

**HIGH COURT OF TRIPURA  
AGARTALA**

B.A. No.141 of 2018

Sri Devendra Kumar Singh,  
son of Alpeshwar Singh,  
Rifleman, 2<sup>nd</sup> Bn., Tripura State Rifles,  
Bodhjunnagar, P.S. Bodhjunnagar, District : West Tripura

----Applicant(s)

[on behalf of the custody accused person,  
**Sri Dharmendra Kumar Singh**,  
son of Alpeshwar Singh, Rifleman, 2<sup>nd</sup> Bn.,  
Tripura State Rifles, Bodhjunnagar, P.S.  
Bodhjunnagar, District : West Tripura

**Versus**

Central Bureau of Investigation (CBI),  
Represented by the Director,  
Plot No.5-B, CGO Complex, Lodhi Road, New Delhi-110003  
Through the Director, Central Bureau of Investigation, Agartala Unit,  
H. No.59, P.O. Kunjaban, Agartala-799006, West Tripura

----Respondent(s)

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For Applicant(s) : Mr. P.K. Biswas, Sr. Advocate  
Mr. P. Majumder, Advocate

For Respondent(s) : Mr. Bidyut Majumder, Advocate

Date of hearing : 06/12/2018

Date of judgment & order : 21/12/2018

Whether fit for reporting : NO

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**HON'BLE MR. JUSTICE S. TALAPATRA**

**Judgment & Order**

This is an application under Section 439 of the Cr.P.C. for

in connection with S.T.(T-1)16 of 2018 arising from Bodhjunnagar P.S. Case No.50 of 2017 under Section 302 of the IPC.

2. The accused-person is in the custody since 24.11.2017, meaning he is in the custody for 368 days on the day of filing of this application on 27.11.2018.

3. On perusal of the records what appears that a serious development has taken place in the midst of the trial. The State Government has provided consent under Section 6 of the Delhi Special Police Establishment Act, 1946 by the Notification No.21(2)-PD/12(P)/873 dated 17.03.2018 [issued by the Home Department, Govt. of Tripura]. Pursuant thereto, the Ministry of Personnel, Public Grievances and Pensions, DOPT, Govt. of India, has asked the CBI by their Notification No.228/15/2018-AVD.II dated 06.06.2018 to take up the investigation of Bodhjunnagar P.S. Case No.2017/BJN/050 dated 21.11.2017 under Section 302 of the IPC and Section 27 of the Arms Act. The Central Bureau of Investigation (CBI) registered the regular case bearing No. RC 02/S/2018/Kolkata dated 29.06.2018 under Section 302 of the IPC and Section 27 of the Arms Act by treating the FIR No.2017/BJN/50 dated 21.11.2017 under Section 302 of the IPC and Section 27 of the Arms Act as the original FIR of their case No. RC 02/S/2018/Kolkata dated 29.06.2018 under Section 302 of the IPC and Section 27 of the Arms Act.

appears that all the original documents, the chargesheet [filed under Section 173(2) of the Cr.P.C.], the supplementary chargesheet [filed under Section 173(8) of the Cr.P.C.], forensic report and the prosecution papers were withdrawn from the trial court by the CBI in terms of the order dated 10.08.2018.

5. It is pertinent to note that the chargesheet filed earlier has been withdrawn by the CBI probably for purpose of paving the way for submitting the final report on termination of their investigation. It is on record that the accused-person was facing trial from the custody and on numerous time he approached the trial court as well as this court seeking his release on bail, but those petitions did not succeed.

6. Mr. P.K. Biswas, learned senior counsel, assisted by Mr. P. Majumder, learned counsel appearing for the accused-person has submitted that on numerous occasions endeavor for obtaining bail in the court of the Addl. Sessions Judge and this court did not succeed. Mr. Biswas, learned senior counsel has submitted that there is no possibility of early trial and thus the accused-person may be granted bail on any condition. Mr. Biswas, learned senior counsel has taken this court to the records to contend that on 31.03.2018 the case was fixed for framing of charge, but the charge could not be framed on that day. Finally, by the order dated 15.05.2018 the charge was framed and examination of witnesses commenced from 13.06.2018. The recording of evidence was supposed to continue up to 07.07.2018.

apprised that the State has decided to hand-over the investigation to the Central Bureau of Investigation (CBI) and they are not willing to produce any witness in view of the said decision. The State prayed for adjournment, but that was rejected. The State sought intervention of the High Court which had intervened in the matter of the trial and finally on 29.06.2017, as has been aforestated the CBI registered regular case bearing No. RC 02/S/2018/Kolkata dated 29.06.2018. Mr. Biswas, learned senior counsel has submitted that the interrogation of all the accused persons has been done by the CBI in the judicial custody. Thereafter, they have withdrawn all the chargesheet and the supplementary chargesheet from the trial court. The CBI has submitted that they are carrying out a fresh investigation examining all the witnesses including those witnesses who are earlier examined by the by the Special Investigation Team (SIT) constituted by the Home Department, Govt. of Tripura. Mr. Biswas, learned senior counsel has further submitted that there is no sign of bringing about the investigation to its logical end within a short while.

