

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 843 of 2019**

- Durgesh Kumar S/o Bhagwati Prasad, aged about 33 years, resident of Dhaulpur, P.S. Nihalganj Dhaulpur, District Dhaulpur (Rajasthan)

---- Applicant**Versus**

- State of Chhattisgarh Through : The Police Station - Ramanujganj, District Balrampur, Ramanujganj (C.G.)

---- Respondent

For Applicant	:	Shri Vineet Kumar Pandey, Advocate.
For Respondent/State	:	Shri Sameer Sharma, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****22/08/2019**

1. The present revision is directed against the order dated 17.06.2019 passed by the learned Sessions Judge, Balrampur in Bail Application No.147/2019 and order dated 10.06.2019 passed by Chief Judicial Magistrate, Balrampur in remand case No.68/2019 of Special Sessions Case No.01/2019, whereby the learned Chief Judicial Magistrate and learned Sessions Judge rejected the application filed under Section 167 (2) of Cr.P.C. by the applicant.
2. Brief facts of the case are that the accused/applicant was arrested on 07.04.2019 in connection with Crime No.68/2018, the case was registered under Section 420 IPC and Section 10 of The Chhattisgarh Protection of

Depositors Interest Act, 2005 (for short 'the Act 2005') and he was produced on remand from time to time. It was contended that the charge sheet was not filed within 60 days of his remand. First remand date of applicant was 07.04.2019 and he filed application under Section 167(2) Cr.P.C. on 10.06.2019 for grant of bail, but the learned Chief Judicial Magistrate rejected this application on the ground that the cases pertaining to Act, 2005 are triable by District & Sessions Judge, therefore, he has no jurisdiction to decide this application. Thereafter, the applicant moved another application under Section 167(2) of Cr.P.C. before the learned Sessions Judge, Balrampur, which was also rejected by the Sessions Judge on 17.06.2019 holding that as the remand has been allowed by the Chief Judicial Magistrate and as per provisions of Section 167(2) of Cr.P.C., the Sessions Court has no jurisdiction to decide it. Hence, the present revision.

3. Learned counsel for the applicant submits that the impugned order passed by the learned Courts below is not in accordance with law applicable to the facts and circumstances of the case. He further submits that the accused/applicant filed these applications after 60 days of his first remand but both the Courts below rejected the application on the ground of jurisdiction, which is not permissible in the eye of law. He also submits that the

applicant was arrested under the offence on 07.04.2019 and till 05.06.2019 i.e. within 60 days from the date of his arrest, the charge sheet has not been filed, and the learned Courts below ignored the mandatory provisions of the law. Therefore, the applicant may be extended benefit of bail under Section 167(2) of Cr.P.C. In support of his argument, he placed reliance on the order dated **13.03.2019** passed by this High Court in **CRMP Nos. 2551/2018 (Smt. Shalini Verma & Another V. State of C.G.) and 225/2019 (Beby Rao V. State of C.G.)**

4. On the other hand, learned counsel for the State supports the order impugned.
5. Heard learned counsel for the parties and gone through the material available on record.
6. It is not in dispute that the accused/applicant was arrested on 07.04.2019, first remand was granted on the same day, he was sent to judicial remand and the custody was subsequently extended from time to time. The order sheets show that till 10.06.2019 the charge sheet was not filed. The prosecution had again prayed for judicial remand, remand was granted and the case was fixed for final report on 18.06.2019.
7. In this regard, Section 167(2)(a) is reproduced herein below:-

(2) *The magistrate to whom an accused person is forwarded under this section may, whether*

he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :

Provided that -

[(a) the Magistrate may authorise 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, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

8. In the matter of **Rajeev Chaudhary Vs. State (NCT) of Delhi**,¹, the Hon'ble Supreme Court has held that period of detention of the accused person in custody u/S

¹ (2001) 5 SCC 34

167(2)(i)(a) would be ninety days for the offences punishable with death, imprisonment for life and imprisonment for a term “not less than 10 years” and for rest of the offences, it would be of 60 days. Relevant para thereof reads thus:

“6. From the relevant part of the aforesaid sections, it is apparent that pending investigation relating to an offence punishable with imprisonment for a term “not less than 10 year”, the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days. For rest of the offences, the period prescribed is 60 days. Hence in cases where offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days. In this context, the expressions “not less than” would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more.....”

9. In the present case, charge sheet was filed for the offence punishable under Section 420 IPC and Section 10 of Act, 2005, which read thus:-

Section 420 of IPC.

“420. Cheating and dishonestly inducing delivery of property - Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or

sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 10 of The Chhattisgarh Protection of Depositors Intereest Act, 2005

10. *Where any financial establishment fraudulently defaults or any financial establishment acts in a calculated manner with an intention to defraud the depositors; every person including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs or of such financial establishment shall be punished with imprisonment for a term which shall not be less than 3 years but may extend to ten years and with fine which not be less than one lakh rupess but may extend to five lakhs rupees and such financial establishment shall also be liable to fine not less than three lakhs rupees but may extend to ten lakhs rupees.*

10. Reverting to the facts of the case and in view of above provisions of law, the computation of period of detention of accused/applicant in custody under Section 167(2) of Cr.PC. will start from the date of remand and period of detention in custody for both the offences (Section 420 IPC ans Section 10 of Act, 2005) shall be governed by sub-clause (ii) of Section 167(2) (a) of Cr.P.C. and would be of sixty days.

11. The learned Chief Judicial Magistrate ignored the mandatory provisions of these Sections and dismissed the application for want of jurisdiction, which is improper. The Sessions Judge in its order dated 17.06.2019 has rightly pointed out that the accused/applicant was not on remand pursuant to the order of Sessions Court, and therefore, the application under Section 167 (2) of Cr.P.C. is not arguable in his Court.
12. In the result, the impugned order dated 10.06.2019 passed by the learned Chief Judicial Magistrate is liable to be and is hereby quashed since this Court is of the opinion that the accused/applicant is very much entitled to receive benefit of default bail on 10.06.2019 as he has been put more than 60 days in custody pending investigation for the alleged offences.
13. Accordingly, the petition is allowed and the accused/applicant is directed to be released on default bail on 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/-

(Rajani Dubey)
Judge