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IN THE HIGH COURT OF DELHI AT NEW DELHI+

CRL.REV. P. 929/2019

Date of Decision: 15.11.2022

IN THE MATTER OF:

STATE
NCT OF DELHI

..... Petitioner

Through: Mr. Amit Ahalawat, APP for State

Versus

RIYAZUDDIN @RAJU @BILLI
S/O AKBAR
R/O CS-91/6 LAKDI MARKET NEAR
USMANIYA MASJID, WELCOME
SEELAMPUR, DELHI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINdra KUMAR KAURAV

J U D G M E N T

PURUSHAINdra KUMAR KAURAV, J. (ORAL)

1. This revision under Section 401 read with Section 482 of the Code of Criminal Procedure (hereinafter referred as 'Cr.P.C.') read with Article 227 of the Constitution of India is directed against the order dated 25.05.2019 passed by the learned ASJ-05, Shahdara, Karkardooma, Courts, Delhi, in Criminal Revision No.20/2019, whereby the order passed by the learned MM dated 15.04.2019, rejecting an application under Section 167(2) of the Cr.P.C., had been reversed, and the

respondent had been directed to be released on bail upon his furnishing personal bond in terms of the provision of Section 167(2) of the Cr.P.C.

2. Learned APP for the State/petitioner submits that the order passed by the revisional court is erroneous inasmuch as, the prosecution has filed the chargesheet against the respondent on 14.04.2019 itself and, therefore, the learned MM had rightly rejected his application for grant of default bail under Section 167(2) of the Cr.P.C. According to him, the accused does not enjoy “indefeasible right” for grant of bail subsequent to filing of the chargesheet. He placed reliance on the decision of the High Court of Madhya Pradesh in Criminal Miscellaneous Case No. 63866/2021, **Baludas v. State of Madhya Pradesh** dated 10.05.2022.

3. I have heard learned APP for the State/petitioner and perused the record. The following are the undisputed facts in the instant case:-

(i) On 31.01.2019, the respondent-accused was arrested in connection with FIR No. 14/2019 for the offences punishable under Sections 302/147/148/120-B/34 of the IPC and under Sections 25/27 of Arms Act.

(ii) The respondent-accused was produced before the Magistrate on 14.01.2019 and he was remanded to police custody for two days. Thereafter, he was sent to judicial custody.

(iii) On 15.04.2019 at about 11:20 a.m., the respondent-accused through his counsel, inquired about the status of the chargesheet and since the same was not filed, therefore, he immediately filed an application under Section 167(2) of the Cr.P.C. showing his willingness to furnish the bail bonds. His application under Section 167(2) of Cr.P.C. was taken up by the court at 2:00 p.m.

(iv) While recording the submissions of the learned counsel for the accused, the matter was passed over for 3:00 p.m., for the appearance of the Investigating Officer.

(v) At 3:00 p.m., the Investigating Officer appeared and submitted the chargesheet.

(vi) Since the chargesheet was submitted, therefore, the learned MM rejected the application under Section 167(2) of Cr.P.C. on 15.04.2019. However, filing of an application for bail is a prior event, than filing of the chargesheet.

4. The order passed by the learned MM was challenged by the accused in revision before the court of learned Additional Sessions Judge. The revisional court while placing reliance on the decision of the Hon'ble Supreme Court in the case of *Rakesh Kumar Paul v. State of Assam*¹ has held that since the chargesheet was not filed within a period of 90 days from the date of remand and the accused had shown his willingness for furnishing bail bonds, the subsequent filing of the chargesheet would not defeat his "indefeasible right" to be released under Section 167(2) of the Cr.P.C. and accordingly the learned Additional Sessions Judge has set aside the order passed by the learned MM and directed the accused to be released on bail on his furnishing personal bond of the sum of ₹15,000/- to the satisfaction of the trial court.

5. Having considered the submissions made by the learned APP for the State/petitioner, this court finds that the view taken by the learned Additional Sessions Judge is strictly in accordance with law and the same does not call for any interference.

