

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.340 of 2022

Satyam Kumar Sharma

....

Petitioner

Mr. D. R.Bhokta, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr.P.K.Maharaj,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER
20.7.2022.

Order No.

06.

1. This matter is taken up through hybrid mode.
2. Heard Mr. D.R.Bhokta, learned counsel for the Petitioner and Mr. P.K.Maharaj learned Addl. Standing Counsel for the State.
3. The Petitioner is in custody since 15th September, 2020 in connection with Umerkote P.S. Case No.212/2020 corresponding to T.R. Case No.32/2020 pending in the court of learned District and Sessions Judge, Umerkote, Nabarangpur for the alleged commission of the offences under Sections 20 (b)(ii)(C)/29 of the N.D.P.S. Act.

4. It is alleged that the Petitioner in association with seven other persons was transporting contraband ganja weighing 105 kgs 676 grams when all of them were apprehended by the Police. The F.I.R. was registered on 15th September, 2020 and the Petitioner was arrested on the same day. He was also remanded on the same day. According to the Petitioner the charge sheet was not submitted within the stipulated period of 180 days, but was submitted on 181st day without any permission for extension being obtained from the Court. The Petitioner therefore moved an application seeking default bail, but learned court below rejected the same by order dated 18th November, 2021 holding that the charge sheet was required to be submitted on or before 13th March, 2021 and the same was submitted on 15th March, 2021 as the Court/Office was closed for four days i.e. from 11th to 14th of March, 2021. Thus, referring to Section 10 of the General Clauses Act, 1987, learned Special Judge held that the charge sheet must be deemed to have been submitted in time and, therefore, the Petitioner is not entitled to default bail.

5. It is argued by Mr. Bhokta that the learned court below firstly committed error in calculating the period of investigation i.e. of

180 days inasmuch as after excluding the date of first remand (15th September, 2020), 180 days expired on 14th March, 2021 and not on 13th March, 2021. Secondly, the Petitioner was not produced before the Court on the 181st day i.e. on 15th March, 2021 nor his right to be released on default bail informed to him. According to Mr. Bhokta, this violates the law laid down by the Apex Court in the case of *Uday Mohanlal Acharya v. State of Maharashtra*, reported in AIR 2001 SC 1910: (2001) 5 SCC 453 and a series of decisions rendered thereafter, as also of this Court in the case *Lambodar Bag v. State of Odisha*, reported in 2018 (71) OCR 31 and in the case of **Rajendra Kakodiya @ Rajendra Kokodia and another v. State of Odisha**; reported in (2021) 84 OCR-472. Therefore, the valuable right of the Petitioner for being released on default bail was illegally denied.

6. Mr. P.K.Maharaj fairly submits that the 180 day period expired on 14th March, 2021 and by such date charge sheet had not been submitted but was submitted on the next day i.e. on the 181st day. However, according Mr. Maharaj the Petitioner not having preferred any application seeking default bail on 15th March, 2021 must be deemed to have forfeited his indefeasible

right of being released on default bail. The application for default bail having been filed much after submission of the charge sheet, learned court below rightly rejected the same.

7. To appreciate the rival contentions, it would be proper to first calculate the relevant period in a tabular form as follows:-

1	15.9.2020	FIR was lodged and Petitioner was arrested.
2		September – 15 days(excluding the date of remand) October – 31 days November – 30 days December – 31 days January – 31 days February – 28 days <u>March -14 – 14 days</u> Total – 180 days Charge sheet submitted on 15th March, 2021, i.e. on 181st day.

