

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.11216 of 2021

A.F.R.

Praveen Kumar

.... Petitioner

Mr. D. Naik, Sr. Advocate
Miss. Bini Mishra, Advocate

-versus-

State of Odisha

.... Opposite Party

Mr.S.K.Mishra,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER
27.4.2022.

Order No.

- 07.
1. This matter is taken up through hybrid mode.
 2. Heard Mr. D. Naik, learned Senior counsel, along with Miss Bini Mishra, learned counsel for the Petitioner, and Mr. S.K.Mishra learned Addl. Standing Counsel for the State.
 3. The Petitioner is in custody since 24th February, 2021 in connection with Mohana P.S. Case No.49/2020 corresponding to G.R. Case No.46/2021 pending in the court of learned Special

Judge-cum-Sessions Judge, Gajapati for the alleged commission of the offences under Sections 20 (b)(ii)(C)/25/29 of the N.D.P.S. Act.

4. The prosecution allegation is that on 24th February, 2021, the Petitioner was apprehended by the staff of Mohana P.S. while he was driving a car bearing Regn. No.WB-24-K-8246 in which one Sankar Ray was the occupant. On search of the vehicle, contraband ganja weighing 130 Kgs. 700 grams was found, which was seized after following the statutory formalities. Accordingly, a case was registered and the Petitioner was taken into custody along with the occupant of the car. In the mean time, investigation has concluded and charge sheet has been submitted. Learned court below has also taken cognizance of the offence under Section 20 (b)(ii)(C)/25/29 of the N.D.P.S. Act.

5. It is submitted by Mr. Naik that the Petitioner is entitled to be released on default bail as per the provisions contained in Section 167 (2) of Cr.P.C. read with Section 36(4) of the N.D.P.S. Act since the investigation was not completed within

the stipulated period of 180 days. Elaborating his argument, Mr. Naik would submit that the Petitioner was remanded to the Special Court on 25th February, 2021. Excluding the date of remand, the 180 day period expired on 24th August, 2021. However, the Petitioner was not produced before the Special Court on the said date nor any permission was granted to the I.O. to extend the period of investigation. Learned Special Judge thereafter allowed the charge sheet to be submitted on 27th August, 2021 i.e. 4 days after the 180 day period. This, according to Mr. Naik, grossly violates the statutory mandate as also the law laid down by the Apex Court and this Court in a series of decisions. Mr. Naik further refers to the order dated 29th October, 2021 passed by the learned Special Judge whereby the application filed by the Petitioner for grant of default bail on the above ground was rejected. It is contended by Mr. Naik that though the order of learned Special Judge mentions that the charge sheet was received on 23rd August, 2021, yet the order sheet of the case record clearly reveals that the same is not correct as charge sheet was received only on 27th August, 2021. Referring to the reasoning adopted by learned Special Judge that

an endorsement was made on the body of the charge sheet by the Special Judge showing receipt of the charge sheet on 23rd August, 2021, Mr. Naik contends that it clearly shows that the endorsement was ante-dated only to deprive the Petitioner from his right to default bail. Finally, it is contended by Mr. Naik that the Petitioner's inalienable right of being released on default bail not having been considered in the proper perspective, the same amounts to violation of his fundamental right to liberty guaranteed under Article 21 of the Constitution of India and thereafter, he should be released on bail on such ground.

6. Per contra, Mr. S.K.Mishra, learned Addl. Standing Counsel for the State, argues that when the learned Special Judge has put his signature on the body of the charge sheet specifically mentioning the date as 23rd August, 2021, the said date has to be treated as the date of receipt of the charge sheet as no malafides can be attributed to the Court. It is further argued that non-mentioning of the fact of receipt of the charge sheet in the order sheet cannot change the date of its actual receipt. Since the charge sheet was received on 23rd August, 2021, i.e. on the

179th day, no indefeasible right can be said to have accrued in favour of the Petitioner.

