

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.348 of 2022

Arising Out of PS. Case No.-172 Year-2019 Thana- MANJHI District- Saran

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Bajrangi Singh @ Sandeep Singh @ Bajrangi Son Of Raju Singh Resident Of
Rawal Tola, P.S.-Chapra Town, District-Saran.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr. Harish Kumar, Advocate

For the Respondent/s : Mr. Rajendra Prasad Nat, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 22-08-2022

Heard learned counsel for the petitioner and learned
counsel for the State.

2. This revision application has been preferred for
setting aside the order dated 23.03.2022 passed by learned 2nd
Exclusive Special Excise Court, Saran at Chapra whereby and
whereunder the learned court has been pleased to reject the prayer
for 'default' bail of the petitioner under Section 167(2) Cr.P.C. in
connection with Manjhi P.S. Case No. 172 of 2019 registered
under Sections 30/30(a)/38(i)(ii) of Bihar Prohibition and Excise
Act (hereinafter referred to as 'the Act of 2016').

3. Learned counsel for the petitioner submits that as per
the prosecution story, in course of checking of the vehicle in
question a total 1664.73 liters of foreign liquors were recovered
from the truck. The apprehended accused disclosed their names as



well as the names of the other accused persons. This petitioner has been named as one of those persons to whom the supply of liquor was to be made.

4. Learned counsel submits that it is a case of false implication of the petitioner on the basis of the alleged statement of the truck driver. It is his submission that in similar manner, the petitioner has been made accused in about 14 cases.

5. Learned counsel submits that so far as this revision application is concerned, it has been filed assailing the impugned order by which the learned court below has refused to enlarge the petitioner on bail giving benefit of the provision of Section 167(2) Cr.P.C. It is submitted that the petitioner was taken on remand in the present case and had been sent to judicial custody on 21.01.2022. The copy of the order dated 21.01.2022 passed by the learned court below has been enclosed with the petition as part of the impugned order.

6. Learned counsel submits that under the Act of 2016 read with proviso (a)(ii) of Sub-Section (2) of Section 167 Cr.P.C., the investigating agency was required to submit a chargesheet within a period of 60 days from the date on which the petitioner has gone in judicial custody. It is submitted that the 60 days'



period in this case expired on 22.03.2022 but no chargesheet was filed within the given statutory period.

7. Learned counsel further submits that the petitioner filed an application under Section 167(2) Cr.P.C. availing his right to get the privilege of default bail on 23.03.2022. Learned counsel has drawn the attention of this Court towards the endorsement made by the office of the learned court below on the margin of the ordersheet wherein on 23.03.2022 at about 02:30 P.M. the office reported to the learned Presiding Officer that no chargesheet has been received in this case. Despite this, the learned court below did not pass the order giving benefit of statutory bail to the petitioner.

8. It is submitted that the application filed on behalf of the petitioner was kept pending and at about 04:15 P.M. another report was called for and this time, the office reported that chargesheet has been filed at 04:15 P.M. Learned counsel submits that it is evident from the endorsement made on the ordersheet of the learned court below that no chargesheet was available on the records when the petitioner moved his application under Section 167(2) Cr.P.C. The learned Presiding Officer had no reason to keep the application pending. It appears that the I.O. of the case was



somehow informed to hurriedly file the chargesheet and he did so towards the end of the working hour of the Court at 04:15 P.M.

9. Learned counsel for the petitioner submits that by virtue of Section 76(1) of the Act of 2016 all offences under this Act shall be cognizable and non-bailable and provision of the Code of Criminal Procedure 1973 shall apply. Learned counsel further submits that Sub-Section (2) of Section 76 of the Act of 2016 states that notwithstanding anything mentioned in sub-section (1) , nothing in Section 360 of Code of Criminal Procedure, 1973, Section 438 Cr.P.C. and Probation of Offenders Act shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under the said Act. It is thus, his submission that so far as 167(2) Cr.P.C. is concerned, it is applicable.

10. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **M. Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence** reported in **(2021) 2 SCC 485** to submit that the Hon'ble Supreme Court has once again taken similar view on the line of the judgment of the Hon'ble Apex Court in the case of **Uday Mohanlal Acharya vs. State of Maharashtra** reported in **(2021)**



5 SCC 453. It is submitted that the impugned order is wholly illegal, arbitrary and bad in law.

11. On the other hand, learned APP for the State has opposed this application. It is submitted that because the chargesheet was filed on 23.03.2022 itself even though belatedly at 04:15 P.M., the petitioner lost his right to seek release under Section 167(2) Cr.P.C.

12. This Court has heard learned counsel for the parties and perused the records.

13. It is not in dispute that in this case, the Investigating Agency was required to file a chargesheet by 22.03.2022. It is also not in dispute that on 23.03.2022 an application under Section 167(2) Cr.P.C. was moved on behalf of the petitioner and the learned court below called for a report from the office as regards filing of the chargesheet. At about 02:30 P.M., the office reported that no chargesheet has been filed. At this stage, the learned court below had no reason to keep the application pending and in all fairness, equity and justice an appropriate order was required to be passed but it was not done. The court awaited for chargesheet and finally at 04:15 P.M. which was towards the end of the court hour, a chargesheet was filed. The court simply took note of it that a



chargesheet has been filed and rejected the application under Section 167(2) Cr.P.C.

14. In the opinion of this Court, the impugned order is wholly illegal and in the teeth of the statutory provision contained under Section 167(2) Cr.P.C. as also contrary to the law laid down by the Hon'ble Supreme Court in the case of **Uday Mohanlal Acharya (Supra)** and the catena of decisions which have been recently discussed by the Hon'ble Supreme Court in the case of **M. Ravindran (Supra)**.

Section 167(2) Cr.P.C. 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-

¹[(a) the Magistrate may authorise the detention of the accused person, otherwise than in 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

1. Subs. By Act 45 of 1978, sec. 13(a), for paragraph (a) (w.e.f. 18-12-1978).



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;]

¹[(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 extent 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.

²[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.]

³[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.]

⁴[provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.]

⁵[(2A) Notwithstanding anything contained in sub-

1. Subs. by Act 5 of 2009, sec. 14(a)(i), for clause (b) (w.e.f. 31-12-2009). Clause (b), before substitution, stood as under:

“(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him.”

2. Ins. by Act 45 of 1978, sec. 13(b) (w.e.f. 18-12-1978).

3. Subs. by Act 5 of 2009, sec. 14(a)(ii), for Explanation II (w.e.f. 31-12-2009). Earlier Explanation was numbered as Explanation II by Act 45 of 1978, sec. 13(b) (w.e.f. 18-12-1978). Explanation II, before substitution by Act 5 of 2009, stood as under:

“*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 authorising detention.”

4. Ins. by Act 5 of 2009, sec. 14(b) (w.e.f. 31-12-2009).

5. Ins. by Act 45 of 1978, sec. 13(c) (w.e.f. 18-12-1978).



section (1) or sub- section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where no order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub- section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.]

15. The Hon'ble Supreme Court in the case of **Uday Mohanlal Acharya (Supra)** laid down the principles in paragraph '13' of its judgment which have been taken note of in the recent judgment of **M. Ravindran (Supra)** in paragraph '11'. This Court would reproduce paragraph '11' of the judgment from **M. Ravindran (Supra)** as under:-



“11. Upon perusal of the relevant jurisprudence, we are unable to agree with Mr Lekhi's submissions. Rather, we find that both points (a) and (b) mentioned supra have been answered by the majority opinion of a three-Judge Bench of this Court in *Uday Mohanlal Acharya*² by observing thus: (SCC pp. 469-70 & 472-73, para 13)

