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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Miscellaneous Petition No.332 of 2018

Order Reserved on : 9.8.2018

Order Passed on : 1.11.2018

Ashish Sinha, S/o A.K. Sinha, aged about 37 years, through Wife Smt. Anupriya Sinha, aged about 36 years, W/o Ashish Sinha, R/o H-2/97, Narmada Nagar, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh

---- Petitioner

versus

State of Chhattisgarh through S.H.O., Civil Line, Bilaspur, District Bilaspur, Chhattisgarh

--- Respondent

For Petitioner	:	Shri Kishore Bhaduri and Shri Hemant Gupta, Advocates
For Respondent/State	:	Shri Prafull Bharat, Additional Advocate General

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Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant criminal miscellaneous petition is directed against the order dated 29.1.2018 passed by the Judicial Magistrate First Class, Bilaspur in Case No.2918 of 2017, whereby the Judicial Magistrate First Class has rejected the application of the accused/Petitioner for grant of default bail under Section 167(2) of the Code of Criminal Procedure.

2. Facts of the case, in brief, are that on 6.6.2017, Police Station Civil Lines, Bilaspur, District Bilaspur registered Crime No.421 of 2017 against the present Petitioner and other co-accused persons for offences punishable under Sections 420, 406 and 407 of the Indian Penal Code. The Petitioner was arrested on 9.6.2017 and was produced before the concerned Magistrate on 10.6.2017 on which date he was remanded to jail. Thereafter, the police had continuously been taking remand of the Petitioner on subsequent dates till 11.8.2017. Since the offences in question relate to Sections 420, 406 and 407 of the Indian Penal Code, the Petitioner was entitled to be released on default bail if the prosecution failed to file charge-sheet within 60 days from the date of first remand. On 10.8.2017, the period of 60 days completed. Therefore, on 10.8.2017, the Petitioner was entitled to get default bail. He moved an application under Section 167(2) of the Code of Criminal Procedure for grant of default bail which has been rejected by the Judicial Magistrate First Class vide the impugned order dated 29.1.2018 stating that the offences punishable under Sections 467 and 468 of the Indian Penal Code have also been added in the case against the Petitioner because of which according to the period of remand provided for these offences investigating agency had time of 90 days from the date of first remand for filing the charge-sheet and, therefore, the application filed by the Petitioner/accused for grant of default bail was premature. The Petitioner/accused filed a writ petition, being Writ Petition (Cr) No.330 of 2017 before this Court on the ground that offences punishable under Sections 467 and 468 of the Indian Penal Code were added to frustrate the entitlement of the Petitioner for his release on bail after 60 days of the remand and the Magistrate has passed the order of remand on 31.7.2017 without application of his mind before passing the impugned order. The Magistrate ought to have applied his mind as to whether the offences included under

Sections 467 and 468 of the Indian Penal Code are supported with material on record or not. The said writ petition was allowed by this Court vide order dated 6.10.2017 and the matter was remanded to the Magistrate to consider the application of the Petitioner under Section 167(2) of the Code of Criminal Procedure afresh keeping in view the observation made by this Court in the order dated 6.10.2017. In the order dated 6.10.2017, it was observed by this Court as under:

> "**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 v. State of Madhya Pradesh, 2011 Law Suit (MP) 389**, the remand Magistrate was empowered to grant bail if no substance is available in the case diary to justify the addition of offence."

3. Being aggrieved by the order of remand of the matter dated 6.10.2017 passed in Writ Petition (Cr) No.330 of 2017, the Petitioner preferred a writ appeal, being Writ Appeal No.490 of 2017, but the writ appeal was dismissed as withdrawn on 6.12.2017. Thereafter, the Petitioner again filed a review petition, being Review Petition No.164 of 2017 for review of the order dated 6.10.2017 passed in Writ Petition (Cr) No.330 of 2017. Vide order dated 10.1.2018, the review petition was allowed and this Court modified its earlier order dated 6.10.2017 and it was ordered that the concerned Magistrate shall consider on the preparedness of the Petitioner on the basis of the application filed previously and if satisfied may pass the orders for furnishing bail bonds as per the provisions under Section 167(2) of the Code of Criminal Procedure. Thereafter, the Petitioner again approached the concerned Court of Magistrate for grant of default bail under Section 167(2) of the Code of Criminal Procedure, but his prayer has been rejected by the Magistrate vide the impugned order dated 29.1.2018 on the ground that on 31.7.2017 the offences under Sections 467 and 468 of the Indian Penal Code were also added by the prosecution and the offence under Section 467 of the Indian Penal Code is punishable with life imprisonment, therefore, the period for filing charge-sheet has been extended to 90 days and before that, on 6.9.2017 charge-sheet had been filed. Therefore, the Petitioner is not entitled to get default bail under Section 167(2) of the Code of Criminal Procedure. Hence, the instant petition.