7. I have given my anxious consideration to the contentions noted above. I have perused the entire order sheet of the case with particular reference to the relevant dates. I have also perused the report dated 11th April, 2022 submitted by learned Special Judge pursuant to the direction of this Court vide order dated 5th April, 2022.

8. As it appears, the Petitioner was remanded for the first time to judicial custody on 25th February, 2021, and, therefore, excluding the said date, the 180 day period was due to expire on 24th August, 2021. A reading of the order sheet of the case reveals that the case was put up on 23rd August, 2021 when the following order was passed:-

“Accused Sankar Ray and Praveen Kumar are produced through V.C. from Sub-Jail, R. Udayagiri I/c warrants of the accused persons are not produced. Put up on 6.9.2021 for awaiting F.F. Accused persons are remanded to I/c. till then. Inform Superintendent of Sub-Jail, R. Udayagiri.”

9. The fact of receipt of charge sheet on the said date as claimed by learned Special Judge in his report dated 11th April, 2022 is not reflected in the aforementioned order. It is stated by learned Special Judge in his report that he had received the Final Form at about 5.30 P.M. on 23rd August, 2021 and had directed the dealing Assistant to place the Final Form along with the case record for further orders, but the final form was not placed along with case record till 27th August, 2021. However, the charge sheet contains no such endorsement. Be that as it may, even if the final form was received at 5.30 P.M., a “later” order could have been passed on the same day as is usually done. Moreover, the case record continued to remain non put-up till 27th August, 2021. According to the learned Special Judge the dealing assistant, *“could not follow the directions properly due to his inexperience in service.”* Undoubtedly, the Special Judge himself is a senior and experienced judicial Officer occupying the highest seat in the District Judiciary. So, for such an Officer to express his helplessness and/or to put the blame on the ‘inexperienced’ dealing assistant is not only surprising but also entirely

unwarranted. Yet, another incongruity that strikes to the mind is that the charge sheet itself bears the date 21st August, 2021. So, if it was ready as on 21st August, 2021, then why was it submitted on 23rd August, 2021, if at all, instead of being immediately submitted. Therefore, this Court is of the view that higher public authorities should take note of such delayed submission/transmission of the charge sheet.

After carefully examining all the above aspects of the matter, this Court is of the considered view that the learned Special Judge has dealt with the matter apparently without being conscious of the fact that the same involves personal liberty of the accused. This Court fails to understand as to how the learned Special Judge could sit silently after purportedly receiving the charge sheet on 23rd August, 2021 without passing any order to such effect and waited till the case record was put up before him by the dealing assistant at his own sweet will.

10. Be that as it may.

11. Assuming that the charge sheet was received by the learned Special Judge on 23rd August, 2021, yet the same not being

taken on record by passing a specific order to such effect cannot be treated as being received on the said date in the eye of law. The order which was required to be passed on 23rd August, 2021 was passed four days later i.e. on 27th August, 2021. Interestingly, on 27th August, 2021, the order states that “record is put up today on receipt of charge sheet No.182 dated 21st August, 2021. xxx xxx xxx”

As between the signature endorsed on the final form by the learned Special Judge and the specific judicial order passed by him on 27th August, 2021, obviously the latter is acceptable. In other words, unless the fact of receipt of charge sheet is duly reflected by passing a judicial order, such receipt, if at all, cannot be treated as receipt of charge sheet in the eye of law as otherwise, the very purpose of maintaining the order sheet would become redundant. In this context, it would be apposite to refer to Rule 192 of G.R.C.O.(Criminal) Vol.1, which contains the list of papers required to be included in File “A” of the Magistrate’s Records in a warrant case. Sub-rule (4) of Rule 192 reads as under:-

“Papers showing how the proceedings were initiated together with any sanction to the proceedings granted under Section 195, 196 or 197 of the Criminal Procedure Code, that is to say, the petition of complaint, the first information, or other report to the police or order of the Magistrate under Section 190(1)(c) Criminal Procedure Code, on which the proceeding were taken, and if there has been a police investigation, the final report of the police under section 173 of the Criminal Procedure Code”.

