

Mangal Hemrum and ors. Vs. State of Orissa

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Court : Orissa

Decided On : Jan-04-1982

Reported in : 53(1982)CLT259; 1982CriLJ687

Judge : R.C. Patnaik, J.

Appellant : Mangal Hemrum and ors.

Respondent : State of Orissa

Advocate for Pet/Ap. : Sri. Pradip Mohanty

Judgement :

ORDER

R.C. Patnaik, J.

1. 'Give me liberty or give me death,' thundered Patrick Henry, more than two hundred years ago, in the Virginia Convention, This eternal aspiration of the soul was enshrined by the Founding Fathers in Article 21 of our Constitution in the following words:

No person shall be deprived of his life or personal liberty except according to the procedure established by law,' The cognate provision in Article 22(2) 'Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of '24 hours of such arrest excluding the time

necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without authority of the magistrate' is in furtherance of the same aspiration.

Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 of the Constitution that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community, personal liberty of an accused or convict is fundamental suffering lawful eclipse only in terms of 'procedure established by law.' The last four words of Article 21 are the life of that human right (see *Gudikanti v. Public Prosecutor*: : 1978 CriLJ502).

Whenever a complaint is made, the court has to see whether the deprivation of personal liberty has the sanction of procedure established by law, if there is lawful justification for the detention.

These prefatory words should guide the exposition of the 'procedural process embedded firmly in the scheme of investigative process Under Section 167.

It is necessary to briefly refer to the connected provisions and the history of the section in order to appreciate the purpose and scope of the provision contained in the proviso to Section 167(2) of Cri P. C. 1973(hereinafter referred to as the 'Code').

2. Section 56 of the Code obligates a police officer making an arrest without warrant to take or send the person arrested before a magistrate having jurisdiction in the case or before the Officer-in-charge of the police station without unnecessary delay subject to the provisions as to bail. Section 57 provides that the maximum period for which a person arrested without warrant shall be de-atined in police custody is 24 hours exclusive of the time necessary for the journey from the place of arrest to the magistrate's court unless there is special order of the Magistrate Under Section 167-Then comes Section 167. It provides that the magistrate to whom the accused has been forwarded by the police may, from time to time, authorise detention of the accused for a term not exceeding 15 days in the whole and if he has no jurisdiction to hold the trial or commit for trial and considers

further detention unnecessary, he may pass an order that the accused be forwarded to the magistrate having such jurisdiction. If within a period of 15 days investigation is not completed and the magistrate is satisfied that adequate grounds exist for authorising further detention of the accused person otherwise than in the custody of the police, he may pass an order for further detention of the accused beyond 15 days; but he shall not authorise the detention of the accused person in custody for a total period exceeding (a) 90 days where the investigation relates to an offence punishable with death, imprisonment for life or for a term not less than 10 years and (b) 60 days where investigation relates to any other offence.

3. Section 209 authorises the magistrate while committing the accused, to remand him to custody. This power is subject to the provisions of the Code relating to bail. Under Section 309(2) an accused could be remanded, if in custody, after taking of cognizance or commencement of trial.

4. Section 173(1) of Criminal P. C. 1898(hereinafter referred to as the 'old Code')) declared;

Every investigation under this Chapter (Chapter XII) shall, be completed without unnecessary delay.

Notwithstanding the said injunction, the Investigating Agency took its own time to complete the investigation.

5. The Code made some drastic changes in the provisions contained in Section 167 of the old Code. Under Section 167 of the Code of 1898, an accused could be remanded, from time to time, though the total period for which he could be remanded to custody at a time was 15 days. But in practice, an accused could be kept in custody indefinitely by remand, from time to time, while the investigation could go on merrily.

6. The Law Commission in its Forty-first Report observed:

It is, therefore, desirable as was observed in the Fourteenth Report, that some time limit should be placed on the power of the police to obtain remand, while

investigation is still going on; and if the present time limit of 15 days is too short, it would be better to fix a longer period rather than countenance a practice which violates the spirit of the legal safeguard. Like the earlier Law Commission, we feel that 15 days is perhaps too short, and we propose therefore to follow the recommendation in the Fourteenth Report that the maximum period Under Section 167 should be fixed at 60 days.

