

IN THE HIGH COURT OF ORISSA AT CUTTACK

C R L M C No.362 of 2022

(In the matter of an application under Section 482 of the Code of Criminal Procedure)

***Pramesh Pradhan@Rani and
another*** ***Petitioners***

-versus-

State of Orissa ***Opposite Party***

Advocate(s) appeared in this case:-

For Petitioners : Mr. J. Panda, Advocate

For Opposite Party : Ms. Samapika Mishra,
Additional Standing Counsel

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
20th April, 2022

B.P. Routray, J.

1. The Petitioners, who are the accused for commission of offence under Section 20(b)(ii)(C) of the N.D.P.S. Act, have prayed for releasing them on default bail in terms of Section 36-A(4) of the N.D.P.S. Act read with Section 167(2) of the Cr.P.C.

2. The case of the Petitioners is that, on the allegation of transporting and possessing 52 kg 850 grams of contraband ganja, they were arrested and taken to custody on 18.07.2021 in connection with Nayagarh P.S. Case No.151 dated 18.07.2021 for commission of

offence under Section 20(b)(ii)(C) of the N.D.P.S. Act. Pending investigation, they were remanded to custody on 18.07.2021 by order of the learned Sessions Judge-cum-Special Judge, Nayagarh in Spl. G.R. Case No.91 of 2021 and since then the Petitioners are inside custody. The investigation continued and 180 days completed on 13.01.2022.

3. The charge-sheet was submitted on 16th January, 2022. But the date mentioned under the signature of the I.O. at the last page is dated 10th January, 2022 though the date mentioned in the first page of the charge-sheet is 13th January, 2022.

4. On 17.01.2022, a bail application was filed by the counsel on behalf of the accused persons praying for grant of bail on the ground that since the charge-sheet was not filed within a period of 180 days from the date of initial remand, hence the accused persons should be released on bail. Learned Sessions Judge-cum-Special Judge, Nayagarh rejected the application for bail filed under Sec.167(2) of the Cr.P.C. by order dated 17.01.2022 on the ground that charge-sheet was within the stipulated time as it was prepared on 10.01.2021 as per the date mentioned on the last page of the same. This has been challenged in the present petition.

5. The Petitioners contend before this Court that rejecting their application for bail by order dated 17.01.2022 is against the principles of law enumerated in Section 167(2) of the Cr.P.C. and such an interpretation of the learned Sessions Judge with regard to the date of

submission of charge-sheet is not permissible. The learned counsel for the Petitioners by relying on a decision of this Court in the case of ***Lambodar Bag vs. State of Orissa, (2018) 71 OCR-31*** contends that rejection of bail for non-completion of investigation within 180 days from the date of custody is illegal and liable to be set aside. It is thus prayed that the Petitioners should be released on default bail as a matter of right guaranteed under the provisions contained in Section 167(2) of the Cr.P.C. read with Section 36-A(4) of the N.D.P.S. Act.

6. It is the settled law that right guaranteed under Section 167(2), Cr.P.C. to the accused is indefeasible. This Court, in the case of ***Lambodar Bag*** (supra) after taking into consideration the principles decided in the case of ***Hitendra Vishnu Thakur vs. State of Maharashtra, AIR 1994 SC 2623*** and various other decisions, have answered on five points relating to release of an accused in terms of Section 36-A(4) of the N.D.P.S. Act read with Section 167 (2) of the Cr.P.C. The answer is in affirmative in favour of the accused for his enlargement on bail for non-completion of investigation within the prescribed period of 180 days on different contingencies relating to extension of such period.

7. It is also held in the case of ***Labmodar Bag*** (supra) that, even if the accused has not applied for his release on default bail, still his entitlement for bail on account of non submission of prosecution report would not be affected. The relevant observations of this Court are reproduced below:

Keeping in view that ratio laid down in the aforesaid decisions and coming to the case in hand, I am of the humble view that even though the Petitioners have not applied for bail during the default period when prosecution report was not filed even after extended period for completion of investigation as was granted by the learned trial judge but since the learned trial judge has not informed the Petitioners of their right being released on bail on account of non-submission of prosecution report, no fault can be found with the Petitioners for not making such application for bail during the default period. Had the learned trial judge informed the Petitioners of their right and the Petitioners on being so informed, failed to file an application for release on bail on account of the default by the investigating agency in the completion of investigation within the extended period, after the prosecution report is filed, they would have lost their valuable right. In the factual scenario, the Petitioners cannot be stated to have voluntarily given up their indefeasible right for default bail.