8. Thus, it is seen that the 180 day period expired on 14th March, 2021 and by such time the charge sheet had admittedly not been submitted. On the next day i.e. on the 181st day, an indefeasible right to be released on default bail accrued in favour of the Petitioner in view of the provisions of Section 36-A(4) of N.D.P.S. Act read with Section 167(2) of Cr.P.C. as also the law laid down by the apex Court and this Court in the cases referred supra. While it is true that the accused did not file any petition seeking default bail on 15th March, 2021, yet it is also borne out from the case record that on that day the Petitioner was not produced before the court. As has already been held by the apex court and this Court, the accused is required to be produced before the Special Judge if charge sheet has not been submitted within the stipulated period and his indefeasible right to be released on bail needs to be informed to him. If the accused does not furnish bail, then only he could be said to have forfeited his indefeasible right. However, merely because charge sheet was submitted after expiry of the stipulated period shall not nullify the indefeasible right of the accused for default bail more so when he is not produced before the Special Judge. In order to

appreciate the contentions better, this Court had called for the copy of the entire order sheet of the case record. The above facts are clearly evident from a bare perusal of the same. It is further seen that the charge sheet has been signed by the I.O. on 12th March, 2021, but the learned Special Judge, while endorsing his signature on the 1st page of the charge sheet has mentioned the date as 15th March, 2021. In the order of rejection, the learned court below has held that the Court/Office was closed for four days i.e. from 11th to 14th of March, 2021 and after reopening the charge sheet was submitted on 15th March, 2021. According to learned Special Judge the charge sheet was required to be submitted on or before 13th March, 2021, which is factually incorrect as the 180 day period expired on 14th March, 2021.

9. Be that as it may, the learned Special Judge, by referring to the provisions of Section 10 of the General Clauses Act, 1987 regarding computation of time held that the court being closed on the last date after expiry of the period of investigation and the charge sheet having been submitted on the reopening day, must be held to have been submitted in time.

In view of the specific provisions in the statute namely Section 36-A(4) of NDPS Act, reference by learned Special Judge to the provisions of General Clauses Act not only seems fallacious but also is absurd. Even assuming that the Court/Office was closed nothing prevented the I.O. from submitting the charge sheet in the residential office of the learned Special Judge, which is a normal feature in all such cases. Moreover, closure of Court on account of holidays etc. cannot be a ground to extend the period of investigation as held by the apex Court in the case of *S. Kasi v. State of Kerala* reported in (2020) SCC Online SC 529. The learned Special Judge despite referring to the judgments of the apex court in the case of *Uday Mohanlal Acharya and S.Kasi* (supra) as also of this Court in the case of Lambodar Bag and *Rajendra Kakodiya @ Rajendra Kokodia* (Supra) has committed manifest error in ignoring the fact that the accused was never produced before him on 181st day nor informed of his indefeasible right to avail default bail. Since fact remains that charge sheet was not submitted within the stipulated time, mere non-filing of an application for default bail by the accused cannot take away his

indefeasible right of being released on default bail. Furthermore, the prosecution is at liberty to oppose the bail on merits thereafter but cannot claim continued detention of the accused as it had failed to conclude investigation within the stipulated period.

10. Thus, from the facts narrated in the preceding paragraphs it is manifest that learned Special Judge has not dealt with the matter in accordance with the statutory provisions and the law laid down by the apex Court as also by this court in the decisions referred to supra. To recapitulate, the Petitioner having been remanded for the 1st time on 15 September 2020, the charge-sheet was required to be submitted on or before 14th of March 2021. Admittedly, charge-sheet was submitted on 15th of March 2021 which is the 181st day. The accused acquired an indivisible right to be released on the default bail as on 15 March 2021 because of non-submission of charge-sheet within the stipulated period of hundred 80 days. The question is, what is the duty of the Court in such a situation. In ***Rakesh Kumar Paul v. State of Assam***, reported in (2017) 15 SCC 67, the Apex Court held as follows:

“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.

The above views were again approved by the Apex Court in the case of *M. Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence*, reported in (2021) 81 OCR (SC) 548: (2021) 2 SCC 485 in the following words:-

“12.7 We agree with the view expressed in Rakesh Kumar Paul (supra) that as a cautionary measure, the counsel for the accused as well as the magistrate ought to inform the accused of the availability of the indefeasible right under Section 167(2) once it accrues to him, without any delay. This is especially where the accused is from an underprivileged section of society and is unlikely to have access to information about his legal rights. Such knowledge-sharing by magistrates will thwart any dilatory tactics by the prosecution and also ensure that the obligations spelled out under Article 21 of the Constitution and the Statement of Objects and Reasons of the CrPC are upheld. IV. The Import of Explanation I to Section 167(2), CrPC.”

Relying upon the observations in *Rakesh Paul and M. Ravindran*(supra), this Court in *Lambodar Bag vs. State of Odisha*, reported in 2018 (OCR) 31, has held that it is mandatory to have the accused produced before the Court to inform him of his indefeasible right to be released on default bail on the next day of completion of the period of investigation. It is true that upon filing of the charge sheet the right to default bail ordinarily does not survive but for the same to happen, it must be ensured that the accused has been given the opportunity to exercise his right to default bail at the relevant time. If such exercise, which is mandatory, has not been taken, it cannot be held that the right to default bail has not survived only because charge sheet has been filed. It is the events occurring during the interregnum that matters.

11. In the case at hand, the accused was neither produced before the court nor his right to be released on default bail informed to him. Therefore, regardless of the fact of submission of charge-sheet that too, after the stipulated period, his indefeasible right to be released on default bail remains intact. The argument made by learned State counsel that the accused

did not pray for default bail on the 181st day pales into insignificance because of the failure of the court to have him produced before it and of informing him of his right. Had the accused been produced and duly informed of his right to default bail and yet he did not exercise such right then the matter would have been different as it would have been treated as a voluntary forfeiture of his right. Since he was not produced, which is mandatorily required as per the law laid down by the apex court in the cases referred above, his right to default bail must be held to have survived notwithstanding the fact of submission of charge-sheet. It is well settled that this being a valuable right akin to a fundamental right, even an oral prayer for default bail would suffice. Obviously, learned Special Judge was not alive to the above legal position.

12. The other aspect of the matter is the erroneous application of the provisions of the General Clauses Act. It is well settled that if the statute requires a thing to be done in a particular manner it is to be done in that manner or not at all. It is further well settled that in the matter of personal liberty the court should be sensitive to the valuable right to liberty

of the accused and therefore should not allow any kind of subterfuge to be adopted by the investigating agency/prosecution. In the instant case, the charge-sheet appears to have been signed by the I.O. on 12.03.2021 but surprisingly it was not submitted on that day. The special prosecutor contended that charge-sheet could not be submitted on 12.03.2021 because the court/office was closed for 4 days that is on 11th, 12th, 13th and 14th of March, 2021. This is completely unacceptable inasmuch as investigation under the NDPS Act being a strictly time-bound affair, it is imperative that each day is important and therefore, it is for such reason that all steps such as forwarding of the F.I.R., forwarding of the accused and seized articles etc. are also done in the residential office of the learned Special Judge beyond Court hours and even on holidays. The Special Judge incidentally operates as the court of the first instance for such offences just like the cognizance taking magistrate. The question of the court being closed on account of holiday does not arise. Sadly, learned Special Judge has not considered the matter from the above perspective, rather appears to have

mechanically accepted the contention put forth by the special prosecutor thereby extending the period of completion of investigation beyond the stipulated period without sanction of law and in the process, curtailed the valuable right of the accused to default bail.

13. For the foregoing reasons therefore, this Court has no hesitation in holding that the indefeasible right of the accused to be released on bail for the default of the investigating agency in submitting charge-sheet within the stipulated period of 180 days fully survived despite submission of charge-sheet on the 181st day. Further, the accused not having been produced before the special Court on the 181st day nor his right to be released on default bail informed to him, learned court below must be held to have committed gross illegality. In such view of the matter this Court holds that the accused is entitled to be released on default bail.

14. In the result, the prayer for bail is allowed. Let the Petitioner be released on such terms and conditions as the court below may deem fit and proper to impose including

such conditions as may be considered necessary to procure the attendance of the accused during trial.

15. The BLAPL is disposed of.

AKB

(Sashikanta Mishra)
Judge