The Select Committee remarked;-

There is a persistent complaint that investigations are not being completed quickly by the police and that in many cases the accused persons are kept in detention on remand, for a very long period causing hardship and misery to such undertrial prisoners and their families Although stringent provisions are already there in the existing Code requiring investigations to be completed quickly, they have not had the desired effect.... A drastic remedy therefore, is called for in this behalf.

and the resentment of the people found expression in the new provision contained in Section 167.

7. However, in certain complicated cases investigations could not be completed within the period of 60 days. Investigation might be necessary at different places of this vast country. The Investigating Agencies were facing considerable difficulties and in genuine Cases, though there was no laches on the part of the Investigating Agency, the accused was being released on bail on the expiry of 60 days when no charge-sheet was filed. There was demand for scrapping the entire provision and to restore the old order. The Parliament intervened in 1978 and stepped on the demand of restoration of the old provision. The clock could not be put back. A clause prescribing a period of 90 days where investigation related to an offence punishable with death, imprisonment for life or imprisonment for a term not less than 10 years was, however, inserted. The essential features of Section 167 were not altered despite protests from the champions of the old order.

The provision is clear. Where an accused is in custody for more than 60 days or 90 days, as the case may be, and investigation is not completed, he shall be entitled to be released on bail irrespective of whether the offence is bailable or not.

The intention of the Legislature seems to be to grant no discretion to the court and to make it obligatory for it to release the accused on bail. *Natabar Parida v. State of Orissa* : AIR 1975 SC1465 . When no charge-sheet is filed within the prescribed period, the accused secures a right to be released on bail. Therefore, the magistrate who has curtailed his liberty by exercise of powers Under Section 167 owes a duty to him and is commanded by Section 21 of the Constitution read with Section 167, to release him on bail if he is prepared to and does furnish bail.

8. Some High Courts have taken the view that for the exercise of the right Under Section 167(2), the accused should make an application to or move the court to be enlarged on bail (see *Heeraman v. State of U. P.*, 1975 Cri LJ 1508(All); *Lakshmi v. State* 1976 Cri LJ 118(All); *Gyanu Madhu v. State of Karnataka*, 1977 Cri LJ 632(Kant) and *Umedsinh Vakmatji Jadeja v. State of Gujarat* : AIR1977 Guj11 . Contrary view has been taken by the Full Benches of Punjab & Haryana High Court in *Baldev Singh v. State of Punjab*, 1975 Cri LJ 1662 and and a Division Bench of the Delhi High Court in ILR (1978) 2 Delhi 442. In my humble opinion, requirement of an application is irrelevant in the scheme.

Reading into the provision the requirement of an application is to defeat the purpose. He who has curtailed the liberty is accountable in law to justify the abridgement, moment by moment. No sooner authority lapses, the accused is entitled to be freed subject to his complying with the requirements of bonds etc. This view gains support from the observations of the Supreme Court in *Hussainara Khatoon's case* : 1979 CriLJ1052 :.The Magistrate must, before making an order of further remand to judicial custody point out to the undertrial prisoner that he is entitled to be released on bail....

and.The attention of the undertrial prisoner should be drawn to the fact that the period has expired and no charge-sheet has been filed....

The decisions of the High Courts, referred to above, which lay down that an application or motion to the court is condition precedent are, with respect, not correct.

It is, therefore, the duty of the magistrate on the expiry of the prescribed period, when no charge-sheet has been filed, to ask the accused if he desires to go on bail. The file should be so posted that it would be possible to draw the attention of the accused immediately after the expiry of the period. The constitutional and processual mandate leaves no room for casual or mechanical treatment.

9. The question next arises if the right secured under the proviso to Section 167(2) of the Code after the expiry of the prescribed period when no charge-sheet is filed, can be defeated by the filing of the charge-sheet before the accused is released on bail under the provision contained in Section 167(2) Proviso. Can the right guaranteed by the Constitution and the Code and earned by the accused Under Section 167(2) Proviso be killed by the investigating agency by filing the charge-sheet before the accused is released on bail? There is a cleavage of judicial opinion on this question.

In : AIR1977 Guj11 (All, the ratio is that the power of the Magistrate to grant bail under the provisions of Section 167(2) comes to an end if charge-sheet is filed and bail can be granted thereafter only Under Section 437 of the Code.

