

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 43 of 2020**

Raghvendra Narvariya, S/o Gouricharan, Aged about 43 years, R/o House No. 18 Balbant Nagar, Thatipur, P.S. Thatipur, District Gwalior, Madhya Pradesh.

---Applicant (in jail)

Versus

State of Chhattisgarh, through Police Station Tumdibod, Durg, District Rajnandgaon, Chhattisgarh.

--- Respondent/State

For Applicant	:	Mr. Tarun Dansena, Advocate
For State	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

17/01/2020

1. Applicant herein was arrested for offence punishable under Section 420, 409, 34 of the IPC read with Section 10 of Chhattisgarh Nikshepakon Ke Hito Ka Parichalan Adhiniyam, 2005 and he was remanded on 08/03/2019 and the period of 90 days for submitting the charge-sheet expired on 06/06/2019, but the applicant did not move any application claiming default bail under Section 167 (2) of the Cr.P.C. and ultimately, charge-sheet was filed on 04/07/2019 and thereafter, he

moved his application under Section 167(2) of the Cr.P.C. for releasing him on default bail on 06/08/2019 which was rejected by the trial Magistrate by order dated 07/08/2019 holding that since the charge-sheet has already been filed and the applicant did not file his application on time, therefore, he cannot be extended the privilege of default bail under Section 167 (2) of the Cr.P.C. against which the applicant preferred a revision, but learned revisional Court agreed with the finding of the trial Magistrate and dismissed his revision vide order impugned dated 19/09/2019 assailing which this petition under Section 482 of the Cr.P.C. has been preferred by him.

2. Mr. Tarun Dansena, learned counsel for the applicant would submit that both the Courts below committed illegality in not granting his application and thereby, not extending the privilege of default bail to the applicant under Section 167 (2) of the Cr.P.C. as admittedly, the charge-sheet was filed on 04/07/2019 i.e. after the expiry of 90 days from the date of first remand i.e. 08/03/2019, therefore, he has indefeasible right to be released on default bail

accruing in his favour which cannot be extinguished by filing charge-sheet subsequently on 04/07/2019 merely because the application for default bail was filed by the applicant with some delay as he was not informed about his right to be released on default bail well within time, as such, the impugned order deserves to be set aside and the applicant be granted default bail under Section 167 (2) of the Cr.P.C.

3. Learned State counsel would oppose and submit that once charge-sheet is filed the indefeasible right of default bail accrued in favour of the applicant/accused gets extinguished and he is not entitled to be released on default bail under Section 167(2) of the Cr.P.C. and he should apply for regular bail, if any.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

5. The question as to whether the applicant/accused would be entitled for default bail if the charge-sheet is filed after expiry of 90 days from the date of first remand and the application under Section 167 (2) of the Cr.P.C. is filed

thereafter, is no longer res integra as it has been decided by the Supreme Court in various decisions including the decision rendered by the Constitution Bench in Sanjay Dutt v. State¹ which has further been followed in the recent decision of the Supreme Court in Rakesh Kumar Paul v. State of Assam² wherein it has been held that the indefeasible right accruing to the accused is enforceable only prior to the filing of the charge-sheet and it does not survive or remain enforceable thereafter, if already not availed of. Their Lordships, while relying upon the decision of the Constitution Bench in Sanjay Dutt (supra), have held as under in paragraphs 36, 38 and 39 of the report :-

"36. While dealing with this common stance, the Constitution Bench in *Sanjay Dutt* made it clear in paragraph 48 of the Report that the indefeasible right accruing to the accused is enforceable only prior to the filing of the charge sheet and it does not survive or remain enforceable thereafter, if already not availed of. In other words, the Constitution Bench took the view that the indefeasible right of "default bail" continues till the charge sheet or challan is filed and it gets extinguished thereafter. This is clear from the conclusion stated by the Constitution Bench in paragraph 53(2)(b) of the Report. This reads as follows: (SCC p. 444)

1 (1994) 5 SCC 410

2 (2017) 15 SCC 67

"53.(2)(b) The "indefeasible right" of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with [Section 167\(2\)](#) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in *Hitendra Vishnu Thakur*³ is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage."

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.

3 (1994) 4 SCC 602

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 *Mohd. Iqbal Madar Sheikh v. State of Maharashtra*⁴ 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."

6. In view of the aforesaid legal position, it is quite vivid that the period of 90 days from the date of first remand expired on 06/06/2019, but still the applicant/accused had not filed application for default bail under Section 167(2) of the Cr.P.C. and ultimately, the charge-sheet was filed on 04/07/2019 and thereafter with some delay, on 06/08/2019, he moved his application under Section 167 (2) of the Cr.P.C. for releasing him on default bail which was rightly rejected by the trial Magistrate as the indefeasible right accruing to the petitioner had already extinguished on 04/07/2019 i.e. the date

4 (1996) 1 SCC 722

when charge-sheet was submitted by the Police. In my considered opinion, learned trial Magistrate has rightly not extended the privilege of default bail under Section 167(2) of the Cr.P.C. to the applicant after filing of the charge-sheet which has rightly been affirmed by the revisional Court.

7. Accordingly, this petition under Section 482 of the Cr.P.C. stands dismissed. No cost(s).

8. Before parting with the record, it is pertinent to mention here that the trial Court has failed to perform his duty and responsibility to apprise the accused of his right to be released on 'default bail' as per judgment and direction of the Supreme Court in various other judgments including Rakesh Kumar Paul (supra) wherein it has been held as under :-

"44. Strong words indeed. That being so we are of the clear opinion that adapting this principle, it would equally be the duty and responsibility of a court on coming to know that the accused person before it is entitled to "default bail", to 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 this Court as is evidenced by the decisions mentioned above, and also adverted to in *Nirala Yadav*.⁵ "

⁵ Union of India v. Nirala Yadav, (2014) 9 SCC 457

9. I hope and trust that criminal Court dealing with criminal cases coming to know that accused person before it is entitled to "default bail" under Section 167(2) of the Cr.P.C. would apprise him or her of the indefeasible right as directed by the Supreme Court in Rakesh Kumar Paul (supra) without fail.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet