

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2543 of 2021

An application under Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated 11.10.2021 passed by learned Special Judge, Gunupur in T.R. Case No. 54 of 2021.

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Sumanta Sabara & Anr.

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Petitioners

-Versus-

State of Odisha

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Opp. Party

Advocate(s) appeared in this case :-

For Petitioner : Mr. Manoranjan Padhy,
Advocate

For Opp. Party : Miss S. Mishra,
Addl. Standing Counsel

CORAM :

JUSTICE SASHIKANTA MISHRA

ORDER

4th February, 2022

SASHIKANTA MISHRA, J.

The short point that arises for consideration in the present case filed under Section 482 Cr.P.C. is, whether the right of an accused, who has been granted default bail, survives after submission

of charge sheet when he fails to comply with the conditions imposed by the Court while granting such default bail.

2. Bereft of unnecessary details, the facts of the case are that the accused-petitioners are facing trial in T.R. Case No. 54 of 2021 pending in the court of learned Special Judge, Gunupur for the alleged commission of offence under Sections 20(b)(ii)(C)/29/25 of NDPS Act.

3. Admittedly the petitioners were remanded to custody on 08.04.2021. Though investigation commenced, yet the same could not be completed within the stipulated period of 180 days, i.e., by 05.10.2021. As such, both the petitioners filed an application with prayer for being released as per the provisions under Section 167(2) Cr.P.C read with Section 36(A) of NDPS Act. Learned trial court after considering the period of detention and the fact of non-submission of charge sheet within the stipulated period, allowed the prayer for default bail by imposing the following conditions.

“Therefore, let the accused persons, namely (1) Jisaya Gamango and (2) Sumanta Sabar, be released on bail of Rs.50,000/- (Rupees fifty thousand only) each with two local solvent sureties of the like amount with further conditions that;

(i) they shall appear before the Court on each date of posting till conclusion of trial,

- (ii) *If they fail to appear, any one of their bailor shall be physically present before the Court; and*
- (iii) *they shall not commit similar type of offence.*

Despite such order however, the accused persons did not furnish bail bond as directed by the trial court and on the next day, i.e., on 08.10.2021, the I.O. submitted the charge sheet. The accused persons furnished bail bonds along with two sureties and connected documents on 11.10.2021 with prayer to release them on bail as per the order passed earlier, i.e., on 07.10.2021. Learned trial Court, however, after considering the ratio laid down by the Apex court in the case of ***Uday Mohanlal Acharya vs. State of Maharashtra***, reported in AIR 2001 SC 1910: (2001) 5 SCC 453, ***M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence***, reported in 2020 SCC Online 867 : AIR 2020 SC 5245 and of this Court in the case of ***Pratima Nayak vs. State of Odisha***, reported in 2011 SCC Online Ori 260 : 2011 (I) ILR-Cut. 595 held that sufficient time has been given to the accused persons to comply with the terms and conditions of the order dated 07.10.2021, but they failed to comply with the same and in the meantime, the I.O. has submitted the charge sheet. As such, the trial court was not inclined to accept the bail bond furnished on behalf

of the accused persons by order dated 11.10.2021, which is impugned in the present application.

4. Heard Mr. Manoranjan Padhy, learned counsel for the petitioners and Ms. S. Mishra, learned Additional Standing Counsel for the State.

5. It is contended by Mr. Padhy that the accused persons having once being held to be entitled to default bail, mere non-submission of bail bond cannot forfeit such right. It is further contended that since no time was stipulated by the trial court to furnish bail bond, the right of the accused persons for default bail, which has already been granted, cannot be defeated merely because of delay in submission of the bail bonds. Mr. Padhy has relied upon the decision of the Apex in the case of ***Rakesh Kumar Paul vs. State of Assam***, reported in (2017) 15 SCC 67 to argue that in the matter of personal liberty, the Courts are not expected to adopt a hyper-technical approach and rather considering the fact that in the case of accused persons who belong to marginalized communities, a liberal view ought to be taken.

6. Ms. S. Mishra, on the other hand, has relied upon the decision of the Apex court in the case of ***Uday Mohanlal Acharya*** (supra) and the case of ***M. Ravindran*** (supra) to contend that the right

of the accused persons for being released on default bail stands extinguished once they fail to comply with the conditions of such bail and in the meantime charge sheet is filed.

6. It would be apposite to refer to the statutory provision at the outside. Section 167(2) Cr.P.C reads as under:

167. Procedure when investigation cannot be completed in twenty-four hours-

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(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 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.]

[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.]

7. In **Uday Mohanlal Acharya** (supra), it was held as under:

“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. xxxxxxxxxx”

However, interpreting the language employed in Explanation-I to the proviso to Section 167(2) Cr.P.C., the Apex court further held as follows:

“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. xxxxxxxxxx”

The above view was crystallized under paragraph 13.5 of the judgment referred to in impugned order. In view of some confusion arising in relation to what was stated in ***Uday Mohanlal Acharya*** (supra) under paragraphs-13.5 and 13.6 thereof, the Apex Court, in the case of ***M. Ravindran*** (supra) after interpreting several other decisions, such as, ***Sanjay Dutt vs. State (II)***, reported in 1994 SCC (5) 410 and ***Hitendra Vishnu Thakur and others vs. State of Maharashtra and others***, reported in AIR 1994 SC 2623 held under paragraph-13, as under:

“13. It is true that Explanation I to Section 167(2), CrPC provides that the accused shall be detained in custody so long as he does not furnish bail. However, as mentioned supra, the majority opinion in Uday Mohanlal Acharya expressly clarified that Explanation I to Section 167(2) applies only to those situations where the accused has availed of his right to default bail and undertaken to furnish bail as directed by the Court, but has subsequently failed to comply with the terms and conditions of the bail order within the time prescribed by the Court. We find ourselves in agreement with the view of the majority. In such a scenario, if the prosecution subsequently files a chargesheet, it can be said that the accused has forfeited his right to bail under Section 167(2), CrPC. Explanation I is only a safeguard to ensure that the accused is not immediately released from custody without complying with the bail order.”

9. Coming to the facts of the present case, it is not in dispute that the order granting default bail was passed on 07.10.2021 and

charge sheet was filed on 08.10.2021. Till such time, the accused persons had not furnished the bail bonds of the sureties as directed by the Court. It is true that no time limit was specified for furnishing of bail bond, but then non-stipulation of time cannot mean that the same can be kept indefinitely open to allow the accused persons to comply with the conditions of the order at their own sweet will or will nullify the effect of the charge-sheet being submitted in the meantime. It is therefore, imperative that if an order for default bail is passed, it is in the interest of the accused to act with promptitude and diligence. In the case at hand, the bail bond was sought to be furnished on 11.10.2021, i.e., four days after the order of default bail was passed and charge sheet had also been submitted. This is, therefore, a case where the Court granted default bail, but the accused failed to abide by the terms and conditions imposed therein and since in the meantime, charge sheet had been submitted, the so called indefeasible right granted, but not actually exercised, stood extinguished in view of the ratio of the cases referred above.

10. This Court is, therefore, of the view that in the facts and circumstances of the case, learned court below has committed no illegality in not accepting the bail bonds furnished by the accused

persons and therefore, the impugned order does not warrant any interference whatsoever.

11. The CRLMC is, therefore, dismissed.

12. As the restrictions due to resurgence of Covid-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No. 4587, dated 25th March, 2020, modified by Notice No. 4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos. 514 and 515 dated 7th January, 2022.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 4th February, 2022/ A.K. Rana