1979 Cri LJ 1503(Mad) mainly followed the Gujarat decision in AIR 1977 Guj 11 and there is no independent discussion.

In Gyanu's case 1977 Cri LJ 632)(Kant, Nesargi. J, observed (at p. 635):.He has got to exercise that right by expressing to the magistrate that he is prepared to be enlarged on bail and to furnish bail and then only the Magistrate has got to enlarge him on bail. If the concerned accused does not exercise the right, the power of the magistrate to authorise detention of the concerned accused beyond the period of 60 days can be exercised provided that the magistrate is satisfied that adequate grounds exist for doing so....

This view requiring the accused to take the initiative is contrary to the provisions of the section and the observations of the Supreme Court in Hussainara Khatoon's case 1979 Cri LJ 1052)(supra). The learned Judge further held that after filing of the charge-sheet and taking of cognizance, the power of remand is exercised Under Section 309(2) and since in that case the power of remand after taking of

cognizance had not been exercised Under Section 309(2), the detention was illegal. Reliance was placed in that case on Premrai v. State of Rajasthan (1976 Cri LJ 455)(Raj) and Khinvadan's case 1975 Cri LJ 1984)(Raj). In Premraj's case, the accused was arrested on 30-9-1975 on charges of murder etc. Application for bail filed before the Sessions Judge on 10-11-1975 was rejected. When the application for bail was pending before the High Court, charge-sheet was filed on 1-12-1975. The Rajasthan High Court held that the accused having been detained beyond the period of 60 days (pre-1978 amendment case) was entitled to be enlarged on bail. The direction for release by order dated 11-12-1975 was notwithstanding the filing of the charge-sheet on 1-12-1975.

In Khinvadan's case supra, cognizance had been taken beyond the period of 60 days on an incomplete police investigation. It was held that the detention of the accused in judicial custody was illegal and he not being in legal custody when cognizance was taken, an order of remand could not be passed Under Section 309(2).

Gyanu's case 1977 Cri LJ 632)(Kant) is also an authority for the proposition that unless the accused is in legal custody taking of cognizance, would not validate the detention.

In Umedsingh's case : AIR 1977 Guj 11, it was held:..If pending such an application for bail a charge-sheet is filed in court, investigation comes to an end so also the power of the magistrate of granting bail to the accused under the provisions of Section 167(2), The Magistrate then can exercise power of granting bail only Under Section 437. The magistrate to whom an application for bail Under Section 167(2) is made has to take the subsequent event into consideration, the subsequent event being the filing of the charge-sheet.

In Heeraman's case 1975 Cri LJ 1508)(All) it was held (see HN Pt. A):

An accused is not to be allowed to just walk out of the place of detention or of the jail after the expiry of sixty days automatically if no charge-sheet has been submitted within that period. If no charge-sheet has been submitted within 60 days, Section 167 only empowers an accused to claim bail as of right. But the

detention of an accused will continue to be legal till he actually applies for bail or in other words he 'is prepared to and does furnish bail'. The Magistrate shall not authorise detention for more than sixty days provided the accused person applies for bail on the expiry of the said period and does furnish bail.

Even if no charge-sheet was submitted within sixty days but was submitted before the accused applied for bail, it will not be open to the accused to claim that he is entitled to bail as of right by invoking Section 167(2)(a) because as soon as the charge-sheet was submitted, the period of remand pending investigation came to an end and provisions of Section 167(2)(a) would cease to apply to such a case and in such a case bail can be granted only on merits.

The substance of the ratio laid down by the aforesaid decisions is that on filing of the charge-sheet Section 167 is no more applicable and the release of the accused can only be Under Section 437 of the Code.

10-11. In Khinvadan's case *supra*) the accused was arrested on 2-12-1974. His application for bail filed on 22-1-1975 was kept pending by the magistrate till 24-2-1975 on which day the police submitted an incomplete charge-sheet. Cognizance of the offence of murder was taken and the petitioner was remanded to judicial custody Under Section 309(2). The learned Judge observed ;.the learned Magistrate was not justified in ordering the detention of the petitioner beyond the total period of 60 days which expired on 2-2-1975

and went on to say (See 1975 Cri LJ 1984 HN Pt. A):

Where, although the police investigation has not been completed within 60 days from the date of arrest the accused petitioner was not released on bail in spite of his bail application, the Magistrate fails to comply with the mandatory provisions contained in Section 167(2) Proviso (a), and further authorisation of detention by the Magistrate otherwise than in police custody by order of remand, presumably Under Section 167(2) Proviso (a), is unjustified and illegal.

