

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1405 of 2017**

- Mukesh Pandey S/o Shri Radheshyam Pandey Aged About 30 Years R/o Mo. Bouripara (Rajesh Kirana Dukan Street), P. S. And Tahsil Ambikapur, District Surguja, Chhattisgarh.

---- **Petitioner****Versus**

- State Of Chhattisgarh Through The District Magistrate, Ambikapur, District Surguja, Chhattisgarh.

---- **Respondent**

For Petitioner	:	Ms. Hamida Siddiqui, Advocate
For Respondent-State	:	Shri Anupam Dubey, Dy. GA for the State

Hon'ble Shri Justice Goutam Bhaduri**C A V Order****(Judgment Reserved on 20.11.2017)****(Judgment Delivered on 17.01.2018)**

1. This petition is against the order dated 11.09.2017 passed by the Additional Sessions Judge, F.T.C., Surguja (Ambikapur) in Criminal Revision No.40/2017, whereby the rejection order of the petitioner by the JMFC for the default bail moved under Section 167 (2) of the Cr.P.C. was affirmed by Sessions Judge.
2. The case of the prosecution in brief is that an offence under Section 376 & 450 of the I.P.C. was registered against the petitioner in a Crime No.121/2017. After such registration of the crime, the petitioner was arrested on 14.03.2017 and he was subjected to remand on different dates. Subsequently, on 13.06.2017, the charge-sheet was filed i.e. after expiry of

90 days is on 91st day. The petitioner filed an application for release on default bail by invoking provisions of Section 167 (2) of the Cr.P.C. Learned Chief Judicial Magistrate, Ambikapur, District Surguja (C.G.) after evaluating the facts, recorded that the charge-sheet was shown to the CJM at 11.30 AM and thereafter it was sent for central filing, subsequently, an application for default bail under Section 167 (2) Cr.P.C. was filed at 12.05 pm, consequently, before filing of the application for bail, the charge-sheet was filed. In a result, the application to release the petitioner for statutory bail was filed subsequently to filing of charge-sheet as such was dismissed. Being aggrieved by such order, the matter was taken up in revision and the revisional Court of Additional Sessions Judge also affirmed the same. Hence this petition.

3. Learned counsel for the petitioner would submit that the petitioner was arrested on 14.03.2017 for the offence under Section 376 & 450 of the I.P.C., consequently, the appellant should have been released on bail as the charge-sheet was not filed within a period of 90 days when the bail was claimed. It is further contended that as per the law laid down in the case of ***Rakesh Kumar Paul Vs. State of Assam {AIR 2017 SC 3948}***, it is settled that if the petitioner expresses his desire to be released on bail, then in such eventuality under the statutory mandate, he is entitled for bail when the charge-sheet is not filed within a specific period of time as required under statute. She would further submit that as per the finding recorded by the Court below that the charge-sheet was first shown to the Magistrate and thereafter was filed, is completely foreign to the entire scheme of filing of charge-sheet. It is further stated that when the right has been accrued, the personal liberty cannot be defeated on the technical ground, as such the petitioner is entitled to be released on bail.

4. Per contra, learned State counsel opposes the petition and submits that the order passed by the Court below is well merited, which do not call for any interference.
5. I have perused the order of the Court below. In the instant case, the petitioner was arrested on 14.03.2017 and first remand was obtained on that date itself. Since the first remand was taken on 14.03.2017, therefore, for computation of the period for the purpose of Section 167 (2) Cr.P.C., it would start from 15.03.2017. The charge-sheet in this case was filed on 13.06.2017 and the period as calculated is shown hereunder:-

Custody Period	Total Period
From 15/03/2017 to 31/03/2017	17 days
From 01/04/2017 to 30/04/2017	30 days
From 01/05/2017 to 31/05/2017	31 days
From 01/06/2017 to 13/06/2017	13 days
Total Days	91 days

6. The provisions of Section 167 (2) Cr.P.C. as amended today is shown hereunder:-

“167- Procedure when investigation cannot be completed in twenty-four hours.

