

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 1155 of 2017**

Smt. Rinku Singh Thakur W/o Ashok Singh Thakur, aged about 30 years, address in front of Science College, Dabripara, Chantidih, P.S. Sarkanda, District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

State Of Chhattisgarh Through police station Sarkanda, District Bilaspur, Chhattisgarh.

---- Respondent

For the Petitioner	:	Shri Sandeep Dubey, Advocate.
For the Respondent /State	:	Shri Ashish Shukla and Shri Anil S. Pandey, Government Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****20.09.2017**

1. Heard.
2. This petition has been brought under Section 482 of the Code of Criminal Procedure with a prayer to quash the impugned order by which the Revisional Court has upheld the order passed by the trial Court dismissing the application of the petitioner under Section 167(2) of the Cr.P.C.
3. Learned counsel for the petitioner submits that the petitioner was arrested in connection with some other cases and when she was produced before the Court of Magistrate on 29.5.2017, by order of the Magistrate, she was sent to jail. The charge-sheet, thus, was filed on 28.7.2017 i.e. 61st day. As the offence registered was under Section 420 of the Indian Penal Code for which the Magistrate had authority to order for detention of the petitioner for a period extending to 60 days

only, the petitioner became entitled for bail under the mandatory provision of Section 167(2) of the Cr.P.C. The Court of Chief Judicial Magistrate, Bilaspur has arbitrarily rejected the application of the petitioner vide order dated 28.7.2017 and the revision petition preferred against the same i.e. Criminal Revision No. 138 of 2017 before the Learned Sixth Additional Sessions Judge, Bilaspur, District Bilaspur has been dismissed vide order dated 5.8.2017.

4. Reliance has been placed on the judgment of Supreme Court in the case of **Union of India through Central Bureau of Investigation vs. Nirala Yadav alias Raja Ram Yadav alias Deepak Yadav** reported in **(2014) 9 SCC 457**, wherein it was held that the default bail under Section 167(2) of the Cr.P.C. is indefeasible, non-discretionary and mandatory in nature. The same view has been reiterated by the Hon'ble Supreme Court in the case of **Rakesh Kumar Paul vs. State of Assam** in **Special Leave to Appeal (Crl.) No. 2009 of 2017** decided on 16.8.2017, in which it was held that the right accrued under Section 167(2) of the Cr.P.C. cannot be defeated by filing of charge-sheet later on. Reliance has also been placed on the judgment of **Chaganti Satyanarayana and Others vs. State of Andhra Pradesh** reported in **AIR 1986 SC 2130**, in which it was held that the day on which Magistrate orders remanding the accused to jail shall be the starting point. That is the period of 90 days or 60 days as provided under Section 167(2) of the Cr.P.C., which shall start from the date of order of remand. Hence, on this basis the date of first remand is 29.5.2017 and the charge-sheet was filed on 61st day i.e. after the accrual of the right to bail of the petitioner.

5. Learned State counsels opposed the submissions made and have submitted that the charge-sheet was filed on the 60th day from the date of first remand. It has been held by the Hon'ble Supreme Court in the case of **Ravi Prakash Singh @ Arvind Singh vs. State of Bihar** reported in **(2015) 8 SCC 340** very clearly relying on the judgment of **State of M.P. vs. Rustam** reported in **1995 SCC (Cri) 830** that while computing the period of detention of 60 days or 90 days as the case may be, the day on which the accused was remanded to judicial custody, shall be excluded and the day on which charge-sheet is filed in court, has to be included. Hence, no right has accrued in favour of the petitioner. The view laid down in **State of M.P. vs. Rustam** (supra) that the entitlement for bail under Section 167(2) of the Cr.P.C. extinguishes after filing of charge-sheet was overruled but the rest of the findings of the said judgment has the effect as it is which has been relied in the judgment passed by the Supreme Court in **Ravi Prakash Singh @ Arvind Singh vs. State of Bihar** (supra).

6. On the basis of the aforesaid ratio laid down, it is clear that the day on which the petitioner was remanded i.e. 29.5.2017 is to be excluded while counting 60 days. Hence, it is clear that the charge-sheet was filed on the 60th day from the day the petitioner was remanded to jail. Consequent to that, no right has accrued in favour of the petitioner under Section 167(2) of the Cr.P.C. Hence, this petition has no substance and it is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge