

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 1206 of 2017

Ganpati Behra S/o Laxmi Prasad Behra, Aged About 34 Years R/o Saldih,
Police Station Sankra, District Mahasamund, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh, Through The Station House Officer, Police Station
Sankra, District Mahasamund, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri Vikash Pradhan, Advocate
For Respondent-State	:	Shri Suryakant Mishra, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

8/02/2018

1. Instant petition is against the order dated 5/08/2017 passed in Special Criminal Case No.H-18/2017 whereby rejection order of the default bail under section 167(2) of the Cr.P.C. was affirmed by the Additional Sessions Judge.
2. The case of the prosecution in brief is that on a raid being conducted from the possession of the petitioner 2.700 gms of cannabis were recovered and he was taken into custody on 27/05/2017. Thereafter, charge sheet was filed on 4/08/2017. An application was filed by the petitioner for default bail and the court rejected the application on the ground that charge sheet has already been filed, therefore right of default bail cannot be exercised.
3. Admittedly, in this case person was arrested on 27/05/2017 and charge sheet was filed on 4/08/2017 i.e. after 60 days. Record of the court shows that charge sheet was filed at 11:00 am on 4/08/2017 and application under

Section 167 (2) of Cr.P.C. was filed at 12:22 pm.

4. Learned counsel for the petitioner would submit that the petitioner was arrested on 27/05/2017 for the offence under section 20 (B) of the NDPS Act and the charge sheet was filed on 4/08/2017. He further submits that the petitioner should have been released on bail as the charge sheet was not filed within a period of 60 days when the bail was claimed.
5. Per contra, learned State counsel opposes the petition and submits that the order passed by the Court below is well merited, which do not call for any interference.
6. The provisions of Section 167 (2) Cr.P.C. as amended today is shown hereunder:-

“167- Procedure when investigation cannot be completed in twenty-four hours.

(1) xxxxxxxxxxxx

(2) xxxxxxxxxxxx

(a) Provided that-

The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) Sixty days, where the investigation relates to any other offence.”

7. The Courts have time and again have shown its concern about personal liberty qua the penal statutes as also the obligation of the Court. It is the duty and obligation of the Magistrate before whom a person accused is

produced to make him fully aware about his right flows from Articles 21 & 22 (1) of the Constitution of India and such mandates needs to be strictly enforced as has been held by the Supreme Court in the matter of ***Rakesh Kumar Paul (supra)***. The Court therein has held that it is the duty and responsibility of a Court on coming to know that the accused person before it is entitled to default bail and at least apprise him or her of the indefeasible right. A contrary view would diminish the respect for personal liberty, on which so much emphasis has been laid by the Courts as is evidenced by the decision mentioned in the case of ***UNION OF INDIA -vs- NIRALA YADAV {AIR 2014 3036}***.

8. In this case nothing is on record that at what time charge sheet was filed before the central filing. According to the prevailing rules, unless and until the Registrar and Deputy Registrar respectively transmit the charge-sheet after allotting a separate number, the same cannot be said to be in compliance to the amended rules. As otherwise, there would have always an ambiguity about the timing of the filing of the charge-sheet and dispute would be in every case especially in the case where the default bail is prayed. Therefore, as per the rules, when the charge-sheet is filed, it is to be presented to the Registrar at Civil District Headquarter and to Deputy Registrar at outlying station in civil District. Thereafter, the Registrar and Deputy Registrar respectively shall allot a separate number to case and transmit the same amongst the Courts of Judicial Magistrates as per Distribution. Here in the instant case, reply of the State would also show in which manner the procedure was followed is not clear. So mere recording of the fact that charge sheet filed it cannot be assumed that the Judge can take a role of prosecutor as it has to act independently.

9. The principle as has been laid down in the case of ***Rakesh Kumar Paul***

(supra) the Supreme Court has held that in matters of personal liberty, the Court cannot be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for 'default bail' or an oral application for 'default bail' it is of no consequence. It was directed that the concerned Court must deal with such an application by considering the statutory requirements, namely whether the statutory period for filing a charge-sheet or challan has expired, whether the charge-sheet or challan has been filed and whether the accused is prepared to and does furnish bail.

10. Therefore, taking into the totality of this case, petitioner had already expressed his right to furnish bail on 4/08/2017 and nothing on record was filed to appreciate the fact before the bail application was filed charge sheet was already on record.
11. Considering the same, petition is allowed and the petitioner is directed to be released on default bail on his executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. He is directed to appear before the trial Court on each and every date given by the said Court.

Sd/-

(Goutam Bhaduri)
Judge