

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No. 8442 of 2021

ORDER:

This Criminal Petition under Sections 437 and 439 Cr.P.C. is filed seeking regular bail to petitioner – Accused No. 1 in connection with Crime No. 187 of 2021 of Choutuppal Police Station, registered for the offences punishable under Sections 366, 344, 376(2)(n), 506 read with Section 109 IPC.

2. The case of prosecution is that on 04.05.2021, at 18.00 hours, complainant Sri Ganji Srinath lodged a telugu-written complaint, wherein it is stated that his sister viz. Ganji Swathi, aged 19 years was forcibly taken away by his villagers Nakka Naveen and Rupani Vamshi on Passion Plus bike bearing Registration No. AP 24 AY 3371.

3. Learned counsel for petitioner Sri B. Govardhan submits that petitioner was arrested and remanded to judicial custody on 14.09.2021 and since then, he has been languishing in jail. He submits that as police failed to file charge-sheet within the statutory period, petitioner is entitled for default bail.

4. Learned Assistant Public Prosecutor also does not dispute the fact that charge-sheet is not filed yet.

5. Section 167 (2) Cr.P.C reads thus:

“(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, authorize 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) ¹ the Magistrate may authorize 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 authorize 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 authorize detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police. ¹ 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;]. ²

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorizing detention."

6. Further, it is apt to note that the Hon'ble Apex Court in **Uday Mohanlal Acharya v. State of Maharashtra**¹ observed that personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorize detention of accused in custody up to a maximum period, as indicated in the proviso to sub Section (2) of Section 167 of Cr.P.C, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, it could be violative of Article 21 of

¹ (2001)5 SCC 453

the Constitution of India. The Hon'ble Apex Court in its recent judgment in **S.Kasi v. State**² observed that the indefeasible right to default bail under Section 167 (2) Cr.P.C. is an integral part of the right to personal liberty under Article 21 of the Constitution, and the said right to bail cannot be suspended even during pandemic as is prevailing now. It was emphasized that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge sheet. Additionally, it is well- settled that in case of any ambiguity in construction of a penal statute, the Courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedure providing for the curtailment of the liberty of the accused.

7. In view of the foregoing reasons, without going into the merits of the matter, as prosecution failed to file charge sheet within the statutory period of sixty days, as contemplated under Section 167 (2) of Cr.P.C., and petitioner is languishing in jail from the last 82 days, this Court is of the opinion that he is entitled to statutory bail.

8. Accordingly, this Criminal Petition is allowed. Petitioner – Accused No. 1 shall be enlarged on bail on his executing a personal bond for Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the V Additional District Judge at Bhongir. However,

² 2020 SCC OnLine SC 529

petitioner – Accused No. 1 shall appear before the Station House Officer, P.S. Choutuppal on every Sunday between 10.00 A.M. and 12.00 P.M. till the charge sheet is filed.

LALITHA KANNEGANTI, J

07th December 2021

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