

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 702 of 2020

- Yamuna Gupta, W/o Shri Ravi Gupta, Aged About 25 Years, Caste Teli, R/o Village and Post Basna, P. S. and Tehsil Basna, District-Mahasamund, Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh Through Station House Officer Police Station Basna, District-Mahasamund, Chhattisgarh.

---- Respondent

For Applicant : Mr. Surfaraj Khan, Advocate.
For Respondent/State : Mr. Gurudev I. Sharan, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

05/02/2021

Heard.

1. This revision petition has been brought being aggrieved by the order dated 21.10.2020 passed by the Court of learned Additional Sessions Judge, Saraipali, Chhattisgarh, rejecting the application of the applicant filed under Section 167(2) of CrPC.
2. It is submitted by the counsel for applicant that FIR that was lodged on 9.7.2020 against the applicant was registered for commission of offence under Section 384 of IPC, which is punishable with maximum sentence of 3 years. The applicant was arrested on 21.8.2020 and she was sent to judicial remand on 22.8.2020. On 20.10.2020, the applicant had completed 60 days in custody. On that basis, she filed an application under Section 167(2) of CrPC on 21.10.2020. This application has been decided by the impugned order, in which, it is held that additional offences under Sections 4 & 6 POCSO Act have already been registered in which the minimum sentence to be imposed is not less than 10 years, therefore, the right to get default bail has not accrued in favour of the applicant. Hence, the application was rejected.

3. It is further submitted by the counsel for applicant that in case of Nadeem Ahmed v. State of Karnataka, reported in 2004(0) Cr.L.J. 4798, in which, it was held that the offences being registered under Section 306 IPC, which was later on converted into Section 304B of IPC and as the minimum sentence prescribed in Section 304B is of 07 years, the qualifying period for default bail is 60 days. Hence, the applicant has entitlement to be released on default bail. Therefore, the impugned order be set aside and the applicant be directed to be released on bail.
4. Learned State counsel opposes the petition and submissions made in this respect. It is submitted that the applicant has separately filed application under Section 439 of CrPC, which has not been mentioned in this revision petition and the submissions. Soon after the registration of offences under Section 384 of IPC, other offences under the POCSO Act were also included for investigation against the applicant. The charge-sheet has also been filed. Therefore, the applicant had no entitlement for grant of bail on completion of 60 days in detention. Prayer has been made to dismiss the revision petition.

Reliance has been placed on the judgment of Supreme Court in the case of Rakesh Kumar Paul v. State of Assam, reported in AIR 2017 SC 3948.

5. Considered on the submissions. There is no denial that on the date when the application under Section 167(2) CrPC was filed before the Court of Additional Sessions Judge, the offences under Sections 4 & 6 of the POCSO Act were already registered. The proviso to Section 167(2)(i) CrPC is specific that a Magistrate shall authorize the detention upto 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years. The case of this applicant falls under the 3rd category, as Section 6 of POCSO Act provides for imposition of rigorous imprisonment for a term which shall not be less than 10 years and may extend upto imprisonment for life. Further, the proviso under Section 167(2) clearly mentions that the case should be under investigation and it is shown from the facts of the case that on the date of filing of application under Section 167(2) CrPC, the investigation

under Sections 4 & 6 of POCSO Act was also continuing in the case registered against this applicant. Therefore, I am of this view that this revision petition is without any substance, which is liable to be dismissed and it is hereby dismissed.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha