

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43769 of 2019**

Arising Out of PS. Case No.-481 Year-2018 Thana- MITHANPURA District- Muzaffarpur

PREMCHANDRA PRASAD @ PREM CHAND PRASAD, Son of Shambhu Sharan Prasad, Resident of Village - Bharwalia, P.S.- Palanwa, District - East Champaran.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

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|--------------------------|---|---|
| For the Petitioner/s | : | Mr. N.K.Agrawal, Senior Advocate Mr. Indu Bhushan, Advocate Mr. Sunil Kumar, Advocate |
| For the Opposite Party/s | : | Mr. Jharkhandi Upadhyay, A.P.P. |

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT**

Date : 24-09-2019

Heard the parties.

2. This application, under Section 482 of the Code of Criminal Procedure, is for quashment of order dated 23.03.2019 passed by the court of learned Sub-Divisional Judicial Magistrate, East Muzaffarpur in Mithanpura Police Station Case No.481 of 2018.

3. The petitioner is an accused in connection with Mithanpura Police Station Case No.481 of 2018 registered under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. The petitioner was arrested in the case on 20.12.2018 and was produced before the learned Magistrate on 21.12.2018 and remanded to judicial custody on 21.12.2018 itself. The aforesaid



fact would be evident from the charge sheet submitted in the case vide *Annexure 3*. The investigation of the case could not be completed even much after expiry of the period of 90 days, which creates indefeasible right in favour of the accused to be released on bail under Section 167 (2) of the Code of Criminal Procedure. The petitioner exercised his right to bail on 23.03.2019 vide petition at *Annexure 2*, stating therein that the petitioner is ready to abide by the conditions of bail as ordered by the court below.

4. By the impugned order, in the first sitting of the court when the bail matter was pressed, the court called for a report from the office whether charge sheet has been submitted or not. In the second sitting, the office reported that charge sheet was submitted on the same day at 2:23 P.M.

5. As such the factual position aforesaid would reveal that on 23.03.2019 the petitioner was in illegal detention, as he could not have been remanded to judicial custody beyond 90 days, if the investigation was still pending. Moreover, the issue has been settled in catena of decisions that once the petitioner exercises his right, subsequent filing of the charge sheet cannot take away the right of the petitioner when at the time of exercise of the right of peremptory bail the petitioner was in illegal



detention. Reference may be made to the case of *Sanjay Dutt versus the State through C.B.I.*, reported in *1994 (5) SCC 410*, *Hitendra Vishnu Thakur versus the State of Maharashtra*, reported in *1994 (4) SCC 602* and the case of *Uday Mohanlal Acharya versus the State of Maharashtra*, reported in *2001 (5) SCC 453*.

6. In Uday Mohanlal Acharya's case, the Hon'ble Supreme Court held that :

“When an application of 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 charge sheet 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”.

7. It is needless to mention that situation would have been different, if the charge sheet would have been filed even after expiry of the period of 90 days but before exercise of the right by the accused to be released on bail. Likewise, if the Magistrate would have passed order of grant of mandatory bail to the accused immediately on such prayer was made and bail bond would not have been furnished before submission of the charge sheet, the right of the accused would have been frustrated.

8. In the present case, on the date the petitioner exercised his right of peremptory bail, the detention of the petitioner was illegal one, as investigation was not complete within the prescribed period of 90 days. Therefore, the court below acted with illegality in adjourning the matter and calling for a report, whether charge sheet has been submitted or not and to frustrate the right of the petitioner, the Police submitted charge sheet after exercise of right by the petitioner. Hence, the impugned order is not sustainable in law. Accordingly, the same is, hereby, **quashed** and it is directed that the petitioner be



released at once on furnishing bail bond to the satisfaction of the learned court below. Accordingly, this application stands *allowed*.

(Birendra Kumar, J)

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