

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.52979 of 2017

Arising Out of PS.Case No. -556 Year- 2015 Thana -MAHUA District- VAISHALI(HAJIPUR)

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Raj Kumar @ Raj Kumar Rai @ Tofa, S/o Shri Lakhendra Rai, R/o
Village- Mirzanagar Dogar, P.S.- Mahua, District- Vaishali.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar, Advocate.
Mr. Shashi Kant, Advocate.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 20-07-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioner for quashing the order dated 18.04.2017 passed by the Chief Judicial Magistrate, Vaishali at Hajipur in connection with Mahua P.S. Case No. 556 of 2015 registered under Section 304B read with 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act whereby the learned Chief Judicial Magistrate has rejected the application of the petitioner preferred for being enlarged on bail in terms of Section 167(2) of the Cr.P.C.



The petitioner has been made accused in Mahua P.S. Case No. 556 of 2015 dated 19.11.2015 registered inter alia under Section 304-B of the Indian Penal Code. He surrendered before the Court of Chief Judicial Magistrate, Vaishali on 16.01.2017 and was remanded to judicial custody on the same day. On 18.04.2017, he filed an application under Section 167(2) of the Cr.P.C for grant of bail. On the same day, when the records were placed before the learned Chief Judicial Magistrate, he called for a report from the office as to whether police report under Section 173(2) of the Cr.P.C has been submitted or not. Immediately thereafter the G.R. Clerk reported that the charge-sheet and the case diary have already been submitted against the petitioner under Section 304-B/34 of the Indian Penal Code. On receipt of the report from the G.R.Clerk, the learned Chief Judicial Magistrate rejected the application filed by the petitioner under Section 167(2) of the Cr.P.C.

It is submitted by Mr. Awadhesh Kumar, learned counsel for the petitioner that when the petitioner had filed his application under Section 167(2) of the Cr.P.C, the charge-sheet was not received in the office of the court and subsequent to the filing of the application by the petitioner, the charge-sheet was submitted by the police. He submitted that an indefeasible right,



which had been accrued to the accused, could not have been frustrated by submitting charge-sheet after filing of the application for bail.

Per contra, learned counsel appearing for the State submitted that the submission made by the learned counsel for the petitioner is not correct. He submitted that the statutory period of detention of the petitioner expired on 16.04.2017. On completion of investigation, the police had already prepared its charge-sheet on 16.04.2017 and the same was submitted in the office of the Chief Judicial Magistrate on 18.04.2017. He submitted that it is not correct to say that after filing of the bail application charge-sheet was received in the office of the Chief Judicial Magistrate.

I have heard learned counsel for the parties and carefully perused the record.

From the record, it does not transpire that the charge-sheet was received of the office of the Chief Judicial Magistrate after filing of the application for grant of bail in terms of Section 167 (2) of the Cr. P.C by the petitioner. In that view of the matter, if the charge-sheet had already been received in the office of the Chief Judicial Magistrate before praying for bail, no indefeasible right to be released on bail had accrued to the petitioner. Thus, the learned Chief Judicial Magistrate has committed no wrong by



rejecting the application preferred under Section 167(2) of the
Cr.P.C.

The application, being devoid of any merit, is
dismissed.

(Ashwani Kumar Singh, J)

Pradeep/Sneha

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