The provisions contained in Proviso (a), to Sub-section (2) of Section 167, are of a mandatory nature and are added as new provisions in the new Code to provide a

satisfactory solution of the problem of delayed investigation and to avoid unnecessary detention of the accused persons for very long periods causing great hardship and misery to them,.The earlier continued illegal detention of the petitioner could not be validated by the order of remand passed by the Magistrate in the instant case after purporting to take cognizance of an offence. The Magistrate having jurisdiction could by a warrant remand the accused in custody under Sub-section (2) of Section 309 only if the police report Under Section 173, Cr IPC was filed before him within 60 days from the date of arrest of the accused If the custody or detention of a person is illegal, as in the instant case, and if the person in custody is entitled to be released on bail immediately before the taking of cognizance of an offence by a Magistrate on police report and is ready to furnish bail, he cannot be recommitted to custody under Sub-section (2) of Section 309 of the Code, although the other conditions laid down in the said Sub-section (are fulfilled).

This decision gives due emphasis on the liberty of citizen which, it is the duty of the court to uphold and safeguard. It has my respectful concurrence.

In Premrai's case supra) it was contended that once charge-sheet had been submitted the enlargement of the accused on bail could only be ordered on merits. Kudal, J. observed, following Khinvadan's case supra, that Heeraman's case was not in conformity with the decision of the Supreme Court in Natabar Parida's case 1975 Cri LJ 1212)(supra). The detention of the accused beina unwarranted after the expiry of the period, he was entitled to bail notwithstanding the filing of the charge-sheet.

The same- view has been taken by Justice Asthana in Madho Singh v. State (Cri, Misc, Bail Appln. No. 4253 of 1974, D/- 24-9-1974)(All.)(referred to in 1970 Cri LJ 118)(All) where it U stated thus ;..the applicant has been detained in jail custody for more than 60 days during the investigation. The Magistrate concerned did not appreciate the requirements of Section 167. Cr IPC The applicant ought to have been released on bail by the Magistrate. According to the applicant he has not yet been charged for any offence. At least he has not been informed of it. I,earned flovern-ment Advocate submitted that if a charge-sheet has been submitted

against the applicant by now he is not entitled to the benefit of Section 167. Cr IPC I do not think that the submission of the learned Counsel really meets the requirement of Section 167. Cr.P.C. If such a contention is accepted the object behind Section 167, Cr IPC would always be frustrated.

The aforesaid observation of Asthana J. was approved by the Division Bench of the Allahabad High Court in Lakshmi Brahman's case 1976 Cri LJ 118) when their Lordships said (At p. 123):

We also agree with Asthana. J. when he observed that in a case where the accused has. during the investigation, applied to the Magistrate concerned for being released on bail Under Section 167, Cr IPC on the ground that he had been in the jail custody for more than 60 days, his prayer cannot be turned down merely because subsequently the police submits a charge-sheet against the accused...

Their Lordships, laid emphasis though on the filing of an application by the accused before the expiry of the period.

In Noor Mohd v. State (ILR (1978) 2 Delhi 442). a Division Bench of the Delhi High Court followed the ratio in Khinvadan's case, Premrafs case, Madho Singh's case and Baldev Singh's case 1975 Cri LJ 1682(Punj)(FB) and held that if the prescribed period expired and no charge-sheet was filed, an application by the accused was not necessary and Section 167(2) did not cease to apply even if charge-sheet was submitted after the prescribed period. The provisions of Section 167(2) being mandatory, could not be overridden by Section 209 and Section 309(2) of the Code, in that case Chawla J, observed:

A little reflection on the scheme of the Code reveals that the whole notion of an application being made for bail is really misconceived....If it is remembered that a remand is not just routine, but a judicial interference with the liberty of the person, the true position immediately emerges. As an interference with liberty, those who seek the remand, must necessarily justify it...the accused can always obtain bail without an application, by merely showing that the prosecution has not established sufficient grounds for a remand. The one situation in which an application is needed is when the accused seeks bail during currency of a period of remand.

Then it is needed because it is the only way in which the attention of the court can be gained. But, when the accused is produced before the court for obtaining a remand an application is quite unnecessary, unless the purpose be to bring on record matters not otherwise apparent therefrom...