8. Even though the Petitioners have not applied for bail before the learned trial judge on the ground of not being noticed to have their say on the invalid petition filed by the Addl. Public Prosecutor on 22.07.2017 but on some other grounds, they are not debarred from taking such ground before this Court. As held in case of Rakesh Kumar Paul, in the matter of personal liberty, the Court should not be too technical and must lean in favour of personal liberty. An application for bail in the High Court is not an application for review of the order of the court below. Grounds not taken in the court below can be taken in the bail petition in the higher Court and even non-taking of grounds in the bail petition will not deprive the counsel for the accused in raising such grounds during hearing of the bail application. Even if a ground for grant of bail is not taken in the bail petition and not argued by the counsel for the accused, the court is not deprived of releasing the accused on bail on such ground if it is legally sustainable. Strict rules of pleadings are not applicable in bail petition.”

8. As it reveals from the impugned order and copy of the lower court record that admittedly charge-sheet was filed on 16th January, 2022. So irrespective of any date mentioned regarding preparation of the charge-sheet, the date of its submission before the Court is only

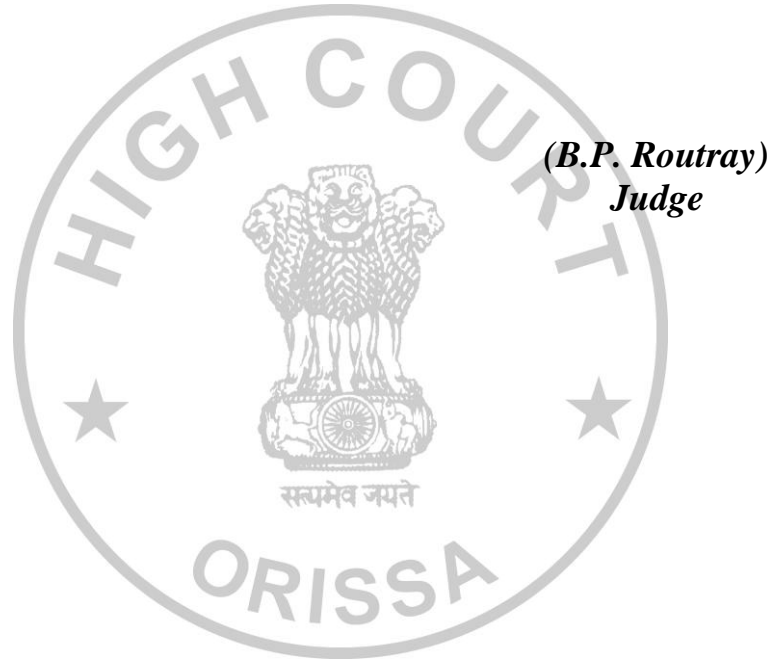
relevant for the purpose of default bail under Section 167 (2) of the Cr.P.C. As per the language used in Section 167, Cr.P.C., the detention is authorized pending completion of investigation and completion of investigation leads to submission of report under Section 173(2), Cr.P.C. The words used in Section 173(2), Cr.P.C. is 'as soon as'. Therefore the inference is that, the investigation has been completed only when the charge-sheet is submitted to the court. Thus the date of completion of investigation is the date of submission of charge-sheet and reverse. In the instant case, when the charge-sheet was submitted on 16th January, 2022 beyond 180 days period, the right of default bail accrued in favour of the accused.

9. Applying those principles as decided by this Court in the case of *Lambodar Bag* (supra) to the present facts of the case as narrated in the preceding paragraphs, it is felt that in the present case, the indefeasible right of the Petitioners for their release on default bail has been violated. It is evinced from the order dated 17.01.2022 that the accused-Petitioners have not been informed of their right of default bail on the expiry of period of 180 days nor have they been informed of such right while taking cognizance upon the charge-sheet filed by the prosecution on 16.01.2022.

10. Thus, in consideration of all the facts, the order dated 17.01.2022 of the learned Sessions Judge-cum-Special Judge, Nayagarh to the extent of rejecting the prayer of grant of bail under Section 167(2) of the Cr.P.C. to the accused is set aside. Resultantly, it is directed to release the Petitioners on bail in the aforesaid case on

furnishing bail bond of Rs.1,00,000/- (Rupees One Lakh) with two sureties each for the like amount to the satisfaction of the court in seisin over the matter with further condition that the Petitioners shall attend the learned trial court on each date fixed. Further, the court below is at liberty to fix any other condition in addition to the above as it deems fit and proper. It is further made clear that violation of any such condition shall entail cancellation of bail.

11. The CRLMC is accordingly allowed.



B.K. Barik/Secretary