

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.349 of 2020

Arising Out of PS. Case No.-194 Year-2019 Thana- MASHRAK District- Saran

Ashok Sah @ Ashok Kumar Gupta Son of Late Yogendra Sah Resident of
Village - Dumarshan, Fardahiya, P.S.- Mashrakh, Distt.- Saran at Chhapra.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Alok Kumar Alok, Adv.

For the Respondent/s : Mr. S.N.Singh APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 23-06-2020 The matter has been listed today for consideration
through Video Conferencing.

Learned counsel representing the petitioner and the State
are appearing and making submissions from their residence. The
Court Master and Secretary are also part of this virtual court
proceedings from their homes, all with the aid of audio visual
technology.

The petitioner has preferred this revision application
against the order dated 16.11.2019 passed by the Court of
Additional Sessions Judge- II –cum- Special Excise Court,
Saran at Chapra, in Mashrakh P.S. Case no. 194 of 2019. The
said Court has refused to grant the petitioner the statutory bail
under Section 167 (2) of the Code of Criminal Procedure (for
short the ‘Code’) on the ground that charge sheet has been filed



by the police.

The brief factual background is that the petitioner was taken in custody on 30.7.2019. On 15.11.2019 the petitioner with a view to avail the benefit under Section 167(2) of the Code filed an application seeking grant of statutory bail since he had been in custody for much longer period than 60 days.

The Court below called for a report from the Office. After the petitioner had argued his prayer for bail on 15.11.2019, the charge sheet was filed at 4.45 PM by the police. The report to this extent was submitted by the office. Since charge sheet had already been filed by the police, the Court below refused to grant the petitioner statutory bail under Section 167(2) of the Code.

Mr. Alok Kumar Alok, learned counsel, representing the petitioner submits that an indefeasible right had been created in favour of the petitioner after lapse of 60 days from his arrest when the investigation had not been completed and charge sheet not filed in the Court. It is, in these circumstances, that the petitioner had availed the remedy of statutory appeal by moving the Court by filing a bail application on 15.11.2019. Till such time, the petitioner filed a petition for availing the statutory benefits. The right of the petitioner under Section 167(2) of the



Code of Criminal Procedure is subsisted. Filing of a charge sheet subsequent thereof would not extinguish the petitioner's statutory right. He has cited before this Court a judgment passed in Cr. Rev. No. 276 of 2018 by a Bench of this Court. This Court would consider it useful to reproduce paragraph Nos. 5, 21, 22, 23, 24 and 25 of the said judgment which read as follows:

“5. The petitioner filed an application seeking bail under the aforesaid provision on 30.01.2018, in the first hour. The Court below asked for a report from the Court office whether the charge-sheet has been submitted in the case. The concerned office staff reported that till 1.30 PM on 30.01.2018, no charge-sheet had been filed. Thereafter, the charge-sheet was hurriedly filed after the lunch hours, on the same day, i.e. on 30.01.2018, vide Charge-Sheet No.10 of 2018.

21. While coming to the aforesaid conclusion, the Bench also held that the observations made by the Supreme Court in case of Sadhwi Pragyna Singh Thakur(supra), ran counter to the principles laid down in case of Uday Mohanlal Acharya (supra), which was followed in case of Union of India vs. Hassan Ali Khan & Anr.2011 AIR SCW 6592 and in case of Sayed Mohd. Ahmad Kazmi(supra).

22. Thus from a conspectus of all the decisions referred to above, it is very clear that if the charge-sheet is not filed within the statutory period and an



accused in custody prefers an application before the Court concerned seeking statutory bail in terms of Section 167(2) of the Cr.P.C., indicating his willingness to subscribe to any of the conditions of the bail, he ought to be released on bail forthwith as any procrastination in passing a requisite order by the Court concerned, would only lead to the prosecution taking advantage of the time gap in filing the charge-sheet hurriedly and thereby, frustrating the claim of the accused.

23. In case in hand, the application for bail under Section 167(2) of the Cr.P.C. was filed on the expiry of the 90 days before the submission of the charge-sheet. The report sought for from the court office also indicated the same. Later, the prosecution filing the charge-sheet, would not dilute or extinguish the right of the petitioner/accused to be released on bail under the provisions of Section 167(2) of the Cr.P.C.

24. In the present case, the petitioner had already availed of his right under Section 167(2) of the Cr.P.C. and the filing of the charge-sheet in the later half of the day would be of no consequence, so far as the right and entitlement of the petitioner to be granted statutory bail is concerned.

25. It is also relevant here in this context to point out that Section 91 of the Bihar Prohibition and Excise Act, 2016 provides for the procedure for launching prosecution, which reads as hereunder:

91. Procedure for launching Prosecution.–

(1) As soon as a violation of any of the provisions of the Act is detected, the excise officer or the police



officer, of the rank of assistant sub inspector and above, shall register a case under the Act.

(2) The excise officer or police officer concerned shall then proceed for investigation of the case.

(3) After investigation of the case, he shall file a Report within Sixty-Days from the date of registration of the case.

(4) The Report so filed shall be deemed to be a Police Report for the purposes of Section 173(2) and Section 190 of the Code of Criminal Procedure, 1973 (Act 2 of 1974).

(5) The Collector shall ensure that the aforementioned Report is filed in time and shall also monitor effective prosecution of the cases before the Courts.

(6) The Superintendent of Police shall closely monitor the status of cases filed by the police officers under this Act and shall submit period reports to the Excise commissioner and the Collector.

From the perusal of Sub-Clause (3) of Section 91 of the Act, it becomes clear that whatever be the sentence prescribed for any one of the offences under the Act, the investigation has to be completed within 60 days from the date of the registration of the case. Sub-Clause(4) of Section 91 of the Act further specifies that the report so filed after investigation shall be deemed to be a police report for the purposes of Section 173(2) and Section 190 of the Cr.P.C. In that view of the matter, the right accrued to the petitioner long before, but



since no application was filed by him on the presumption that 90 days is the requisite time for filing charge-sheet, the petitioner would be deemed to have availed of his right only on filing of his petition.”

The order passed in Cr. Rev. no. 276 of 2018 has taken into consideration the various judgments of the Apex Court tracing the various developments in this regards.

In the instant case also, the petitioner has filed petition to avail the benefit of statutory bail in terms of Section 167(2) of the Cr.P.C. indicating his willingness to fulfill the condition of bail. When at the time he had filed his application, and when it was heard on 15.11.2019, till that time no charge sheet had been filed. It is only later, on 15.11.2019 i.e. at 4.45 PM that police has filed the charge sheet. Such subsequent filing of charge sheet would not dilute or extinguish the petitioner's right to be released on bail under the provisions of Section 167(2) Cr. P.C. Till such time, the petitioner had presented his application and the same was argued in Court. The petitioner had a right to be released on statutory bail forthwith. The fact that the Court has called for a report could not have been utilized by the prosecution for taking advantage of the time gap to hurriedly file a charge sheet, so as to frustrate the petitioner's



claim.

On a consideration of the submissions, the relevant dates of surrender and petition for availing the statutory benefits, this Court, having regard to the legal position arising out of the judgment passed in Cr. Rev. no. 276 of 2018, would allow the instant revision application.

In the facts and circumstances of the case, the order dated 16.11.2019 passed by the Court of Additional Sessions Judge -II -cum- Special Excise Court, Saran at Chapra, in Mashrakh P.S. Case no. 194 of 2019 is hereby set aside.

The petitioner is directed to be released on statutory bail, but subject to the terms and conditions of bail to be decided by the learned court below on receipt/production of a copy the present order.

The application stands allowed.

(Madhuresh Prasad, J)

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