

(2016) 03 PAT CK 0101

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 79 of 2016 (Arising Out of PS.Case No. 62 Year 2014 Thana-Shankarpur District- Madhepura).

Upendra Yadav @ Munshi Yadav alias Munshi Yadav

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)

Penal Code, 1860 (IPC) — Section 307, 323, 324, 326, 34, 341

Citation : (2016) 1 BBCJ 605 : (2016) 2 ECrC 511

Hon'ble Judges : Hemant Gupta, J.

Bench : Single Bench

Advocate : Kumar Dharendra Pratap Singh, Advocate, for the Appellant; Dr. Ansuman, S.C.-14, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J. - Challenge in the present writ petition is to an order passed by the learned Sessions Judge, Madhepura on 3rd October, 2015 wherein, the revision filed by the petitioner against the order passed by the Additional Chief Judicial Magistrate, Madhepura on 13th of August, 2015 claiming compulsive bail in terms of Section 167(2) of the Code of Criminal Procedure (for short, "the Code") remained unsuccessful.

2. The facts, in brief, are that the petitioner was arrested on 4th of May, 2015 in Shankarpur Police Station Case No. 62 of 2014 registered for the offences punishable under Sections 341, 323, 324, 326, 307 read with Section 34 of the Indian Penal Code. The petitioner submitted an application for grant of bail in terms of Section 167(2) of the Code on 13th August, 2015 in view of the fact that the Investigating Officer has failed to submit charge-sheet within stipulated period of 90 days. The learned Additional Chief Judicial Magistrate passed the following order on such application on 13th August, 2015:-

"A petition on behalf of accused (in custody since 04.05.15) Upendra Yadav @ Munsu Yadav U/S 167(2) of Cr.P.C. filed today along with attendance after giving its copy to the learned DPO, Madhepura along with Bail Bond on behalf of the said accused petitioner and taken up for hearing when pressed.

It is argued that the petitioner has been into judicial custody on dated 04.05.2015 and after lapse of stipulated period of 90 days the investigation officer has failed to submit charge sheet against the petitioner till today i.e. 13.08.2015. That, it is about 100th days in judicial custody of the petitioner and he has statutory right of bail, hence, the petitioner may be enlarged on bail under the mandatory provision U/S 167(2) of Cr.P.C.

Heard and perused the case record from which it appears that the petitioner is in judicial custody since 04.05.2015. Since the bail application has been filed U/S 167(2) of the Cr. P.C., the G. R. Clerk is directed to submit report at once. Put after receipt of the report.

Later on 13.08.2015

Report of the G. R. Clerk as well as O/C of this Court has been received which is mentioned on the bail application itself. The G. R. Clerk has reported that he is authorised to receive the F.I.R only. The office clerk of this Court has reported that the charge sheet and the original case diary has been received in the office at 03:15 P.M. today against the accused petitioner and other co-accused persons submitted by the I.O. of this case U/S 341, 342, 323, 324, 326, 307/34 of I.P.C. Seen. The I/O has submitted the charge sheet no. 75/15 dated 31.7.2015 U/s 341, 342, 323, 324, 326, 307/34 of I.P.C. against the named accused (1) Upendra Yadav @ Nunuya @ Munsu Yadav (2) Santosh Yadav (3) Rajendra Yadav (4) Umesh Yadav (5) Raghuni Yadav, (6) Yogendra Yadav, (7) Baso Yadav (8) Kamro Yadav @ Kamleshwari Yadav and (9) Shivam Yadav and (10) Mahendra Yadav. From perusal of case record it transpires that the date fixed is 24.8.15 in this case. Hence, put up on the fixed date for hearing on the point of cognisance.

So far as the prayer for bail U/s 167(2) Cr.P.C. of the accused (in custody) petitioner Upendra Yadav @ Munsu Yadav is concerned, since the charge sheet and case diary has been submitted in this case against the accused petitioner aforementioned, at 15:15 hours today the petitioner accused does not deserve bail U/S 167(2) Cr.P.C., therefore, the bail petition U/S 167(2) Cr.P.C. accordingly stands rejected and the bail bond furnished on his behalf is not accepted."

3. The learned Additional Chief Judicial Magistrate declined the application for bail for the reason that charge-sheet was filed on the same day at about 15.15 hours as per the General Register Clerk (for short, "G.R. Clerk"). It is the said order which was challenged by the petitioner before the learned Sessions Judge through a revision petition, which was dismissed on 3rd October, 2015.

4. Learned counsel for the petitioner refers to a Supreme Court judgment in case of Union of India through Central Bureau of Investigation v. Nirala Yadav alias

Rajaram Yadav alias Deepak Yadav (2014) 9 S.C.C 457 to contend that the application for bail in terms of Section 167(2) of the Code is bound to be accepted once the Investigating Agency fails to file report and the accused is ready to furnish bail bonds. The non filing of charge sheet gives indefeasible right in favour of the accused to be granted bail. He also refers to a Division Bench judgment of this Court in case of Dinesh Yadav and Anr. v. The State of Bihar and Ors. 2001 (2) PCCR 174, wherein the filing of the charge-sheet on the same day after the filing of the application for bail was held to be inconsequential and the accused was admitted to bail.

5. I have heard learned counsel for the parties and find no merit in the present petition. Though the Division Bench judgment in case of Dinesh Yadav (supra) supports the argument raised by the learned counsel for the petitioner, but I do not find that any indulgence can be granted to the petitioner in the facts available on record and in view of the judgment cited by the learned counsel for the Petitioner himself.

6. The Hon"ble Supreme Court in Nirala Yadav case (supra) considered the argument of the prosecution that right of "compulsive bail" whether it should be available on the date of the bail application were taken up for consideration or on the date of his presentation. The Hon"ble Supreme Court considered the three Bench judgment in the case of Uday Mohalal Acharya v. State of Maharashtra (2001) 5 SCC 453, laying down the six conclusions, which are necessary for consideration of an application under Section 167(2) of the Code. The same read as under:-

(1) Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days on the whole.

(2) Under the proviso to the aforesaid subsection (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than in the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.

(3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

(4) When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation

within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

(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 unauthorised, 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.

(6) The expression "if not already availed of" used by this Court in Sanjay Dutt case must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in para (a) of the proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same."

7. Admittedly, on 13th of August, 2015, the petitioner was in lawful custody by virtue of an order passed by the Magistrate. On the same day, the charge-sheet was filed, though after the filing of the application for grant of "compulsive bail". In terms of Uday Mohanlal Acharya case (supra), an indefeasible right accrues in favour of the accused for bail on account of default of the investigating agency. In terms of conclusion (4), the Magistrate must dispose of such an application for "compulsive bail" forthwith.

8. In the present case, the Magistrate has decided the application on the same day, but after obtaining the report from G.R. Clerk. This was no attempt to frustrate the right of the petitioner to be released on bail, but to verify whether the petitioner has completed 90 days; and that whether the charge-sheet has been filed or not. Since the charge-sheet has been filed on the same day on which date the application for "compulsive bail" was filed, the judgment in Nirala Yadav case (supra) will not be applicable to the facts of the present case as in the aforesaid case, there was a request by the investigating agency for extension of time for filing of the charge-sheet. In the present case, no time sought for filing of the charge-sheet. The charge-sheet was filed on the same day though after the application for bail was filed.

9. In view of the facts of the present case, the petitioner is not entitled to

compulsive bail as the charge-sheet was filed on the same date on which date the petitioner filed an application for bail as on that day, the petitioner was in lawful custody.

10. In view thereof, I do not find any merit in the present writ petition. The same is dismissed.