

(1996) 11 PAT CK 0034
In the Patna High Court
Case No : Cr.W.J.C. No. 738 of 1996

Sanjeev Kumar Tulsiyan @ Pappu Tulsiyan

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-11-1996

Acts Referred:

Arms Act, 1959 — Section 25, 25(1)
Criminal Procedure Code, 1973 (CrPC) — Section 167(2)

Citation : (1997) 1 PLJR 232

Hon'ble Judges : Narayan Roy, J;G.S. Chaube, J

Bench : Division Bench

Advocate : S.D. Sanjay, for the Appellant; S.D. Yadav, for the Respondent

Final Decision : Allowed

Judgement

1. Heard counsel for the parties.
2. This is an application for issuance of habeas corpus. Short facts giving rise to this application are as under.
3. The Petitioner was remanded in Khagaria Police Station Case No. 223/96 u/s 25(a) and 25(1)(a) of the Arms Act on 3.7.96. After expiry of 60 days, the Petitioner applied for bail u/s 167(2) of the Code of Criminal Procedure on 4.9.96. The learned Additional Chief Judicial Magistrate, Khagaria, however, rejected the prayer of the Petitioner. The Petitioner, thereafter, moved the learned Magistrate for grant of bail u/s 167(2) Code of Criminal Procedure which was also dismissed vide order dated 4.10.96. Consequently thereof this writ application has been filed.
4. The learned Counsel appearing on behalf of the Petitioner submitted that the maximum sentence u/s 25(a)(1) is upto 10 years and in that view of the matter if charge-sheet is not submitted within 60 days of the date of remand, the Petitioner is entitled to be released on bail taking the benefit u/s 167(2) Code of Criminal Procedure. It is further submitted that since no charge-sheet was

submitted till 3rd September, 1996, he applied for bail and after his bail was rejected by the learned Additional Chief Judicial Magistrate, charge-sheet was submitted in the case on 19.9.96 when his application for bail was pending before the learned Sessions Judge.

5. The learned Counsel for the State however, is not in a position to justify the action of the court below in not granting bail to the Petitioner u/s 167(2) Code of Criminal Procedure.

6. We have examined the materials on record and we have examined the provisions of law. It appears to us that the maximum sentence u/s 25(1)(a) is upto 10 years and the charge-sheet, accordingly, could have been submitted within 60 days from the date of remand of the Petitioner.

7. Ex facie, it appears from the order-sheets that charge-sheet was not submitted within 60 days from the date of remand of the Petitioner i.e. on 3.7.96. The Petitioner, therefore, in our opinion, was entitled to invoke the jurisdiction of the court u/s 167(2) Code of Criminal Procedure.

8. Taking into consideration the facts and circumstances of the case and also the fact that no charge-sheet was submitted within 60 days, the Petitioner is entitled to be released on bail u/s 167(2) Code of Criminal Procedure.

9. Accordingly, we allow this application and direct for release of the Petitioner forthwith u/s 167(2) Code of Criminal Procedure on furnishing bail bond of Rs. 5,000/- (Rs. five thousand only) with two sureties of the like amount each to the satisfaction of the Additional Chief Judicial Magistrate, Khagaria in Khagaria P.S. case No. 223/96.