
(2015) 05 CAL CK 0016
In the Calcutta High Court
Case No : C.R.R. No. 517 of 2015

Saddam Sk.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 401, 482
Protection of Children from Sexual Offences Act, 2012 — Section 4

Citation : (2015) 05 CAL CK 0016

Hon'ble Judges : Shib Sadhan Sadhu, J

Bench : Single Bench

Advocate : Arindam Sen Gupta and Saikat Chatterjee, for the Appellant; Subir Banerjee, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Shib Sadhan Sadhu, J.—This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 filed by the petitioner seeking for modification of the order dated 09.01.2015 and also for setting aside the order dated 20.01.2015 passed by the Learned Judge, Special Court, Murshidabad in connection with case No. C-SPL 10 of 2014 whereby and whereunder he granted statutory bail to the petitioner of Rs. 5,000/- with one local surety of the like amount to be verified by the ADM (LR) or SL and LRO, Murshidabad subject to satisfaction of that Court and rejected the prayer for modification of the said bail order.

2. The factual matrix leading to the present application in brief is that the petitioner was arrested and taken into custody on 10.10.2014. Since final report was not filed within the statutory period as prescribed under Section 167(2) Cr.P.C. the petitioner was granted bail by the Learned Judge, Special Court on 9th January, 2015 on condition that the petitioner would furnish a bond of Rs. 5,000/- with one local surety to be verified by the ADM (LR) or SL and LRO,

Murshidabad subject to the satisfaction of that Court Id. to remain in custody till 20.01.2015. In terms of such order the petitioner furnished bail bond on 14.01.2015 but the Learned Judge, Special Court did not accept the same holding that it was not in compliance with the bail order and on that very date i.e. 14.01.2015 charge sheet under Section 4 of the Protection of Children from Sexual Offences Act, 2012 was submitted and cognizance was also taken. Thereafter the petitioner filed a petition on 20.01.2015 praying for modification of the order of granting bail passed on 09.01.2015 but such prayer was turned down on the ground that the same is not maintainable. Being aggrieved by such order the instant Revisional Application has been filed.

3. Mr. Arindam Sengupta, Learned Advocate appearing for the petitioner contended that the Learned Trial Judge, ought to have assigned reasons for rejecting the application for modification of the stringent condition of bail because it deprived the petitioner's fundamental right under Article 21 of the Constitution of India. He further contended that the Learned Judge extended a premium to the Investigating Agency to ensure the submission of charge-sheet by putting such stringent condition knowing fully well that the date 09.01.2015 was Friday and the next three days i.e. 10th January, 11th January and 12th January were holidays and all the Government offices were closed for which there was no scope for the petitioner to get the local surety to be verified by the Authority prescribed in that order dated 09.01.2015. He contended yet further that the petitioner/accused had an indefeasible right to be released on bail on account of default by the Investigating Agency to submit the charge-sheet within the statutory period. But such statutory right of the petitioner/accused has been frustrated which tantamounts to refusal of bail and is a gross violation of the fundamental right of the petitioner. Therefore, according to him, the impugned orders are bad in law and are liable to be set aside. He relied on the decisions reported in *Raghubir Singh and Others Vs. State of Bihar*, AIR 1987 SC 149 : (1987) CriLJ 157 : (1986) 2 SCALE 452 : (1986) 4 SCC 481 : (1986) 3 SCR 802 and *Monotosh Ghosh Vs. The State of West Bengal*, (2011) 5 CHN 141 : (2011) CriLJ 3013 : (2011) 3 Crimes 636 in support of his contention.

4. Mr. Subir Banerjee, Learned Advocate appearing for the State on the contrary, submitted that the law is well-settled on the point that the right accrued to the petitioner for non-submission of charge-sheet within the statutory period stood extinguished in view of non-filing of the bail bond as per direction of the Learned Trial Judge since the charge-sheet was submitted in the mean time.

5. Having regard to the contention and submission advanced by the Learned Advocates appearing for the parties in the light of the decisions placed. I would like to say at the very outset that there is no provision in the Criminal Procedure Code authorizing detention of an accused in custody after the expiry of the period indicated in the proviso to sub-section (2) of Section 167 excepting the contingency indicated in Explanation I namely if the accused does not furnish the bail. It is in this sense it can be stated that if after expiry of the period, an

application for being released on bail is filed, and the accused offers to furnish the bail and thereby avail of his indefeasible right and then an order of bail is passed on certain terms and conditions but the accused fails to furnish the bail, and at that point of time a challan is filed then possibly it can be said that the right of the accused stood extinguished.

6. In a recent decision reported in Union of India (UOI) Vs. Nirala Yadav, (2014) AIRSCW 4298 : (2014) 8 SCALE 9 : (2014) 9 SCC 457 the Hon"ble Supreme Court reiterating and restating the principles of law laid down in the case of Uday Mohanlal Acharya Vs. State of Maharashtra, AIR 2001 SC 1910 : (2001) CriLJ 1832 : (2001) 2 Crimes 150 : (2001) 4 JT 262 : (2001) 3 SCALE 29 : (2001) 5 SCC 453 : (2001) 2 SCR 878 : (2001) AIRSCW 1500 : (2001) 3 Supreme 142 has held thus:-

"20(5). If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in Para (a) will not be unauthorized, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.

7. In the instant case the petitioner filed an application for bail on the expiry of the statutory period as charge-sheet was not submitted within that time and so he was granted bail by the Learned Trial Judge on 09.01.2015 with certain condition. The petitioner furnished the bail bond only on 14.01.2015 which was not accepted because it was not in tune with the condition imposed in the bail order. In the mean time before furnishing of the bail bond the charge-sheet was filed on that very date i.e. on 14.01.2015. Thereafter on 20.01.2015 the petitioner made an application before the Learned Trial Judge for modification of the bail order passed on 09.01.2015 which was rejected.

8. Therefore, in view of the well-established position of law as has been enumerated above it becomes crystal clear that the right of the petitioner to get release stood extinguished for his failure to furnish the bail as directed by the Learned Trial Judge.

9. For the aforestated reasons I find no merit in the instant Revisional Application and the same is accordingly dismissed. No order as to costs.

10. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, as early as possible.