7. Reliance has been placed on a decision of the apex court in **Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav & Anr.**, reported in **(2004) 7 SCC 528**, where the apex court has catalogued the factor which are required to be considered by this court before granting bail. Those factors are : (i) the nature of accusation and the severity of punishment in case of conviction and the nature of

the witness or apprehension of threat to the complainant and (iii) prima facie satisfaction of the court in support of the charge.

8. Mr. Bidyut Majumder, learned counsel has appeared for the CBI and stated that there are serious material against the accused person and as such he shall not be granted any bail. In support thereof, Mr. Majumder, learned counsel has relied on a decision in **Kanwar Singh Meena vs. State of Rajasthan & Anr.**, reported in **(2012) 12 SCC 180**, where the apex court has observed as under:

**10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognized principles underlying the power**

**not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this court are much wider, this court is equally guided by the above principles in the matter of grant or cancellation of bail.**

[Emphasis supplied]

9. When this court queried Mr. Majumder, learned counsel that what would be the impact of the statutory provision of Section 167(2) of the Cr.P.C., he had shied away from the question, but it is a very important question in the emerged situation when the CBI has started a re-investigation in the matter. From the Case Diary, it has transpired that all the witnesses, examined earlier by the Special Investigation Team (SIT) are re-examined by the CBI.

10. That apart, the CBI has withdrawn the chargesheet and the supplementary chargesheet from the trial court. Hence the investigation as being carried out by the CBI, is an 'investigation' within the meaning of Section 167 of the Cr.P.C. Therefore, all rigours of Section 167(2) of the Cr.P.C. would be applicable in respect of the detention of the accused-person.

11. In a recent judgment in **Achpal & Ors. Vs. State of Rajasthan**, reported in **AIR 2018 SC 4647**, it has been observed by the apex court that the letter of and spirit behind enactment of Section 167 of the Code as it stands thus mandate that the investigation ought

completed within first 24 hours itself. Further, in terms of sub-section (1) of Section 167, if it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57 of the Cr.P.C., the concerned officer ought to transmit the entries in the diary relating to the case and at the same time forward the Accused to such Magistrate. Thereafter, it is for the Magistrate to consider whether the accused be remanded to custody or not. Sub-section (2) of Section 167 then prescribes certain limitations on the exercise of the power of the Magistrate and the proviso stipulates that the Magistrate cannot authorize detention of the accused in custody for total period exceeding 90 or 60 days, as the case may be. It is further stipulated that on the expiry of such period of 90 and 60 days, as the case may be, the accused person shall be released on bail, if he is prepared to and does furnish bail. The provision has a definite purpose in that. The Magistrate ought to be in a position to proceed with the matter. It is thus clearly indicated that the stage of investigation ought to be confined to 90 or 60 days, as the case may be, and thereafter the issue relating to the custody of the accused ought to be dealt with by the Magistrate on the basis of the investigation. Matters and issues relating to liberty or whether the person accused of a charge ought to be confined or not, must be decided by the Magistrate and not by the Police. The further custody of such person ought not to be guided by mere suspicion that he may have committed an offence or for that matter, to facilitate the pending

12. The proposition of **Rakesh Kumar Paul vs. State of Assam**, reported in **(2017) 15 SCC 67** has been approved in **Achpal** (supra). In **Rajesh Kumar Paul** (supra), it has been observed by the apex court as under:

**“11. Unfortunately, all laws tend to be misused whenever opportunity knocks, and Section 167 of the Code of Criminal Procedure, 1898 was no exception. Since there was a practical difficulty in completing investigations within the 15-day time-limit, the prosecution often took recourse to the provisions of Section 344 of the Code of Criminal Procedure, 1898 and filed a preliminary or incomplete report before the Magistrate to keep the Accused in custody. The Law Commission of India noted this in its 41st Report (after carefully studying several earlier Reports) and proposed to increase the time-limit for completion of investigations to 60 days, acknowledging that:**

