

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No.724 of 2020

- Rishikesh @ Rikesh Paikra, S/o Late Balam Singh Paikra, Aged About 25 Years, Occupation Agriculturist, Residence Of Village Parvatipur Police Station and Tahsil Lundra, District- Surguja, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Lundra, District- Surguja, Chhattisgarh

---- Non-applicant

For Applicant : Mr. Sunil Tripathi, Advocate.

For State/Non-applicant : Mr. Gurudev I. Sharan, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

12-01-2021

Heard.

1. This Criminal Revision has been brought praying to set aside the impugned order dated 12-10-2020, passed by the Special Judge, N.D.P.S. Act, Ambikapur, District- Surguja, C.G., in which order dated 15-04-2019 granting bail to the applicant under Section 167(2) of Cr.P.C. has been canceled by the Special Court.
2. It is submitted by the learned counsel for the applicant that the right of default bail of the applicant under Section 167(2) of Cr.P.C. is indefeasible right. The applicant could not arrange and furnish bail bonds soon after the order was passed and, therefore, he could not be released on bail. The impugned order has been passed at the stage when the applicant was ready to furnish bail bonds as ordered in order dated 15-04-2019.
3. Reliance has been placed on the judgment of Hon'ble the Supreme

Court in the case of **Bikramjit Singh Vs. State of Punjab**, (2020) 10 SCC 616 and the order of Hon'ble the Supreme Court in the case of **Kamlesh Chaudhary Vs. The State of Rajasthan** in Criminal Appeal no.15 of 2021 decided on 05-01-2021.

4. Learned State counsel opposes the submissions and submits that the provision under the proviso to Section 167(2) of Cr.P.C. is clear that on completion of the prescribed period of detention in that provision, the accused is prepared and he does furnish bail, then he shall be released on default bail. In this case, the applicant was ordered to be released on bail on 15-04-2019, but he did not furnish the bail and it was after passing of about one and a half years, he has come forward to furnish bail bonds in accordance with the order dated 15-04-2019. In the meanwhile, the trial has made progress and it is only Investigating Officer, who is remaining to be examined, therefore, the trial is going to be concluded, hence, the order of cancellation of bail passed by the Special Court N.D.P.S. is not erroneous in any manner.

Relying on the judgment of this Court in **Gyan Chandra Agrawal Vs. Central Bureau of Investigation**, 2007 CriLJ 2851, it is submitted that the bail under Section 167(2) of Cr.P.C. is default bail, therefore, after the default has been cured, the indefeasible right of the accused stands extinguished, hence, on this basis, the proposal for furnishing bail bonds after lapse of long period should not be and need not to be entertained. Hence, it is prayed that the revision petition may be dismissed.

5. Heard learned counsel for the parties and perused the documents.
6. Section 167 (2) of the Code of Criminal Procedure, 1973 reads as under:-

(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;]

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.
Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case

may be.”

7. In the case of **Bikramjit Singh Vs. State of Punjab** (supra) delivered by Hon'ble the Supreme Court after discussions on all the case laws relating to infeasible right of default bail has been discussed in detail. Reference was made to the judgment of *Aslam Babalal Desai v. State of Maharashtra*, (1992) 4 SCC 272 in which Hon'ble the Supreme Court held that the right to bail under Section 167(2) proviso (a) thereto is absolute. It is a legislative command and not court's discretion. In the case of *Sanjay Dutt v. State*, (1994) 5 SCC 410, it was held by Hon'ble the Supreme Court that infeasible right of accused is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed, because Section 167 CrPC ceases to apply. Further, in case of *Uday Mohanlal Acharya v. State of Maharashtra*, (2001) 5 SCC 453 the expression “if already not availed of” in Sanjay Dutt case (supra) has been discussed and held that if after accrual of infeasible right of bail and before the filing of charge sheet the application for grant of default bail has been filed and in the meanwhile subsequent to that the charge sheet is filed, then the right of the accused cannot be frustrated for that reason.

Justice B.N. Agrawal had made a dissenting note, that the expression availed of does not mean mere filing of the application for bail expressing thereunder willingness to furnish bail bond, but the stage for actual furnishing of bail bond must reach.

8. In case of **Rakesh Kumar Paul v. State of Assam**, 2018 1 SCC (Cri) 401, Hon'ble the Supreme Court has made observations in para 37

which is 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.”

9. It has been further held in **Bikramjit Singh Vs. State of Punjab** (supra) that after release of accused on default bail there is no prohibition in law to prevent the arrest or re-arrest of the accused.
10. In the case of **Kamlesh Chaudhary v. The State of Rajasthan**, vide order dated 05-01-2021 passed in Criminal Appeal No. 15 of 2021 (arising out of SLP (Crl.) No.5715 of 2020) Hon'ble the Supreme Court has held that bail granted under Section 167(2) of the Cr.P.C. can be cancelled on other grounds available in law to the prosecution.
11. This Court has discussed the case of **Uday Mohanlal Acharya v. State of Maharashtra** (supra) and the judgment in the case of **Aslam Babalal Desai v. State of Maharashtra** (supra) while deciding the similar matter of **Gyan Chandra Agrawal Vs. Central Bureau of Investigation** (supra) and it was held in para 10 of the said judgment that:-

“10. The Apex Court summarized that an order for release on bail made under the proviso to Section 167(2) is not defeated by lapse of time, the filing of the charge-sheet or by remand to custody under Section 309(2). The order for release on bail may however be cancelled under Section

437(5) or Section 439(2), Cr.PC. Generally, the grounds for cancellation of bail, broadly, are interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in 60 days, after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail, cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody and that such release on bail under the proviso to Section 167(2) does not come to an end with the passage of time on the filing of the charge-sheet.”

12. The words in the clause (ii) of proviso 2(a) of Section 167 of the Cr.P.C. that accused shall be released on bail if he is prepared to and does furnish bail bonds specifically dealt with in the case of **Gyan Chandra Agrawal Vs. Central Bureau of Investigation** wherein this Court had made reference to the judgment in the case of **Uday Mohanlal Acharya v. State of Maharashtra** (supra) and abstracted that judgment in para 12, clause (v) of which is as follows:-

“(v) If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation-I and the proviso to Sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in Para (a) will not be unauthorized, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.”

13. The explanation -I to Section 167 of the Cr.P.C. provides that accused

can be kept in detention in case he does not furnish bail bond as per orders of the Magistrate under Section 167(2) of the Cr.P.C. Therefore, continued custody of the applicant in this case for about more than 1 and ½ years for the reason that he did not furnish bail promptly after passing of the order for default bail gives rise to this situation that his indefeasible right has extinguished and the same is the conclusion drawn by this Court in Gyan Chandra Agrawal Vs. Central Bureau of Investigation (supra) case. Although learned trial Court has passed the order cancelling the bail granted to the applicant which appears to be an order in different context. According to the conclusion drawn in this case, the applicant's right to be released on bail by order dated 15-04-2019 had extinguished on the basis of the reasons mentioned hereinabove. Hence, this revision petition appears to be without any merit which is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)

Judge