4. Learned Counsel appearing for the Petitioner/accused submitted that merely because the investigating agency further added the offences punishable under Sections 467 and 468 of the Indian Penal Code, it does not strike down the indefeasible statutory right of the Petitioner because the prosecution agency has no right to add any further offence in the FIR. It has been done merely to frustrate the indefeasible right of the Petitioner. On 31.7.2017, while granting remand, the Judicial Magistrate First Class has not applied his mind and has granted further remand to the police without any application of mind and in a very mechanical manner, which is clearly violation of vital right of the Petitioner confirmed by Articles 14 and 21 of the Constitution of India. It was further argued that on 31.7.2017, on what grounds offences under

Sections 467 and 468 of the Indian Penal Code had been added, has not been stated. Even if for the sake of argument it is considered that the offences under Section 467 and 468 of the Indian Penal Code were added, the allegation made is not against the present Petitioner, but it is against the co-accused persons. Therefore, the statutory period for filing charge-sheet in case of the Petitioner was 60 days only. Therefore, on 10.8.2017, the Petitioner was entitled to get default bail.

5. Per contra, Learned Counsel appearing for the State/Respondent submitted that no doubt, initially, offences under Sections 420, 406, 407 of the Indian Penal Code had been registered against the Petitioner and other co-accused persons, but, during the course of investigation, on the basis of material collected by the investigating agency, offences under Sections 467, 468, 34 of the Indian Penal Code were added on 31.7.2017 and on the very date, further remand was also obtained from the Magistrate. In the remand application also, the added offences were mentioned and in this regard, entries were also made in Rojnamcha Sanha No.2272 on 31.7.2017 and after perusal of the case diary and the material available, the remand was granted by the Magistrate. Since on 31.7.2017, the additional offences had already been added and remand had also been granted, the statutory period for filing charge-sheet was 90 days. Therefore, the Magistrate has rightly rejected the application for grant of default bail. It was further submitted that at this stage, it is not to be seen that which offence is being constituted against which accused. This is to be seen at the time of framing of charges. At this stage, the only thing that is to be seen is whether *prima facie* the alleged offences have been made out or not.

6. I have heard Learned Counsel appearing for the parties and perused the case diary minutely.

7. Going through the facts of the case reveals that on 6.6.2017, a written report was made by one Gaurav Chhabra. On the basis of the said report, FIR has been registered for offences punishable under Sections 420, 406 and 407 of the Indian Penal Code against the present Petitioner and other co-accused persons, namely, Raghvendra Singh Saluja, the Managing Director of All Process Sources Solution Private Limited (henceforth 'the Sources Solution Company') and Nikhil Prakash, one of the Directors of the Sources Solution Company. Allegedly, the Petitioner is also one of the Directors of the Sources Solution Company. It has been alleged that the Sources Solution Company was engaged in converting the hard copy of foreign books into pdf file (soft copy). The Petitioner was given a franchisee of the Sources Solution Company at Bilaspur. It has been further alleged that the Petitioner contacted Complainant Gaurav Chhabra and on being asked by the Petitioner, the Complainant executed an agreement with the Sources Solution Company in which the Complainant was given the work of converting six lakhs pages of books of Nigeria into pdf file (soft copy) by the said Sources Solution Company. For this work, the Complainant deposited a total sum of Rs.55 Lakhs as security amount on various dates in different bank accounts of the Sources Solution Company. On completion of the work, all the bills were to be paid within 1 month. It has been further alleged that the Complainant was not made any payment and after locking the office, all the Directors and employees of the Sources Solution Company ran away.

8. From the above, it is clear that the allegation regarding offences under Sections 420, 406 and 407 of the Indian Penal Code was made against the Petitioner and the other 2 co-accused persons. From a perusal of the case diary, it also reveals that during the course of investigation, on 31.7.2017, it was found that Raghvendra Singh Saluja, the Managing Director of the Sources Solution Company, by using forged identity, opened a bank account and that account was used for deposit of the amount received by cheatings. Therefore, additional offences under Sections 467, 468, 34 of the Indian Penal Code were added and in this regard entries were also made in Rojnamcha Sanha No.2272 on 31.7.2017. Since the allegations of cheating and dishonest misappropriation of entrusted property were levelled against the Managing Director and the Directors including the Petitioner, later on, when evidence was collected to the effect that the Managing Director had opened a bank account by using forged identity and that bank account was used for deposit of the money received from cheatings and all the accused persons were to gain benefit from the said deposited money, therefore, though the bank account was opened by the Managing Director by using forged identity, but all the accused persons were beneficiaries, a *prima facie* case is made out against the Petitioner also for the offences punishable under Sections 467, 468, 34 of the Indian Penal Code. Therefore, for the purpose of filing of charge-sheet against the Petitioner/accused, the statutory period shall be 90 days not 60 days from the date of the first remand. Therefore, the ground on which the Judicial Magistrate First Class has rejected the application for grant of default bail under Section 167(2) of the Code of Criminal Procedure is proper and in accordance with law.

9. Consequently, the instant criminal miscellaneous petition is dismissed.

Sd/-
(**Arvind Singh Chandel**)
JUDGE

Gopal