

(1991) 04 OHC CK 0003

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 361/91

Sauti Jena and Another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 16-04-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 36, 37

Citation : (1991) 1 OLR 549

Hon'ble Judges : L. Rath, J

Bench : Single Bench

Judgement

L. Rath, J.—Order No. 5 dt 16-4-1991—This is an application for bail where the arrest of the petitioner has been made in connection with the contravention of the provisions of Section 20 of the Narcotic Drugs & Psychotropic Substances Act. Bail has been refused by the S. D J. M. as well as the Sessions Judge being of the view that Section 37 of the Act is a bar against grant of bail. It appears that the petitioner was arrested on 5/6-3-1991 and was produced before the Magistrate of on 7-3-1991 on which day he was remanded to custody. Section 36-A of the N. D P. S: Act makes provision in Sub-section (1) (b) thereof: that when a person accused of of suspected- of the commission of an; offence under the Act is. forwarded to a- Magistrate under Sub-sec (2) or Sub-section (2-A). of Section 167 Cr. P. C. such Magistrate may authorise the- detention of such person in such custody as he thinks fit for a period not- exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an. Executive Magistrate, It is thus apparent that the maximum period of detention authorised under the provision of See. 167(2), Cr. P. C. has been abridged so far as the N. D. P.3 S. Act is concerned to a maximum- period of fifteen days provided the Magistrate ordering, detection is a Judicial Magistrate and be seven days when the Magistrate is an Executive Magistrate. As such all considerations which- apply in. law to the question of enlargement on bail under the proviso to- Section 167(2) Cr. P. C. become

applicable to a person for warranted under the N. D. P. Sr Act to the Magistrate after expiry of fifteen days or seven days from the date of remand, as the case may be. The proviso to Sub-section (1)(b) further provides that where the Magistrate thinks the detention of the person to be unnecessary when the accused is forwarded to him at any time before the expiry of the period of detention authorised by him, he has to order such person to be forwarded to the Special Court and under Sub-section (1)(c) the Special Court assumes full power u/s 167, Cr. P. O to deal with the accused. The proviso as such comes into operation and authorises the Magistrate to forward the accused to Special Court if the Magistrate thinks that detention of the person is unnecessary which opinion he may form either when the accused is forwarded to him or at any time before the expiry of the period of detention authorised by him.

2. Since such is the position of law, the petitioner having been remanded by the Magistrate on 7-3-1991 which fact is not disputed, the petitioner has become entitled to bail after expiry of fifteen days from that date, it is however submitted by the learned Addl. Govt. Advocate that it is not known as to whether the Magistrate has exercised his power under Sub-section (1)(b) and has forwarded the petitioner to the Special Court, Though it is submitted by Mr. Mukherjee that as a fact the Magistrate has not exercised such power yet certainty of such fact is subject to verification. Considering the facts and circumstances of the case, it is directed that the petition for bail of the petitioner may be moved before the learned S. D. J. M. Jagatsinghpur who shall release the petitioner on bail of Rs. 20,000/- with two sureties each for the like amount to his satisfaction unless he has already exercised his power under the proviso and referred the petitioner to Special Court. It is made clear that unless such power of forwarding to special Court has been exercised within the time stipulated, such power is no more avoidable to be exercised by the Magistrate.

The petition is disposed of.