Thus, the report submitted under Section 173 of Cr.P.C. has to form part of the case record.

Rule 205 of the G.R.C.O. (Criminal) Vol.1 refers to the contents of order sheet and provides as under:-

“Contents of order sheet-The order sheet shall include every interlocutory order from the date of complaint or the date on which the accused is sent in custody to the Magistrate by the police and shall also contain the substance of the final order.”

Thus, on a conjoint reading of Rules 192 and 205 of the G.R.C.O., it would be evident that all interlocutory orders including the receipt of final report of Police under Section 173 of Cr.P.C. (charge sheet) has to be duly reflected in the order sheet which incidentally, the Special Judge has done in the order

passed on 27th August, 2021. As regards, the signature made on the body of the charge sheet by learned Special Judge, it would be proper to refer to the note appended to Rule 204, which reads as follows:-

“Order shall not be written on petitions, reports and other similar documents. The serial number and the date of order passed on any petition shall be noted on such petition”.

Be it noted here that for the purpose of NDPS Act, the Court of Special Judge is the court of first instance and therefore, the above provisions though meant for a Magistrate's Court are also applicable to it.

In view of the clear bar that no order shall be written on petitions, reports, etc, mere endorsement of signature of the learned Special Judge on the body of the charge can sheet by no stretch of imagination be treated as judicial acceptance of the charge sheet by the Court. Moreover, mere receipt of the charge sheet without the same being taken on record and duly reflected by passing a judicial order cannot satisfy the

requirements of Rule 192 (4) read with Rules 204 and 205 of GRCO (Criminal) Vol.1. Resultantly, such receipt of the charge sheet, if at all, cannot be treated as receipt in the eye of law.

This Court is, therefore, constrained to hold that the charge-sheet was not received within the stipulated time. Such being the finding, the obvious corollary is, the accused not being produced before the court upon expiry of the stipulated period, and his inderfeasible right of being released on bail for the default of the investigating agency being not informed to him by learned Special Judge on the expiry of the stipulated period makes him entitled to be released on bail.

12. It need not be over emphasized that the right of the accused to be released on default bail is a valuable right akin to his fundamental right under Article 21 of the Constitution of India. All Courts are expected to be alive to the constitutional right of the accused while dealing with matters affecting his personal liberty. As has been emphatically laid down by the Apex Court, the Courts must not fall prey to the subterfuges that may be adopted by the investigating agency/prosecution to frustrate the

right of the accused. In this regard the following observations of the Apex Court in ***Rakesh Kumar Paul v. State of Assam***, reported in (2017) 15 SCC 67 are noteworthy:-

*“This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to **Mohamed Iqbal Madar Sheikh v. State of Maharashtra** wherein it was observed that some courts keep the application for ‘default bail’ pending for some days so that in the mean time a charge sheet is submitted. While such a practice both on the part of prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for ‘default bail’ during the interregnum when the statutory period for filing the charge sheet or challan expires and the submission of the charge sheet or challan in court.” (Emphasis supplied)*

Thus, it is required that the Courts must rise to the occasion to discharge their constitutional duty without ‘fear’ or ‘favour’ solely with the intent of dispensing justice and nothing more.

13. In the result, the prayer for default bail is allowed. Let the Petitioner be released on furnishing bail bond of Rs.1,00,000/-

(Rupees one lakh) with two sureties to the satisfaction of learned court below along with the following conditions:-

(i) the Petitioner shall appear before the court below on each date of posting of the case without fail; and

(ii) he shall not leave the territorial jurisdiction of the court below without obtaining leave.

14. Let a copy of this order be communicated to the S.P.Gajapati for his information and necessary action.

15. The BLAPL is disposed of.

AKB

(Sashikanta Mishra)
Judge