

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.272 of 2023

Arising Out of PS. Case No.-6 Year-2021 Thana- BIHPUR District- Bhagalpur

Neeraj Thakur @ Neeraj Kumar Thakur Son Of Late Mahendra Thakur R/O
Village- Lattipur, Ward No.11, P.S.- Bihpur, District- Bhagalpur

... .. Petitioner/S

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vikram Singh, Adv.

For the Respondent/s : Mr. Rabindra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 05-05-2023 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The present revision application has been filed for setting aside the order dated 13.03.2023 passed by learned A.C.J.M. 1st, Naugachia for grant of benefit of Section 167(2) of Cr.P.C. in connection with Bihpur P.S. Case No. 06 of 2021 under Sections 420, 406, 409 of the I.P.C.

Counsel for petitioner submits that the petitioner is accused of Bihpur P.S. Case No.06 of 2021 lodged under Sections 420, 406, 409 of the I.P.C. He submits that the petitioner was remanded on 12.12.2022 and petition for bail under Section 167(2) of Cr.P.C. was filed on 13.03.2023. Counsel submits that according to the said provision, if charge-sheet shall not be filed within the period of 90 days, an

indefeasible right to default bail accrues to the petitioner on 30th March, 2023 as the 30 march, 2023 is the 91st day according to him.

Counsel for petitioner relied on judgment of three Judges Bench decision of **Enforcement Directorate, Government of India Vs. Kapil Wadhawan & Anr.** decided on 27.03.2023.

Counsel for State submits that this Judgment is the latest judgment of Section 167 (2) of Cr.P.C.

Upon going through the record and after hearing the parties, two things are admitted. The first is that the remand of the petitioner took place on 12.12.2022 and the petitioner has filed his bail application under Section 167(2) on 13.03.2023 as well as from the said application, it has been acknowledged by the staff of the office that final report has been submitted on 13.03.2023 at about 11:00 AM. The counting of days are as follows:-

12th December, 2022 = 19 days, January, 2023 = 31 days, February, 2023 = 28 days and March, 2023 = 13 days

(Total 19 + 31+ 28+ 13 = 91 days)

This Court is well-aware about Section 10 of the General Clauses Act, 1897(Act 10 of 1897) which talks about the Computation of Time which is as follows:-

Computation of Time.- (1) “Where, by

any [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done on the next day afterwards on which the Court or office is open:

Provided that nothing in this Section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.”

(2) “This section applies also to all [Central Acts] and Regulations made on or after fourteenth day of January, 1887.”

Upon going through the reportable judgment of Hon’ble Supreme Court of India in case of **Enforcement Directorate, Government of India Vs. Kapil Wadhawan & Anr.** decided by three Judges Bench decided on 27.03.2023 in Criminal Appeal No.701-702 of 2020. It has been held in paragraph 50 & 51 which are as follows:-

50. “Since there exists vacuum in the application and details of Section 167 of Cr.P.C.,

we have opted for an interpretation which advances the cause of personal liberty. The accused herein were remanded on 14.05.2020 and as such, the chargesheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on 13.07.2020 which was the 61st day of their custody. Therefore, the right to default bail accrued to the accused persons on 13.07.2020 at 12:00 AM, midnight, onwards. On that very day, the accused filed their default bail applications at 8:53 AM. The ED filed the chargesheet, later in the day, at 11.15AM. Thus, the default bail Applications were filed well before the chargesheet. In Ravindran (supra) and Bikramjit (supra), which followed the Constitution Bench in Sanjay Dutt (supra) it was rightly held that if the accused persons avail their indefeasible right to default bail before the chargesheet /final report is filed, then such right would not stand frustrated or extinguished by any such subsequent filing. We therefore, declare that the stipulated 60/90 days remand period under Section 167 of Cr.P.C. ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is

excluded, the remand period, as we notice will extend beyond the permitted 60/90 days' period resulting in unauthorized detention beyond the period envisaged under Section 167 of Cr.P.C. In cases where the chargesheet/ final report is filed on or after the 61st/91st day, the accused in our considered opinion would be entitled to default bail. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused."

51. "Following the above discussion and opinion, the impugned order of the High Court granting default bail to the respondents by applying the proviso (a) (ii) of Section 167(2) Cr.P.C. is found to be in order. Hence, we uphold the impugned judgment dated 20.08.2020 passed by the learned Single Judge of the Bombay High Court. Any other pending issues arising from these appeals are to be addressed by an appropriate Bench of this Court."

From the decision of Hon'ble Supreme Court, it transpires that the first day of remand has to be taken into calculation and, therefore, in the present facts and

circumstances, it is clear that in 90 days, the final report has not been accepted in the Court rather it has come on the 91st day which resulted in creation of an indefeasible right to default bail in favour of the petitioner.

In this view of the matter, this Court is of the view that the order impugned dated 13.03.2023 passed by learned A.C.J.M. 1st, Naugachia for grant of benefit of Section 167(2) of Cr.P.C. in connection with Bihpur P.S. Case No. 06 of 2021 is bad in law and, therefore, **set aside**.

The Trial Court is directed to pass order afresh and release the petitioner forthwith, in accordance with law laid down by Hon'ble Supreme Court.

With this direction, this Criminal Revision Application is hereby allowed.

(Dr. Anshuman, J.)

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