

**Sanjay Singh Vs. State of Bihar**

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**Court :** Patna

**Decided On :** Jul-10-2007

**Judge :** Ghanshyam Prasad, J.

**Acts :** Code of Criminal Procedure (CrPC) - Sections 167, 167(2) and 482; Terrorist and Disruptive Activities (Prevention) Act, 1987 - Sections 20 and 20(4); Indian Penal Code (IPC) - Sections 34, 120B, 363 and 366

**Appeal No. :** CR. Misc. No. 11331 of 2007

**Appellant :** Sanjay Singh

**Respondent :** State of Bihar

**Disposition :** Application dismissed

**Prior history :** Ghanshyam Prasad, J. 1. This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 20.1.2007 passed by the Sessions Judge, Patna in Criminal Revision No. 45/2007 thereby the learned Sessions Judge has confirmed the order dated 8.1.2007 passed by the Chief Judicial Magistrate. Patna in Kotwali P.S. Case No. 504/2004 whereunder the prayer for release of the petitioner under Section 167(2) of the Code of Criminal Procedure has been rejected. 2. H

**Judgement :**

## **Ghanshyam Prasad, J.**

1. This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 20.1.2007 passed by the Sessions Judge, Patna in Criminal Revision No. 45/2007 thereby the learned Sessions Judge has confirmed the order dated 8.1.2007 passed by the Chief Judicial Magistrate. Patna in Kotwali P.S. Case No. 504/2004 whereunder the prayer for release of the petitioner under Section 167(2) of the Code of Criminal Procedure has been rejected.

2. Heard learned Counsel for the petitioner as well as the State.

3. The petitioner is one of the accused in the aforesaid police case registered under Sections 366/363/120B/34 of the Indian Penal Code. The petitioner surrendered before the court of the Chief Judicial Magistrate, Patna on 14.5.2005 and was remanded to jail custody on the same day. However, even after lapse of Sixty days no charge-sheet was submitted by the police. It was submitted only on 22.7.2005. Thereafter, the petitioner on 16.8.2005 filed a petition for bail under Section 167(2) of the Code of Criminal Procedure which was rejected on the same day. Again it was filed on 5.1.2007 which was rejected by the Chief Judicial Magistrate vide order dated 8.1.2007. The learned Sessions Judge also confirmed the said order.

4. Submission of learned Counsel for the petitioner is that as the police did not submit charge-sheet within sixty days of remand of the petitioner, he was entitled to be released under default clause of Section 167(2) of the Code of Criminal Procedure Code. The right to be released under default clause of Section 167(2) of the Code of Criminal Procedure is indefeasible right of the accused which cannot be extinguished by subsequent filing of charge-sheet. It is further submitted that exercise of right to get the bail under default clause is not required. It is the duty of the court to release the accused on bail, if the police fails to file charge-sheet within sixty days. Subsequent filing of the charge-sheet will not disentitle the accused to be released on bail. In support of submission learned Counsel for the petitioner relied on several decisions of different High Courts as well as Supreme Court including 1992 CRI.L.J.3712 (Aslam babalal Desai v. State of Maharashtra), 1993(3) Crimes Page 873 (A. Narayan Reddy v. State of Andhra Pradesh), 1994

CRI.L.J.730 (Dharmanand alias Mahto v. The State) and : 2001 CriLJ1832 (Uday Mohanlal Acharva v. State of Maharashtra).

5. From the above submission it is quite clear that the only question to be decided in this case is as to whether the right of bail under default clause of Section 167(2) of the Code of Criminal Procedure survives even after submission of charge-sheet, even if not availed earlier. As said above, learned Counsel for the petitioner has filed catena of decisions of different Courts. However, it would be sheer wastage of time and energy to deal with those decisions. The matter has already been settled by the Constitution Bench of the Apex Court in : 1995 CriLJ477 (Sanjay Dutta v. State through C.B.I. ) which has also been followed in several other decisions including : 1996 CriLJ1652 (Dr. Bipin Shantilal Panchal v. State of Gujrat) as well as : 2001 CriLJ1832 (Supra).

6. The above cited decision reported in : 1995 CriLJ477 the case is under TADA Act. However, in that case the scope of default clause of Section 167(2) of the Code of Criminal Procedure has also been discussed along with Section 20 of TADA Act. In paragraph 48 of the Judgement it has been held as follows;

We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4) (bb) is based on a correct reading of principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the Challan' and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference of the merit of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167, Cr.P.C. ceases to apply.

7. In paragraph 53(2)(b) it has further been held as follows;

The 'indefeasible right' of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in *Hitendra Vishnu Thakur : 1995 CriLJ517* is a right which ensures to and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed.

8. The above decision has been relied in another decision of the Supreme Court reported in : *1996 CriLJ1652 (Supra)*. After placing reliance upon the above decision, in paragraph 4. it has been ultimately held as follows:

Therefore, if an accused person fails to exercise his right to be released on bail for the failure of the prosecution to file the charge-sheet within the maximum time allowed by law. he cannot contend that he had an indefeasible right to exercise it at any time notwithstanding the fact that in the meantime the charge-sheet is filed, But on the other hand. if he exercises the right within the time allowed by law and is released on bail under such circumstances, he cannot be rearrested on the mere filing of the charge-sheet as pointed out in *Aslam Babalal Desai v. State of Maharashtra (1992) AIR SCW 4 2621*.

9. Again it has been relied upon a decision reported in *2001 SC 1910 (Supra)* in paragraph 6 at page 1922.

10. Thus, from the above discussions of decisions of the Supreme Court it is quite clear that the right to get bail under default clause of Section 167(2) of the Code of Criminal Procedure is indefeasible right but it is extinguished if the right is not exercised before filing of charge-sheet. The moment charge-sheet is filed Section 167(2) of the Code of Criminal Procedure ceases to apply. In the present case, the admitted fact is that the petitioner has not exercised his indefeasible right of bail under default clause before filing of charge-sheet. Therefore, now it is extinguished after filing of charge-sheet. However, the petitioner may move for grant of bail on merit under the provisions relating to grant of bail.

11. Thus, having regard to the facts and circumstances of the case this application stands dismissed.

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