

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No. 669 of 2022

O R D E R:

This Criminal Petition under Sections 437 and 439 Cr.P.C. is filed seeking regular bail to the petitioners – Accused Nos. 2 to 4 in connection with Crime No. 694 of 2021 of P.S. RGI Airport, Shamshabad registered for the offences punishable under Sections 420, 468, 471, 370, 370(7) IPC.

2. The case of the prosecution is that on 08.12.2021, at about 03.30 hours, while the complainant along with interceptor vehicle staff were performing patrolling duty at Departures, RGI Airport, Shamshabad, they found one unknown person wandering suspiciously in the Airport. The complainant took him into custody and opened his bag and found 20 Indian Passports and Visas and travel documents. On enquiry, he failed to give proper answer, then the complainant summoned panch witnesses and in their presence, the said person stated his name as Noor Mohammed Yanamurli (Accused No.2) from whom 20 original passports, 20 work visas and 20 PCCs. were seized. Further, it came to know that Accused Nos.2 and 3 were working at Fayaz and Accused No. 3 gives print outs of visas and Pccs and hand over them to Accused No.2, who, in turn, submits the same to RGI Airport for illegal departure. It is also alleged that Accused No. 2 would give money to Shashidar (mediator) for smooth process and Shashidhar would give the same to Immigration Officer. Jazeera Airline employee and Somayya also became conspirators in this process. Thus all the said persons colluded together and

transporting the innocent passengers to foreign countries illegally and in violation of the Rules.

3. Learned counsel for the petitioners Sri D. Chandrashekar submits that petitioner No.1 (Accused No.2) was arrested and remanded to judicial custody on 08.12.2021 and petitioners 2 and 3 – Accused Nos. 3 and 4 on 10.12.2021 and all of them have been languishing in jail from the last 71 days. He submits that as contemplated under Section 167(2) Cr.P.C., police failed to complete the investigation and file the charge-sheet within 60 days, as such, the petitioners are entitled for grant of default bail.

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

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 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.

¹ (2001)5 SCC 453

² 2020 SCC OnLine SC 529

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, as the prosecution failed to file charge-sheet within the statutory period of 60 days, as contemplated under Section 167 (2) Cr.P.C., and the petitioners are languishing in jail from the last 71 days, this Court is of the opinion that they are entitled to statutory bail.

8. Accordingly, this Criminal Petition is allowed. Petitioners – Accused Nos. 2 to 4 shall be enlarged on bail in connection with Crime No. 694 of 2021 on the file of RGI Airport Police Station, Shamshabad, on each of them 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 XIV Additional Metropolitan Magistrate, Rajendranagar, Cyberabad. However, the petitioners – Accused Nos. 2 to 4 shall appear before the Station House Officer concerned on every Sunday between 10.00 A.M. and 12.00 P.M. till the charge sheet is filed.

LALITHA KANNEGANTI, J

15th February 2022

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