

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.124 of 2019

Arising Out of PS. Case No.-153 Year-2018 Thana- DAUDPUR District- Saran

1. Bharat Rai and Ors Chandi Lal Rai Resident of Village-Balesara, P.S Daudpur, District Saran
2. Ram Kumar Rai Ram Bhola Rai Resident of Village-Balesara, P.s Daudpur, District Saran
3. Chandi Lal Rai Chandrika Rai Resident of Village-Balesara, P.s Daudpur, District Saran
4. Suresh Rai Chandrika Rai Resident of Village-Balesara, P.s Daudpur, District Saran
5. Laldeo Rai Chandrika Rai Resident of Village-Balesara, P.s Daudpur, District Saran

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Harsh Singh

For the Respondent/s : Mr.Md. Ataur Rahman

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

8 11-03-2019

Heard learned counsel for the parties.

The present revision application has been preferred by the petitioners against the order dated 15.11.2018 passed by learned J.M. 1st Class, Saran at Chapra in Daudpur P.S. Case No. 153 of 2018 registered under Section 147, 148, 149, 341, 323, 324, 307 and 302 of the Indian Penal Code by which the



bail application of petitioners filed under Sections 167(2) of Cr.P.C. was rejected. Petitioners were arrested and remanded to judicial custody pending investigation on 11.08.2018. Petitioners remained in judicial custody on 09.11.2018 but even after 90 days charge sheet was not submitted and petitioners filed an application for grant of default bail on 15.11.2018 after remaining in judicial custody for 95 days, however the same was rejected by order as impugned.

At the time when the bail application of petitioners were taken up on 15.11.2018 charge sheet was not filed and same was not on record, however learned trial court directed office clerk to submit a report whether charge sheet has been filed or not and later on the office clerk has submitted its report that case diary and charge sheet has been submitted on same day and rejected the prayer of petitioner for grant of bail on default.

Learned counsel for the petitioners has relied upon a judgment of Division Bench of this Court which squarely covers the matter and facts of both cases are also quite similar. Division Bench of this Court in the case of **Dinesh Yadav and Anr vs the State of Bihar & Ors** since reported in **2002 CRI.L.J 1067**, in paragraph no. 6 has held as follows:-

“From the law laid down by the Supreme Court, this becomes clear that as soon as the accused files an application and makes an offer to furnish bail, he has



availed of his right under Section 167(2), Cr.P.C. and he is entitled to be released. In the instant case, the petition for release on bail under Section 167(2), Cr.P.C. was filed on 23-4-2001 i.e. after expiry of 90 days. The report was submitted on the same day that till 10 a.m. no charge-sheet was submitted. However, it appears from the subsequent report that charge-sheet was submitted at about 11.45 a.m., therefore, it is manifest that charge-sheet was submitted in the case after the petitioners had already availed of their right. In fact, by the time the petitioners had filed their application, no charge-sheet had been submitted by the investigating agency. Therefore, the instant case is squarely covered by the law laid down by the Apex Court in the case of Uday Mohanlal Acharya v. State of Maharashtra (AIR 2001 SC 1910).

The Apex Court in its judgment in **Rakesh Kumar Paul Vs State of Assam** since reported in **2017(15) SC 67**, in para 37, 38 and 39 has held as follows:-

“37. This Court had occasion to review the entire case law on the subject in Union of India v. Nirala Yadav (2014) 9 SCC 457. In that decision, reference was made to Uday Mohanlal Acharya v. State of Maharashtra (2001) 5 SCC 453 and the conclusions arrived at in that decision. We are concerned with conclusion No. 3 which reads as follows:

(3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the Accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the Accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

38. This Court also dealt with the decision rendered in Sanjay Dutt and noted that the principle laid down by the Constitution Bench is to the effect that if the charge sheet is not filed and the right for 'default bail' has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The Accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or challan has expired and the same



has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the Accused is prepared to furnish the bail bond.

39. This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to Mohamed Iqbal Madar Sheikh v. State of Maharashtra (1996) 1 SCC 722 wherein it was observed that some courts keep the application for 'default bail' pending for some days so that in the meantime a charge sheet is submitted. While such a practice both on the part of prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the Accused for 'default bail' during the interregnum when the statutory period for filing the charge sheet or challan expires and the submission of the charge sheet or challan in court.”

Considering the above, this revision application is allowed. The order 15.11.2018 passed by learned J.M. 1st Class, Saran at Chapra in Daudpur P.S. Case No. 153 of 2018 is set aside. The petitioners, above named, are directed to be released on bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) each with two sureties of like amount each to the satisfaction of learned J.M. 1st Class, Saran at Chapra in Daudpur P.S. Case No. 153 of 2018 with following conditions:-

(1) Bailors should be local having sufficient immovable property within the jurisdiction of the court concerned.

(2) Petitioners shall co-operate in the trial and shall be represented on each and every date fixed by the court.

(3) If the petitioners tampers with the evidence or the witnesses of the case, in that case, prosecution will



be at liberty to move for cancellation of bail of the petitioners.

This revision application stands allowed.

(S. Kumar, J)

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