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Court : Patna

Decided On : Jun-16-2008

Judge : V.N. Sinha, J.

Appellant : Naresh Ram

Respondent : State of Bihar

Disposition : Application dismissed

Judgement :

V.N. Sinha, J.

1. Heard learned Counsel for the petitioner and the State.

2. This criminal revision application is directed against the order dated 6.5.2008 whereunder the Sub-Divisional Judicial Magistrate, Lakhisarai has refused to release the petitioner on bail in the light of the provisions contained in proviso to Sub-section (2) of Section 167 of the Code of Criminal Procedure. The validity of the said order has been challenged on the ground that after expiry of the statutory period of ninety days with effect from the date of remand i.e. 5.2.2008 on account of failure of the prosecution to file charge-sheet, petitioner applied for grant of compulsive bail on 6.5.2008 in terms of proviso to Sub-section (2) of Section 167 Cr.P.C., which application was allowed under orders dated 6.5.2008 itself directing the petitioner to furnish bail bonds of Rs. 7,000/- (Seven thousand) with two

sureties of the like amount. Copy of the said order was, however, also forwarded to the Superintendent of Police for his information.

3. In compliance of the said order bail bonds of Rs. 7,000/- (Seven thousand) with two sureties of the like amount was furnished on 6.5.2008 itself but before the same could be accepted the charge-sheet was received on 6.5.2008 and in the light of the charge-sheet bail bonds were not accepted and thereby indefeasible right of the petitioner which accrued in terms of proviso to Sub-section (2) of Section 167 Cr.P.C. was allowed to be defeated.

4. Learned counsel for the petitioner appearing in support of this application submitted that once the right for grant of compulsive bail under proviso to Sub-section (2) of Section 167 Cr.P.C. was availed of and bail bonds were submitted then it was not open for the court below to have not accepted the bail bonds as before the filing of the charge-sheet the right for grant of compulsive bail stood availed of Counsel for the State has opposed the prayer and has submitted that right for grant of compulsive bail may have been availed of after the expiry of the period of ninety days but before the bail bonds submitted by the petitioner could be accepted and he could be released charge-sheet was filed on the same day and in the light of the filing of the charge-sheet the bail bonds were not accepted and the right availed of could not crystallize and in the light of the filing of the charge-sheet it was open for the court below to have not accepted the bail bonds.

5. I have examined the submissions noted above in the light of the provisions contained in proviso to Sub-section (2) of Section 167 Cr.P.C. as also in view of the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of Sanjay Dutt Versus State through C.B.I., Bombay (II) 1994 (5) SCC 410 and the subsequent judgment in the case of Uday Mohanlal Acharaya Versus The State of Maharashtra 2001 (5) SCC 453. The right of being admitted to the privilege of compulsive bail under proviso to Sub-section (2) of Section 167 Cr.P.C. was availed of by the petitioner on 6.5.2008 but before the said right could actually be availed of and enforced by securing his release on acceptance of the bail bonds furnished by him in compliance of the order dated 6.5.2008 the charge-sheet was filed on 6.5.2008 itself and thus in my view before the rights accrued in terms of

proviso to Sub-section (2) of Section 167 Cr.P.C. could be availed of and enforced the charge-sheet was filed and the court below rightly refused to release the petitioner on compulsive bail under proviso to Sub-section (2) of Section 167 Cr.P.C. and I do not see any illegality in the impugned order and the revision application is dismissed, however with liberty to the petitioner to apply for grant of bail on merits.

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