

their application filed under Section 167(2) of Cr.P.C. for grant of default bail.

2. The aforementioned case has arisen out of Balipatna P.S. Case No.183 dated 07.07.2022 registered for commission of the offence under Sections 302/364/120(B)/114/34 of IPC.

3. Both the petitioners were arrested on 11.07.2022 and remanded to judicial custody on the same day. Their application for bail was also rejected on the same day. On 11.11.2022, the record was put up on the strength of advance petition filed on behalf of the petitioners for consideration of another application filed by them for release on default bail as per provision under Section 167(2) of Cr.P.C. on the ground that charge sheet had not been submitted, even after lapse of the statutory period of 120 days. Learned J.M.F.C. after hearing both sides found that a charge sheet had actually been submitted by the I.O. on 05.11.2022, but for some reason had not been placed before the Court. Since the charge sheet was not tagged to the case record, learned J.M.F.C. directed the CSI attached

to the Court to place the charge sheet in the open court forthwith, pursuant to which a staff of CSI placed the charge sheet in presence of both parties. On perusal of the charge sheet, learned J.M.F.C. having found that the same had been submitted on 05.11.2022 and was not placed before the Court for consideration due to laches and lapse of CSI staff, but the same having been filed within the stipulated period, the right of the accused persons to statutory bail came to an end. On such findings learned J.M.F.C. rejected the application for default bail.

4. The petitioners thereafter moved the Court of Sessions seeking bail citing accrual of indefeasible right under Section 167(2) of Cr.P.C. Learned Sessions Judge took note of the finding of learned J.M.F.C. that the charge sheet had been submitted by the I.O. on 05.11.2022, but was not placed before him. It was further held that the materials available on record prima facie suggest complicity of the petitioners in the alleged crime. The application was thus rejected.

5. Heard Mr. P.K.Nanda, learned counsel for the petitioners and Mr. S.K. Mishra, learned Additional Standing Counsel for the State.

6. In order to appreciate the contentions, it would be apposite to refer to the sequence of events stated below. Before that however, it is to be noted that since the petitioners were arrested and remanded to judicial custody on 11.07.2022, the calculation of the statutory period would be as follows:-

July, 2022	Dt. 11.07.2022	to	31.07.2022	21 days
Aug. 2022:	Dt.01.08.2022	to	31.09.2022	31 days
Sept., 2022	Dt.01.09.2022	to	30.09.2022	30 days
Oct. 2022	Dt.01.10.2022	to	31.10.2022	31 days
Nov. 2022	<u>Dt.01.11.2022</u>	to	07.11.2022	07 days
TOTAL				= 120 days

7. Admittedly, the charge sheet was placed before the PO for the first time on 11.11.2022, which is five days after the stipulated period of 120 days, i.e., 07.11.2022. This Court finds from the order sheet of the case record that the case was posted to 04.11.2022 on which date the accused persons were remanded till 17.11.2022. It is not understood as to why the case was adjourned beyond 07.11.2022 as the same was the last date for submission of

charge sheet. In all fairness, the case should have been adjourned to 07.11.2022 or at best 08.11.2022 on which date, the accused persons could be said to have acquired an indefeasible right to be released on bail for default of prosecution in submitting the charge sheet. It is reiterated that an indefeasible right to be released on bail accrued to the petitioners on the 121st day, i.e., 08.11.2022. In view of the well settled legal position, it was incumbent upon learned J.M.F.C. to have directed production of the accused persons to inform them of their right to be released on default bail. This is the first illegality noted by this Court.

8. The second illegality which is glaringly manifest is condoning the default of the prosecution in submitting the charge sheet within the stipulated time. Charge sheet is to be filed in the Court and not before the Court Sub-Inspector. Even if for some reason it is submitted before the Sub-Inspector, the same is required to be immediately placed before the concerned Court without any delay. Submission of the charge sheet before the Court Sub-Inspector is therefore, not the same thing as submission

before the Court because once it is filed, it is to be taken on record by passing a judicial order. On the contrary, it is seen that learned J.M.F.C., despite noting that due to laches and lapse of CSI staff the charge sheet could not be placed before the PO in time, most surprisingly held that the right of the accused persons to statutory bail came to an end. It must be kept in mind that the Court is not supposed to act as an agent of the prosecution so as to be left at its mercy. When the question of liberty of a person is involved, it is expected that the Court shall rise to the occasion to dispense justice without in the least aligning itself with any party whatsoever. It has been emphasized time and again that right to default bail is akin to the fundamental right of liberty guaranteed under Article 21 of the Constitution of India. The learned J.M.F.C. could not have taken such an unconscionable view to defeat the valuable right of the accused persons by seemingly siding with the prosecution. What is more surprising to note is, learned Sessions Judge being a senior judicial officer also failed to appreciate this fundamental aspect and principle of law. Furthermore, despite noting such serious lapse on

the part of learned J.M.F.C., learned Sessions Judge chose instead to dwell upon the merits of the case to reject the application filed for bail claiming accrual of indefeasible right under Section 167(2) of Cr.P.C., which by itself, is entirely illegal and unacceptable.