¹ (2017) 15 SCC 67

6. The Hon'ble Supreme Court in the case of *Sanjay Dutt v. State Through CBI, Bombay (II)*², in paragraph No.53 (2) (b) has held that "indefeasible right" of the accused to be released on bail is a right which is enforceable by the accused only from the time of default till the filing of the challan and does not survive and remain enforceable on the challan being filed. The Hon'ble Supreme Court in the case of *State of Madhya Pradesh v. Rustam and Ors.*³, while relying on its earlier decisions in the cases of *Sanjay Dutt (supra)* and *Hitendra Vishnu Thakur v. State of Maharashtra*⁴, however has held that on the date when the High Court entertained the petition for bail, the challan was already filed and, therefore, the right as such was not available. In the case of *Rustam and Ors. (supra)*, it is to be noted that the accused in that case had filed the application under Section 167(2) of Cr.P.C. after the filing of the challan. Similar view has been taken in the case of *Iqbal Madar Sheikh v. State of Maharashtra*.⁵ The Hon'ble Supreme Court in the case of *Uday Mohanlal Acharya v. State of Maharashtra*⁶ has held that when an application for bail is filed by an accused for enforcement of his "indefeasible right" alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose it of forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no chargesheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution

² (1994) 5 SCC 410

³ (1995) 3 SCC 221

⁴ (1994) 4 SCC 602

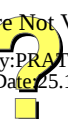
⁵ (1996) 1 SCC 722

⁶ (2001) 5 SCC 453



to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

7. In the case of *Uday Mohanlal Acharya (supra)* the period of 60 days for filing of chargesheet was completed on 16.08.2000. On 17.08.2000, an application for release on bail was filed before the Magistrate. The Magistrate rejected the prayer on the same day on the ground that Section 167(2) of Cr.P.C. had no application to cases pertaining to MPID Act i.e. Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999. The accused in that case, therefore, preferred revisional application before the Bombay High Court. The matter was taken up by the Division Bench of Bombay High Court on 29.08.2000 and the same was adjourned for arguments on 31.08.2000 and in the meanwhile a chargesheet was filed before the trial court on 30.08.2022. The Division Bench held that an accused arrested for commission of an offence under Section 3 the MPID Act is entitled to claim a release upon the bail on expiry of total period specified in Section 167 of the Cr.P.C. if the challan is not filed within that period. However, the High Court ultimately refused to grant relief on the ground that by the time the application for bail before the Division Bench came to be considered on 31.08.2000, a chargesheet had been filed before the Magistrate on 30.08.2022 and, therefore, the so-called 'indefeasible right' did not survive or remain enforceable. The Hon'ble Supreme Court in paragraph No.14 of its said decision set aside the order passed by the High Court and directed that the accused be released on bail. It was held that the accused availed his right on 17.08.2000 by filing an application



for being released on bail prior to the filing of the chargesheet and offering therein to furnish the bail and hence the said right cannot be defeated due to subsequent filing of the chargesheet.

8. The aforesaid legal position propounded has been reiterated by the Hon'ble Supreme Court in the case of ***Rakesh Kumar Paul (supra)***.

9. In view thereof, if the facts of the present case are analysed, the same would clearly reveal that even excluding the date of remand and reckoning the period of custody from the date following the date of remand, the period of 90 days stands completed on 14.04.2019. Month-wise days of custody can be understood in the following manner:-

A	From 15.01.2019 to 31.01.2019	-	17 days
B	February, 2019	-	28 days
C	March, 2019	-	31 days
D	Till 14.04.2019	-	14 days
	Total	-	90 days

The accused, in the instant case, moved his application for grant of bail under Section 167(2) of the Cr.P.C. on 15.04.2019 at 2:00 p.m. The chargesheet was filed on the 91st day i.e., on 15.04.2019, which is beyond 90 days and after filing of default bail application. The concerned court, instead of passing the order on such application, posted the matter at 3:00 p.m. and by that time, the chargesheet was filed. The legal position, as has been propounded by the Hon'ble Supreme Court in various decisions, would clearly indicate that subsequent filing of the chargesheet after availing the right to be released on bail under Section 167(2) of the

Cr.P.C. would not extinguish the "indefeasible right" of the accused to be released on bail under Section 167(2) of the Cr.P.C. In view thereof, there is no substance in the submissions made by learned APP for the State/petitioner.

10. So far as the decision relied upon by the learned APP for the State/petitioner in the case of *Baludas (supra)* is concerned, the High Court of Madhya Pradesh in paragraph No. 12 has clearly noted that the application in that case for grant of bail was filed subsequent to filing of the chargesheet. The same is not the fact and situation in the present case and, therefore, the same would not have any application in the instant case.

11. Accordingly, the present petition is devoid of any merit, the same is dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 15, 2022

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