The proviso directs that after 60 days of custody an order for bail shall be made. Whether actually recorded or not, in law it must be deemed to have been made. If the accused is unable to furnish bail, he will have to be remanded from time to time. Nevertheless, at any time the order of remand can be, rendered nugatory by giving the required security, it matters not a whit under which section the order of remand was made. Thus, the filing of a police report is immaterial. For, no order of remand, under whichever section it might have been made, can annul a pre-existing order of bail.

Rohatgi, J. observed:..Chapter XXXIII knows no distinction between a bail granted on 'technical ground' and one allowed 'on merits'. Nor is it an interim bail in the sense that it can be cancelled by the Court of Session, when the accused is committed to it under Section 209 to stand his trial. Section 209(b) is expressly 'subject to the provisions of this Code relating to bail.' Similarly, it is not subject to the power of remand contained in Section 309(2)...

The requirement of an application is counter-productive. It deprives the accused of his personal liberty and moreover converts his illegal detention into lawful custody on the view of certain authorities. A contrivance devised to liberate the accused from illegal detention becomes an instrument of curtailment of his liberty. This is the very Opposite of the desired effect. Insistence on an application for bail, for which there is no warrant in the statute, frustrates the purpose of legislation... The court has no power to remand the because Under Section 309(2) if he has been in custody beyond 60 days. If the police report is filed within 60 days the court may remand the accused if the conditions of Section 309 are satisfied. A remand in direct contravention of Section 167(2) cannot be made. Nor can the court validate the illegal detention by making an order of remand Under Section 309(2). The touchstone of legality is Section 167(2). Section 309(2) confers an ancillary power of remand to facilitate investigation...

I fully associate myself with the observations of both the Hon'ble Judges of the Delhi High Court.

12. An order of detention has to pass the test of Article 21 every moment of its existence. It is the obligation of the Magistrate and every other authority to justify the detention by reference to law. He who infringes the basic right must have the sanction for it. So it follows that the Magistrate must be in a position to -justify to the accused, the latter's detention and it is not for the accused to show to the Magistrate that his detention is illegal. Our bondage during colonial days, struggle for freedom and the aspiration of the soul to remain free led us to give unto ourselves a provision analogous to the 'due process' clause in the American Constitution so that our liberty is safeguarded not only from the onslaught of the executive but of any other authority whatsoever including the judiciary. I am, therefore, of the view that widest amplitude should be given to the mandate contained in Section 167 and vigilance should be exercised always for the protection of liberty, for rightly it has been held that 'eternal vigilance is the price of liberty'. So, for the Magistrate's error the right earned by the accused cannot be defeated nor can the Investigating Agency be allowed to take recourse to a device of filing charge-sheet before the accused is released on bail. The mandate contained in Section 167(2) Proviso (a) 'every person released on bail under this section shall be deemed to be so released under the provisions of Chapter XXXIII for the purpose of that Chapter' hardly leaves any room for doubt as to where the emphasis lies and what emphasis should be given to the deeming provision. The observation of Lord Asquith in regard to the scope and amplitude of the deeming provision is worth recalling:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of those in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so. you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.' C1952 AC 109).

One ought not to permit one's imagination to boggle midway following a narrow path. Unless contextually deterred one has to go the whole hog,

13. Sri R. K. Patra, the learned Additional Govt. Advocate, relied upon *Basanta Chandra Ghose v. Emperor* AIR 1945 FC 18) and drew attention to the following observation:...'if at any time before the Court directs release of the detenu, a valid order directing his detention is produced, the Court cannot direct his release merely on the ground that at some prior stage there was no valid cause for detention. The question is not whether the later order validates the earlier detention but whether in the face of the later valid order the Court can direct the release of the petitioner.' and to the case of *Saptawna v. State of Assam* : 1971 CriLJ679 :

The Federal Court was concerned with detention of a person under the Preventive Laws. There was a separate order for detention before the direction for release. The facts, therefore, are distinguishable. In *Saptawna's* case *supra*) the facts are different. It was held that the detention of the petitioner from Jan. 10 to Jan. 24, 1968 assuming to be illegal, his subsequent arrest on Jan. 24, 1968 was valid. Moreover, there were a number of cases pending against *Sap-tawna* and he was treated to have been arrested in other cases pending against him. From the judgment, the facts are not clear nor is there any discussion of the question involved. It is, therefore, of no assistance to the State justifying refusal of bail.