9. The most glaring illegality seen from the order of learned J.M.F.C. is the following observations made in the order dated 11.11.2022.

“When the matter is taken up for consideration, the charge sheet was not tagged to the case record. So, the Court gave direction to the C.S.I. attached to the Court to place the charge sheet as per the submission made by the learned A.P.P. in the open Court forthwith. In compliance with the direction, a staff of C.S.I. placed the charge sheet before the Court in presence of both the parties.”

10. A bare reading of the observations as above, prompts this Court to hold that the Presiding Officer travelled beyond his brief to somehow condone the default of the prosecution by calling for the charge sheet that had not been placed before him.

11. It is emphasized at the cost of repetition that the right of the accused to be released on default bail is a valuable

right akin to his fundamental right under Article 21 of the Constitution of India. All Courts are expected to be alive to the constitutional right of the accused while dealing with matters affecting his personal liberty. As has been emphatically laid down by the Apex Court, the Courts must not fall prey to the subterfuges that may be adopted by the investigating agency/prosecution to frustrate the right of the accused. In this regard the following observations of the Apex Court in the case of **Rakesh Kumar Paul v. State of Assam**, reported in (2017) 15 SCC 67 are noteworthy:-

*“This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to **Mohamed Iqbal Madar Sheikh v. State of Maharashtra** wherein it was observed that some courts keep the application for ‘default bail’ pending for some days so that in the mean time a charge sheet is submitted. While such a practice both on the part of prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for ‘default bail’ during the interregnum when the statutory period for filing the charge sheet or challan expires and the*

submission of the charge sheet or challan in court.” (Emphasis supplied)

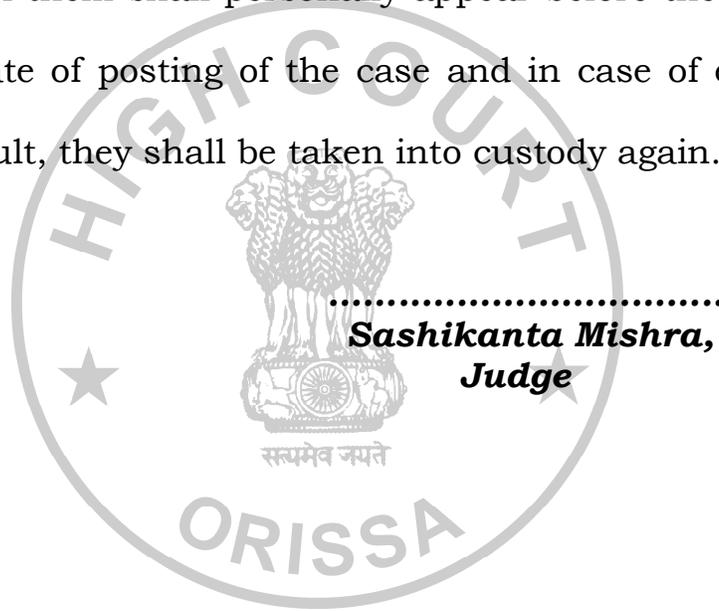
Thus, it is required that the Courts must rise to the occasion to discharge their constitutional duty without ‘fear’ or ‘favour’ solely with the intent of dispensing justice and nothing more.

12. It is unfortunate that learned Sessions Judge, despite taking note of the manifest illegality chose to turn the other way instead of exercising his jurisdiction appropriately. The bail application was thus mechanically rejected without so much even entering into a discussion as regards the illegality committed by the Court below. Learned Sessions Judge ought to have exhibited the sensitivity required of a senior officer in such fact situation.

From a conspectus of the discussion and analysis made hereinbefore, this court is of the view that both the courts below have committed gross illegality in rejecting the petition filed by the accused-petitioners for default bail under Section 167(2) of Cr.P.C., despite non-submission of charge sheet within the stipulated period of 120 days. In view of what has been discussed hereinbefore, this Court

holds that the accused persons are entitled to be released on bail forthwith.

13. It the result, the CRLMC is allowed. It is directed that the accused-petitioners shall be released on bail on such terms and conditions as the court in seisin over the matter may deem fit and proper to impose including the condition that both of them shall personally appear before the Court on each date of posting of the case and in case of even a single default, they shall be taken into custody again.



*Orissa High Court, Cuttack,
The 4th March 2023/ B.C. Tudu, Sr. Steno*