

Jharkhand High Court

Nasim Ansari @ Guru Mian vs State Of Jharkhand on 16 January, 2009

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 1380 of 2008

Nasim Ansari @ Gura Mian.....

Petitioner

Versus

State of Jharkhand & Anr.....

Opp. Parties

Coram: The Hon'ble Mr. Justice Amareshwar Sahay

For the petitioner : Mr. K.P.Deo

For the State : Mr. A.P.P.

For the informant : M/s Mahesh Tewari, N.P.Choudhary

ORDER

C.A.V. on 27/11/2008

Delivered on 16/01/2009

5/16.01.2009

Heard the parties.

2. The petitioner has filed this application challenging the order dated 02/09/2008, passed by the Sessions Judge, Deoghar, dismissing the Criminal Revision No. 110/2008, as well as the order dated 14/08/2008, passed by the Sub-Divisional Judicial Magistrate, Madhupur at Deoghar, refusing to release the petitioner on bail by giving him the benefit of Section 167 (2) (a) (ii) of the Code of Criminal Procedure.

3. The facts, in short, are that one Taiyab Ansari lodged a first information report being Sarath (Chitra) P.S. Case No. 53/2008 against three named accused persons, i.e. the petitioner and two others namely, Phurkant Mian and Mahboob Mian. The F.I.R. was registered under Section 363 and 366 A IPC, wherein it was alleged by the informant that this petitioner was his Driver and he used to reside in his house. On the alleged date of occurrence, this petitioner by enticing his minor daughter took her away with him and both were missing. It was alleged that the petitioner eloped with his minor daughter for illegal purposes of marriage and rape. So far as against the two other accused persons, who were named in the FIR, it was

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4. The police took up investigation and the petitioner was arrested and was remanded to custody on 03/06/2008.

5. On 14/08/2008, a petition was filed by the petitioner before the S.D.J.M., Madhupur at Deoghar, purported to be a petition under Section 167 (2) (a) (ii) Cr. P.C. praying therein to release him on bail on the ground that he cannot be detained in custody for more than 60 days as the police failed to complete the investigation and submit charge sheet in the case within the period of 60 days as provided under Section 167 (2) (a) (ii) Cr. P.C. and, therefore, he was entitled to be released on bail.

6. The learned Sub-Divisional Magistrate by order dated 14/08/2008 rejected the petition and refused to release the petitioner on bail on the ground that the punishment provided under Section 366 A IPC was imprisonment for a period of 10 years and also fine and, therefore, the case would fall under Section 167 (2) (a) (i) Cr. P.C. wherein the period for completion of investigation was provided to be 90 days and not 60 days.

7. The petitioner challenged the said order in revision before the Sessions Judge, Deoghar, which has been dismissed by the Sessions Judge by the impugned order dated 02/09/2008, which is under challenge in this application.

8. From the impugned order of the Sessions Judge it appears that the prayer of the petitioner for releasing him on bail, has been rejected on the ground that the police submitted charge sheet on the 88th day under Section 376 IPC also and the punishment provided under Section 376 IPC was much more higher than 10 years and, therefore, the provision of 60 days would not be applicable rather provision of 90 days would be applicable in the case.

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9. Mr. K.P. Deo, learned counsel appearing for the petitioner submitted that an accused arrested and remanded to custody in connection with an offence punishable for imprisonment of 10 years or less, he may be detained in custody not more than 60 days, if the police does not submit final form/charge sheet within the period of 60 days as envisaged under Section 167 (2) (a) (ii) Cr. P.C. He further submitted that the period for detention up to 90 days is permissible only in relation to the offences in which punishment are provided with death, imprisonment for life or imprisonment for a term not less than 10 years. Whereas, in the present case, as per the allegations, the FIR was registered under Section 363 and 366 A of the Indian Penal Code and both the offences are punishable for imprisonment for 10 years or less and, therefore, the petitioner is entitled to be released on bail after the expiry of the period of 60 days when the police did not submit charge sheet. According to Mr. Deo, the right which accrued to the petitioner for his being released on bail on the 61st day from the date of his remand to custody cannot have been taken away only because that later on the police submitted charge sheet under Section 376 IPC on the 88th day and the punishment provided under Section 376 IPC is imprisonment for more than 10 years.

10. On the other hand, Mr. Mahesh Tewari, learned counsel appearing for the informant/O.P. No. 2 submitted that in a case relating to the offence under Section 376 IPC the statutory period for submission of charge sheet would be 90 days because it is punishable for imprisonment of 10 years and above and in the present case admittedly the charge sheet was submitted on the 88th day, i.e. within the period of 90 days and, therefore, the petitioner is not entitled to be released on bail. He further submitted that the offence committed by the petitioner was heinous in nature and, therefore, it should be dealt with strong hands of law.

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11. In order to appreciate the rival submissions of the parties, it is necessary to extract the provision of law in this regard. Section 167 (2) (a) (i) and Section 167 (2) (a) (ii) are quoted herein below for ready reference:-

"167 (1)...

(2)...

(a) 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 authorize 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, and on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter."

12. There is no dispute of the fact that for the offence under Section 366 A IPC the punishment provided is imprisonment for a period of 10 years or less. In this view of the matter, the provision of Section 167 (2) (a) (i) would not apply because the same speaks about those cases where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than 10 years. For such types of offences, which are punishable for

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(ii) speaks about the other offences except those mentioned in (i), the maximum period of detention of an accused would be 60 days and if no charge sheet or final form is submitted within the said period, the accused would be entitled to be released on bail.

13. If the period of 90 days as envisaged under Section 167 (2) (a) (i) Cr. P.C. or the period of 60 days as envisaged under Section 167 (2) (a) (ii) Cr. P.C. provided for filing charge sheet against the accused expires then in that case an indefeasible right accrues to the accused on and from 91st or 61st days, as the case may be, to get himself released on bail on the terms and conditions as may be imposed by the trial court. This right cannot be curtailed or taken away in any manner by the Court. In the present case, admittedly, the charge sheet was submitted by the police on the 88th day from the date of remand of the petitioner by adding Section 376 IPC. In my view, even though the police submitted charge sheet under Section 376 IPC, it would not make any difference and the right which already accrued to the petitioner for his release on bail on and from the 61st day from the date of his

remand due to non-submission of the charge sheet by the police that cannot be curtailed or taken away by submission of the charge sheet under an offence which provides punishment of imprisonment for more than 10 years. The learned Sessions Judge as well as the trial court both have gravely erred in refusing to release the petitioner on bail by giving him the benefit under Section 167 (2) (a) (ii) of the Code of Criminal Procedure.

14. In view of the discussions and findings above, the impugned orders dated 02/09/2008 and 14/08/2008 passed by the Sessions Judge, Deoghar and S.D.J.M., Madhupur at Deoghar respectively, are hereby quashed. The trial court is directed to release

-6- Cr.M.P. 1380 of 2008 the petitioner on bail if he is prepared to furnish bail bonds and on such terms and conditions as may be imposed by the trial court permissible under the law. Consequently, this application stands allowed with the above observations and directions. .

(Amareshwar Sahay, J) Mukund/-