

12.04.2023
Ct. No.34
S/L No.6
KS

C.R.R. 1078 of 2021
Tapan Kumar Bhattacharya
-Vs.-
The State of West Bengal

Mr. Asimes Goswami
Ms. Paulomi Banerjee
.....For the Petitioner
Mr. S. G. Mukherjee, Ld. P.P.
Mr. N. P. Agarwala
Mr. S. Datta
.....For the State

Mr. Goswami, learned advocate appearing for the petitioner submits that the present case was initiated in the year 2013 and the police authorities much after the statutory period submitted charge-sheet before the learned Special Judge, 3rd Court, Alipore, in the meantime, the petitioner preferred an application for discharge under Section 167(5) of the Code of Criminal Procedure. Learned Court kept the said application pending and allowed the Investigating Agency to submit the charge-sheet and it is only after submission of charge-sheet the application under Section 167(5) of the Code of Criminal Procedure was dismissed.

Mr. Datta, learned advocate appearing for the State opposes the contentions and submits that once the charge-sheet has been submitted, there is no scope for consideration of the application under Section 167(5) of the Code of Criminal Procedure. Attention of this Court was drawn to the application under Section 167(5) of the Code of Criminal Procedure which was filed before the learned Special Judge, 3rd Court, Alipore in connection Special Case No.5 of 2013. The contention in the said

application was that the petitioner was implicated in connection with Ultadanga Police Station Case No.183 dated 16.06.2013 under Sections 120B/ 420/ 409/ 477A of the Indian Penal Code and he applied for anticipatory bail and the anticipatory bail was granted on 24th September, 2013. It was contended that since the accused was released on anticipatory bail on 24.09.2013 and the charge-sheet was not submitted before the learned Court within a period of three years from the said date, the accused is entitled to the benefit of Section 167(5) of the Code of Criminal Procedure (West Bengal Amendment).

Mr. Goswami, learned advocate appearing for the petitioner has produced a photostat certified copy of all the orders of the learned Special Court on and from 22nd November, 2013 and tried to impress this Court that it has been recorded in the order-sheet that the accused is present by filing 'Hazira' and such observation is available continuously from the said date till 22.11.2016. Learned advocate further draws the attention of this Court to the order dated 07.03.2017 which reflects that the order of the learned Special Court speaks of the accused being on C.B., which implies that the accused is on Court bail. Such order continued till the charge-sheet was submitted, however, there is no order of the learned Special Court which reflects that the accused was physically present pursuant to the anticipatory bail granted or he has regularized his bail.

Mr. Goswami, learned advocate appearing for the petitioner submits that the statutory interpretation 'appearance' which is reflected in Section 167(5) would also include within its ambit, the participation of the accused in the Court proceedings and to that extent learned advocate submits that the observations of the learned Special Court do satisfy or

qualify the said purpose for getting benefit of the provisions of Section 167(5) of the Code of Criminal Procedure.

I have considered the submissions of the rival parties and on an appreciation of the materials appearing in the records of the case, I am unable to satisfy my conscience that the accused was ever physically present before the Court. If an anticipatory bail is granted, the same do not qualify the purpose of “appearance” as interpreted under Section 167(5) of the Code of Criminal Procedure. At this stage, until and unless the physical appearance of the accused is reflected in the orders on a particular date which would automatically be under the normal custom prevailing in the criminal proceedings, a bond being furnished pursuant to an anticipatory bail being granted, is not reflected from the order-sheets. Consequently until and unless, the petitioner is able to show an order from the learned Special Court, the computation of the period for expiry of the three years is not possible by this Court.

Accordingly, the subject-matter of challenge before this Court cannot be interfered with, however, the petitioner is granted liberty in case he is able to produce any order of regularization of bail and the charge-sheet being submitted more than three years thereafter.

With this aforesaid observation, C.R.R. 1078 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon’ble Court.

(Tirthankar Ghosh, J.)