Pai**² has held that Section 173(5) of the CrPC is not mandatory, it is directory in nature and non-filing of full set of documents with police report/charge-sheet within statutory period would not entitle the accused to get default bail so long as police report is in compliance with Section 173(2) of the CrPC.
10. The Madras High Court in the matter of **Guna alias Gunsasekaran Vs. The State**³ has held that the remedy of bail under Section 167(2) of the CrPC extinguishes after filing of charge-sheet and return of the charge-sheet or final report for compliance of certain defects would not entitle the accused to be released on bail. It was observed as under:-

“10. Thus, it has become deducible from the legal ratio enunciated by the Apex Court, followed by this Court in the cases cited supra that to avail the remedy of bail by filing of application furnishing with sureties, in the contingency of not filing of the final report or the charge-sheet as provided under Section 173 of the Code of Criminal Procedure within the time limit spelt out under Section 167(2) of the Code is an indefeasible right and such right could be made available to the accused only in case of contingency provided therefor and after the expiry of the time, if the charge-sheet or the final report has been filed into the Court, as spelt out

1 (2015) 3 SCC 417

2 (2002) 5 SCC 82

3 1997 CRI.L.J. 626

clearly by the Apex Court, the remedy of bail made available to the accused person become extinguished and it would not survive after the filing of the charge-sheet or the final report. It is also made clear that this extinguishment of the indefeasible right made available to the accused continues and it puts a double bar to the accused in such cases. In other words, it would mean that if the final report is filed, the remedy provided under Section 167(2) of the Code of Criminal Procedure will not be made available, but the aggrieved person viz., the accused can seek remedy of bail under Chapter XXXIII of the Code of merits of a given case.

14.....The filing of charge-sheet or final report would follow with returns for compliance of defects pointed out by the Court within the purview of Section 173 of the Code which would clearly demonstrate the fact that it is a matter of routine administration and it would not mean in any event that no charge-sheet or final report has been filed into the Court. The final report may be defective for want of certain particulars which may be on some important aspects or not, but it is purely within the power of the Court to decide whether the final report is within the purview of Section 173 of the Code of Criminal Procedure or not. It does not however give any room or inference that no charge-sheet or final report has been filed. Applying the said ratio and the underlying principle carved out from the reading of Section 173 of the Code of Criminal Procedure to the facts of the instant case, even though the final report filed by the respondent herein on 19-12-1995 was returned for compliance

of certain defects, it is an administrative one under Section 173 of the Code of Criminal Procedure and it cannot be allowed to be taken advantage of getting bail under Section 167(2) of the Code.....”

11. However, the petitioner has relied upon the decision of the Supreme Court in the matter of **Satya Narain Musadi and Ors. Vs. State of Bihar**⁴ in which the question before the Supreme Court was whether in view of the provision contained in Section 11 of the Essential Commodities Act, 1955, a Court taking cognizance of any offence punishable thereunder, upon a police report is precluded from looking into the complaint or first information report filed before the Court or that is must keep itself exclusively confined to the report submitted by the police, therefore the said judgment is clearly inapplicable to the facts of the present case.

12. Other decision of **Gurpal Singh and Ors. Vs. State of Punjab**⁵ cited by Mr.Dubey is also clearly inapplicable as in that case the question before the Court of whether failure on the part of the prosecution agency in filing application under Section 36-A(4) of the NDPS Act to defeat the right of accused alleged to have been found in possession of commercial quantity of the contraband and presentation of challan without the Chemical Examiner report could have created a circumstance of not having presented the challan within the period of 180 days. In other words, whether challan without the report of Chemical Examiner presented within a period of 180 days could be said to be a challan as per the legal requirements of Section 173(2) CrPC read with Section 173(5) CrPC, dis-entitling the accused for the default bail under Section 167(2) CrPC.

13. In the present case, jurisdictional police has filed the charge-sheet complying with the requirement of Section

4 (1980) 3 SCC 152

5 MANU/PH/0637/2016

6

173(2) of the CrPC on 17.3.2017 and thereafter it has been returned to the concerned police station seeking certain clarification for omission of offence under Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012 on 21.3.2017 and only thereafter the petitioner has filed application under Section 167(2) of the CrPC, which has rightly been rejected by the trial Court, in which there is no illegality or infirmity warranting interference in exercise of jurisdiction under Section 482 of the CrPC.

- 14.** Accordingly, the petition under Section 482 of the CrPC deserves to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-