“13. ... It is also further clear that that indefeasible right does not survive or remain enforceable on the challan being filed, if already not availed of, as has been held by the Constitution Bench in *Sanjay Dutt case*⁴. The crucial question that arises for consideration, therefore, is what is the true meaning of the expression “if already not availed of”? Does it mean that an accused files an application for bail and offers his willingness for being released on bail or does it mean that a bail order must be passed, the accused must furnish the bail and get him released on bail? *In our considered opinion it would be more in consonance with the legislative mandate to hold that an accused must be held to have availed of his indefeasible right, the moment he files an application for being released on bail and offers to abide by the terms and conditions of bail.* To interpret the expression “availed of” to mean actually being released on bail after furnishing the necessary bail required would cause great injustice to the accused and would defeat the very purpose of the proviso to Section 167(2) of the Criminal Procedure Code and further would make an illegal custody to be legal, inasmuch as after the expiry of the stipulated period the Magistrate had no further jurisdiction to remand and such custody of the accused is without any valid order of remand. That apart, when an accused files an application for bail indicating his right to be released as no challan had been filed within the specified period, there is no discretion left in the Magistrate and

4. [*Sanjay Dutt v. State*, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433]

2 [*Uday Mohanlal Acharya v. State of Maharashtra*, (2001) 5 SCC 453 : 2001 SCC (Cri) 760]



the only thing he is required to find out is whether the specified period under the statute has elapsed or not, and whether a challan has been filed or not. *If the expression “availed of” is interpreted to mean that the accused must factually be released on bail, then in a given case where the Magistrate illegally refuses to pass an order notwithstanding the maximum period stipulated in Section 167 had expired, and yet no challan had been filed then the accused could only move to the higher forum and while the matter remains pending in the higher forum for consideration, if the prosecution files a charge-sheet then also the so-called right accruing to the accused because of inaction on the part of the investigating agency would get frustrated.* Since the legislature has given its mandate it would be the bounden duty of the court to enforce the same and it would not be in the interest of justice to negate the same by interpreting the expression “if not availed of” in a manner which is capable of being abused by the prosecution. ... There is no provision in the Criminal Procedure Code authorising detention of an accused in custody after the expiry of the period indicated in proviso to sub-section (2) of Section 167 excepting the contingency indicated in Explanation I, namely, if the accused does not furnish the bail. *It is in this sense it can be stated that if after expiry of the period, an application for being released on bail is filed, and the accused offers to furnish the bail and thereby avail of his indefeasible right and then an order of bail is passed on certain terms and conditions but the accused fails to furnish the bail, and at that point of time a challan is filed, then possibly it can be said that the right of the accused stood extinguished. But so long as the accused files an application and indicates in the application to offer bail on being released by appropriate orders of the court then the right of the accused on being released on bail cannot be frustrated on the off chance of the*



Magistrate not being available and the matter not being moved, or that the Magistrate erroneously refuses to pass an order and the matter is moved to the higher forum and a challan is filed in interregnum. This is the only way how a balance can be struck between the so-called infeasible right of the accused on failure on the part of the prosecution to file a challan within the specified period and the interest of the society, at large, in lawfully preventing an accused from being released on bail on account of inaction on the part of the prosecuting agency.”

(emphasis supplied)

16. The ratio of the judgments of the Hon’ble Apex Court is that the moment an accused files the application seeking statutory bail and offers to abide by the terms and conditions of bail, he would be deemed to have availed the infeasible right to default bail under Section 167(2) Cr.P.C. which is an integral part of the Right to Personal Liberty under Article 21 of the Constitution of India.

17. In this case, the petitioner had availed his right on 23.03.2022 well before 02:30 P.M. and at that time, there was no chargesheet on the records, thus, the petitioner was entitled to get the benefit under Section 167(2) Cr.P.C. Subsequent filing of the chargesheet at 04:15 P.M. would not take away the right of the accused under Section 167(2) Cr.P.C. which is an integral part of Right to Life under Article 21 of the Constitution of India.



18. In result, the impugned order dated 23.03.2022 passed by learned 2nd Exclusive Special Excise Court, Saran at Chapra is set aside and the application under Section 167(2) Cr.P.C. is allowed.

19. The petitioner above named shall be released on bail in connection with Manjhi P.S. Case No. 172 of 2019 on furnishing bail bonds to the satisfaction of learned court below.

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	24.08.2022
Transmission Date	24.08.2022

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