(1) xxxxxxxxxxxx

(2) xxxxxxxxxxxx

(a) Provided that-

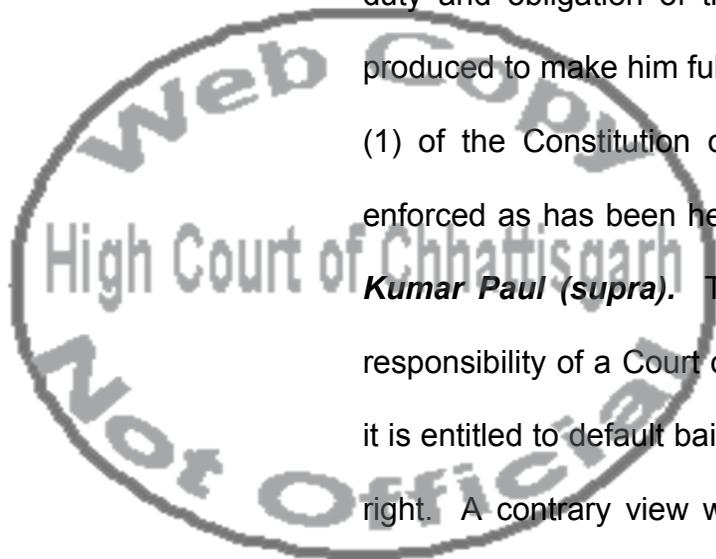
The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) Sixty days, where the investigation relates to any other offence.”

7. The Courts have time and again have shown its concern about personal liberty qua the penal statutes as also the obligation of the Court. It is the duty and obligation of the Magistrate before whom a person accused is produced to make him fully aware about his right flows from Articles 21 & 22 (1) of the Constitution of India and such mandates needs to be strictly enforced as has been held by the Supreme Court in the matter of **Rakesh Kumar Paul (supra)**. The Court therein has held that it is the duty and responsibility of a Court on coming to know that the accused person before it is entitled to default bail and at least apprise him or her of the indefeasible right. A contrary view would diminish the respect for personal liberty, on which so much emphasis has been laid by the Courts as is evidenced by the decision mentioned in the case of **UNION OF INDIA -vs- NIRALA YADAV {AIR 2014 3036}**.

8. Taking into facts of this case, order-sheet of remand would show that judicial remand was given up till 14.06.2017 on which the statutory period of 90 days had already expired. The inspection of the remand papers attached shows that initially the date was given on 14.06.2017, which is fortified by the marginal noting in the order-sheet. The order-sheet purports that subsequently some over writing was made and date of 14.06.2017 was preponed to 13.06.2017. The order-sheet of remand, however, shows that



the accused was given a date of 14.06.2017. The order-sheet of the CJM shows that the charge-sheet was produced on 13.06.2017 and the first page of it reflects that after the case was registered in CIS filing/registration, thereafter, only the case was remitted to the concerned Court. In order-sheet of the CJM, the presiding Judge has observed that the charge-sheet was shown to the CJM at 11.30 am, which was then sent to the central filing and thereafter an application for bail was filed at 12.05 pm. The first page of filing of the charge-sheet don't reflect the time of filing, the order-sheet also do not show that on that date the accused was produced from the custody as apparently he was given a date of 14.06.2017. Whereas, the Supreme Court has laid down that it would be the duty and responsibility of the Court to inform the accused about his right of default bail, therefore, the chronological events in order-sheet raises a doubt about compliance of such mandate. In absence of accused naturally the compliance could not have been carried out. Even mere recording of the statement of the CJM that initially the charge-sheet was shown to him and subsequently, it was sent for central filing cannot be held that charge-sheet was actually filed. Until the charge-sheet actually is filed in the central filing section according to the Rules & Orders (Criminal) as amended by the High Court, the same cannot be termed as filing.

9. For this reason the notification of amendment of the Rule would be relevant, which is shown herein below.
10. The notification was published in the official gazette dated 16.12.2013 which reads as under:-

“No.9004/R.G/2013.- It is hereby informed that, the High Court of Chhattisgarh hereby makes the following amendments in the Civil Court Rules as also in the Rules and Orders (Criminal), which shall come into force from the date of publishing in Chhattisgarh Gazette.