13A. The bail granted Under Section 167 cannot be treated to be a bail of inferior order, of a pariah class. It occupies the same pedestal as that granted under Chap XXXIII and by the deeming clause, shall have full swing and I respectfully agree with Hohatgi, J, (*Noor Mohd's* case) IL.R (1978) 2 Delhi 442:1980 Cri LJ (NOC) 27) that bail granted Under Section 167 could be cancelled only on merits after charge-sheet is filed. I am further strengthened in my view by the decisions in *Rama Murti's* case 1976 Cri LJ 211)(All) and *Ram Pal's* case 1976 Cri LJ 288)(All). It is worth mentioning here that *Ram Pal's* case was approved by the Supreme Court in *Bashir's* case : 1973 CriLJ159 .

14. Bail granted Under Section 167 having been elevated to the same pedestal as occupied by bail granted under Chap. XXXIII, no discriminatory treatment is

permissible. Such bail can only be cancelled like the bail granted under Chap. XXXIII and not on the filing of the charge-sheet, the reason being that bail granted on merits is not ipso facto reviewed on merits after the filing of the charge-sheet. For cancellation, recourse has to be taken to Section 437(5) and cancellation can be urged only on well known grounds. Any other interpretation would amount to putting the clock back and ignoring the exercise made during the last decade, and the observations of the Supreme Court in Natabar Parida's case -1975 Cri LJ 1212(SC) and Hussainara Kha-toon's case, 1979 Cri LJ 1052(SC)(supra)

Let us recall the words from Bashir's case supra):.As Under Section 157(2) a person who has been released on the ground that he had been in custody for a period of over sixty days is deemed to be released under the provisions of Chap. XXXIII, his release should be considered as one Under Section 437(1) or (2)

and importantly the further observation:.The provisions of Section 437(1), (2) and (5) are applicable to a person who has been released Under Section 167(2)...

15. My conclusions are;

(1) Detention beyond 60 days or 90 days, as the case may be, when no charge-sheet has been filed, is unwarranted and illegal Under Section 167(2);

(2) No application for bail is necessary. It is the duty of the court to ascertain the desire of the accused and release him on bail if he furnishes security;

(3) Section 167(2) does not cease to apply if charge-sheet is submitted after the prescribed period; and

(4) There is no distinction between bail granted Under Section 167(2) and bail granted on merits under Chap. XXXIII and can only be cancelled on grounds well established in law and not on the mere filing of a charge-sheet.

16, Petitioners 1 and 3 charged with commission of an offence of dacoity completed 90 days in custody on 1-9-1981. No charge-sheet having been filed within the prescribed period, it was the duty of the Magistrate to ask them on the 91st day if they were prepared to go on bail and to furnish bail. The Magistrate

infringed the constitutional and procedural mandate by deferring the application filed by the petitioners for consideration till 4-9-1981. Firstly it was his duty to draw the attention of the accused that he had earned a right to be released on bail. Graver error, however, was the adjournment of the case till the 4th of Sept. 1981. The Magistrate seems to have treated the liberty of a human being appearing before him as an accused very lightly and casually. Whether charge-sheet had been filed or not was a matter of record and when liberty of citizen was involved, pressure of work cannot be a valid and acceptable ground. The Magistrate, being an instrumentality in the administration of justice, should have visualised what feeling or impression, his act would have generated in the mind of the accused in regard to justice and administration of -justice. Short of holiday intervening matters involving the liberty, should have got preference and by no stretch of imagination, consideration of the application could have been deferred. It is not the accused who should be vigilant of his right; but the magistrate, who is the cause of the abridgement of his liberty. The lapses of the Magistrate cannot be a boon for the Investigation Agency and no advantage can be had by the filing of the charge-sheet after the prescribed period, petitioners, therefore, were entitled to bail notwithstanding the filing of the charge-sheet on 4-9-1981.

These are the reasons for my granting bail to petitioners 1 and 3 by order dated 20-11-1981.

I am indebted to Sri R. K. Patra, learned Addl. Govt, Advocate and Sri Pradip Mohanty, learned Counsel for the petitioners, for the valuable assistance rendered in this case.

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