

(2009) 05 CAL CK 0017**Calcutta High Court****Case No:** C.R.R. No. 3163 of 2008

Md. Israil

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: May 14, 2009**Acts Referred:**

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 167
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20(b)(ii)(c), 25, 36A(4)

Hon'ble Judges: Pranab Kumar Chattopadhyay, J; Kishore Kumar Prasad, J**Bench:** Division Bench**Advocate:** Himangshu De and Suman De, for the Appellant; S.S. Roy for the State, for the Respondent**Judgement**

1. This application has been filed by the petitioner in connection with NDPS Case No. 37 of 2007 arising out of Bhaktinagar P.S. Case No. 709 of 2007 dated 21st September, 2007 u/s 20(b)(ii)(c) /25 of the Narcotic Drugs and Psychotropic Substances Act challenging the orders dated 16th June, 2008, 23rd June, 2008 and 30th June, 2008 passed in the aforesaid case.

2. From the records, we find that the petitioner hereinafter surrendering himself in the Court of Special Judge was remanded to judicial custody by order of the learned Judge on 18th December, 2007 and this remand was extended from time to time.

3. The investigating agency could not file the chargesheet within the statutory period of 180 days which expired on 15th June, 2008. On 16th June, 2008, the petitioner herein filed an application for being released on bail and on the same day, the prosecution also filed an application before the learned Court below praying for extension of the period of investigation in terms of proviso to section 36A(4) of NDPS Act. The concerned learned Additional Sessions Judge fixed the date

of hearing of the aforesaid bail application filed on behalf of the accused/petitioner as well as the application filed by the learned Public Prosecutor for extension of the period of investigation on 23rd June, 2008.

4. By the order dated 23rd June, 2008, the learned Additional Sessions Judge, 2nd Court, Jalpaiguri allowed the application filed by the learned Public Prosecutor and extended the time of the period of investigation.

5. On 23rd June, 2008, another application was filed on behalf of the accused/petitioner for granting bail. Both the applications dated 16th June, 2008 and 23rd June, 2008 filed on behalf of the petitioner for granting bail were rejected by the learned Additional Sessions Judge on 30th June, 2008.

6. It is not in dispute that the prescribed statutory period of 180 days had expired on 15th June, 2008 and the accused/petitioner filed an application for granting bail on 16th June, 2008. The prosecution although filed an application for extension of time to complete the investigation on 16th June, 2008 but subsequently, it appears from the records that the chargesheet was ready on 14th June, 2008 which was ultimately filed before the concerned Court on 17th June, 2008.

7. The learned Advocate representing the petitioner submits that the learned Court below could not permit the detention of the petitioner beyond the prescribed period since the chargesheet was not filed by the investigating agency within the prescribed period.

8. Mr. Roy, learned Advocate representing the State also submits that the chargesheet was ante-dated and the same was filed admittedly on 17th June, 2008 i.e. after the expiry of the prescribed period of 180 days.

9. Mr. Dey, Learned Counsel representing the petitioner referred to and relied on a decision of the Hon'ble Supreme Court in the case of Uday Mohanlal Acharya vs. State of Maharashtra, reported in 2001 SCC (Cri) 760 and submits that the consequences of default on the part of the concerned Investigating Officer in not filing the chargesheet within the prescribed period would entitle the accused/petitioner to be released on bail.

10. The Hon'ble Supreme Court in the aforesaid case Uday Mohanlal Acharya (supra), specifically observed that the filing of challan at the subsequent stage will not take away the right of the accused/petitioner. In the aforesaid decision, Supreme Court held:

...in such a case, therefore, even if the application for consideration of an order of being released on bail is posted before the Court after some length of time, or even if the Magistrate refuses the application erroneously and the accused moves the higher forum for getting a formal order of being released on bail in enforcement of his indefeasible right, then filing of challan at that stage will not take away the right of the accused. Personal liberty is one of the cherished objects of the Indian

Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution....

11. In the aforesaid decision, the Hon'ble Supreme Court also observed as under:

...This is the only way how a balance can be struck between the so-called indefeasible right of the accused on failure on the part of the prosecution to file a challan within the specified period and the interest of the society, at large, in lawfully preventing an accused from being released on bail on account of inaction on the part of the prosecuting agency....

12. Mr. Dey further submits that the learned Court below should have disposed of the application for bail on the very day the same was filed. According to Mr. Dey, learned Additional Sessions Judge adjourned the hearing of the bail application in clear violation of the law laid down by the Apex Court in the case of Uday Mohanlal Acharya (supra).

13. Going through the aforesaid decision, we also find that the Hon'ble Supreme Court specifically held as hereunder:

When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/Court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no chargesheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/Court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

14. In the present case, the learned Court below failed to appreciate the accrual of the indefeasible right in favour of the accused/petitioner for being released on bail on account of failure on the part of the prosecution to file the charge within the specified period of 180 days.

15. The learned Advocate representing the State very fairly submits that in the present case, the law is very much clear and the petitioner herein is entitled to be released on bail.

16. Considering the submissions of the Learned Counsel of both the parties and in view of the law clearly laid down by the Hon'ble Supreme Court in the case of Uday Mohanlal Acharya (supra); we are of the opinion that the order passed by the learned Court below on 30th June, 2008 rejecting the applications made on behalf of the petitioner herein for grant of bail filed on 16th June, 2008 and 23rd June, 2008 cannot be sustained and the same is accordingly set aside.

17. We, therefore, direct the learned Additional Sessions Judge, 2nd Court, Jalpaiguri (Special Court under NDPS Act) to release the accused! petitioner on bail pending disposal of the trial in connection with NDPS Case No. 37 of 2007 on the terms and conditions to his satisfaction.

18. We also direct the learned Court below to expeditiously dispose of the NDPS Case No. 37 of 2007 arising out of Bhaktinagar P.S. Case No. 709 of 2007 dated 21.09.2007 in accordance with law, since the chargesheet has already been filed.

19. This revisional application thus stands disposed of.