AMENDMENTS

In Civil Court Rules :-

1. xxx xxx xxx
 xxx xxx xxx
 xxx xxx xxx

2. In Chapter 24 of Rules and Orders (Criminal), Rule 571 shall be numbered as 571 (1) and following shall be added after Rule 571 (1) :-

Section 571 (2) :-

(i) There shall be a Central Filing Section headed by the Registrar at the Civil District Headquarter and Deputy Registrar at the outlying Station in each Civil District.

(ii) The District Judge shall appoint any of its employee/officer to function as Registrar/Deputy Registrar.

(iii) District and Sessions Judge shall also provide as many employees as required to assist the Registrar and Deputy Registrar to perform their function.

(iv) All charge-sheet in Criminal matters, Criminal Appeals, Criminal Revisions and Miscellaneous Judicial Cases shall be presented to the Registrar at Civil District Headquarter and to Deputy Registrar at outlying station in Civil District.

(v) Registrar and Deputy Registrar respectively shall allot a separate number to each case and transmit the same amongst the Courts of Judicial Magistrates as per Distribution order of Chief Judicial Magistrate, under section 14 (1) and 15 (1) of Cr.P.C.

11. According to the prevailing rules, unless and until the Registrar and Deputy Registrar respectively transmit the charge-sheet after allotting a separate number, the same cannot be said to be in compliance to the amended rules. As otherwise, there would have always an ambiguity about the timing of the filing of the charge-sheet and dispute would be in every case especially in the case where the default bail is prayed. Therefore, as per the rules, when the charge-sheet is filed, it is to be presented to the Registrar at Civil District Headquarter and to Deputy Registrar at outlying station in civil District. Thereafter, the Registrar and Deputy Registrar respectively shall allot a

separate number to case and transmit the same amongst the Courts of Judicial Magistrates as per Distribution. Herein, in the instant case, apparently such Rules were not followed. Neither any number is appearing nor any endorsement appears on the face of the filing of the challan. So mere showing the challan to a Magistrate cannot be said to be filing of the challan. The judge cannot take the role of prosecutor or show any interest on behalf of the prosecution as he has to act independently. Therefore, the amended Rule will prevail over the observation of a Judge with respect to date & filing of it with time.

12. The principle as has been laid down in the case of **Rakesh Kumar Paul** (*supra*) the Supreme Court has held that in matters of personal liberty, the Court cannot be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for 'default bail' or an oral application for 'default bail' it is of no consequence. It was directed that the concerned Court must deal with such an application by considering the statutory requirements, namely whether the statutory period for filing a charge-sheet or challan has expired, whether the charge-sheet or challan has been filed and whether the accused is prepared to and does furnish bail.

13. In the instant case, the record would show that the accused was not before the Court and the remand document shows that he was given date of 14.06.2017 as noting of 14.06.2017 exists in the margin of the order-sheet. The memo send by the Court also reflects the date was given on 14.06.2017, but subsequently some correction was made. The memo issued to the Jail Superintendent, Surguja shows that a direction was made that the accused should be produced on 14.06.2017 before the Court. The remand case file shows that the application for default bail was filed at 12.05

pm on 13.06.2017. Thus, it is not clear by the papers that before 12.05 pm the validly constituted charge-sheet was filed in central filing before 12.05 PM.

14. Therefore, taking into the totality, it can be assumed by inspection of the remand case file that before the charge-sheet was filed, the bail application was already on record and thereby the petitioner had exercised his right for default bail and consequently was ready to furnish the bail.

15. In a result, I am of the opinion that the principle laid down in the case of **Rakesh Kumar Paul (supra)** shall govern the facts of this case and I am of the opinion that the petitioner has satisfied all the requirements of obtaining default bail on 13.06.2017 as he has been put more than 90 days in custody pending investigation for the alleged offence. Since he was prepared to furnish bail for his release, as such he ought to have been released by the Court below on reasonable terms and conditions of bail. In a result, since the petitioner was not released, I am inclined to allow this petition.

16. Accordingly, the petition is allowed and the petitioner is directed to be released on default bail on his executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. He is directed to appear before the trial Court on each and every date given by the said Court.

Sd/-

Goutam Bhaduri
Judge

Ashu