**14.19. ... such an extension may result in the maximum period becoming the Rule in every case as a matter of routine; but we trust that proper supervision by the superior courts will prevent that.”**

13. In **Achpal** (supra) it has been further observed as under:

**10. The law on the point as to the rights of an Accused who is in custody pending investigation and where the investigation is not completed within the period prescribed Under Section 167(2) of the Code, is crystallized in the judgment of this Court in Uday Mohanlal Acharya v. State of Maharashtra : (2001) 5 SCC 453. This case took into account the decision of this Court in Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors.: (1994) 4 SCC 602, Sanjay Dutt v. State through C.B.I., Bombay (II) : (1994) 5 SCC 410 and Bipin Shantilal Panchal v. State of Gujarat: (1996) 1 SCC 718. Justice Pattanaik (as the learned Chief Justice then was) speaking for the majority recorded conclusions in para 13 of his judgment. For the present purposes, we may extract conclusions 3 and 4 as under:**

...

**3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the Accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period**



**4. 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 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.**

....

**11. The principles laid down in Uday Mohanlal Acharya (supra) have been consistently followed by this Court namely in State of W.B. v. Dinesh Dalmia: (2007) 5 SCC 773; Sanjay Kumar Kedia v. Intelligence Officer, Narcotics Control Bureau and Anr. : (2009) 17 SCC 631; Union of India v. Nirala Yadav : (2014) 9 SCC 457 and in Ranbeer Shokeen v. State (NCT of Delhi): (2018) 4 SCC 405. It must therefore be taken to be well settled that in terms of 3rd conclusion as recorded in Uday Mohanlal Acharya (supra), on the expiry of the period stipulated, an indefeasible right accrues in favour of the Accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period stipulated and the Accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.**

[Emphasis added]

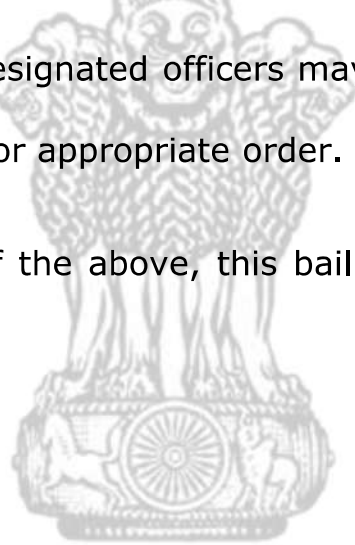
14. In **Rajesh Kumar Paul** (supra), the apex court has further observed that "default bail" would be granted on such terms and conditions as may be reasonable. If someone is granted the default bail it does not prohibit or otherwise prevent the arrest or re-arrest of the person who has been granted bail on cogent grounds in respect of the subject charge and upon arrest or re-arrest, the petitioner may

15. This court has examined the Case Diary as produced by the CBI. It appears that the investigation is being carried out leisurely and that is the reason that even if the FIR was registered on 29.06.2018 the Investigating Officer who was present in person in the court has failed to indicate to a possible time frame when the investigation might be completed, though the said query did not have material relevance on the aspect, as covered by Section 167(2) of the Cr.P.C. Now, the pertinent question that falls for consideration of this court is that for starting a de novo investigation by withdrawing all the chargesheet and supplementary chargesheet from the court whether after expiry of the statutory period as provided by Section 167(2) of the Cr.P.C. the accused-person is entitled to the default bail or not. No doubt about it that at this stage there is no chargesheet before the court as those were withdrawn and the fresh investigation has been launched. In this regard, there is no divergent view. In the considered opinion of this court, such investigation is also covered within the meaning of 'investigation' as provided under Section 167 of the Cr.P.C. Thus, the accused-person is entitled to the default bail.

Accordingly, it is directed that the accused-person shall be released on bail on furnishing a bail bond of ₹1,00,000 (rupees one lakh) supported by 2(two) sureties of the like amount, one of whom shall be a Government employee having permanent residence within the territory of Agartala Municipal Corporation, to the satisfaction of

Investigating Officer at their office at Agartala on every Monday, Wednesday and Friday. If any of those days is found to be a Government holiday, the accused-person shall report on the next following day without fail. Further, the accused-person shall not in any manner try to threaten, coerce or intimidate any witness or any person seized of the material information or object of the investigation. Further, the accused-person shall not leave the territorial limit of Agartala Municipal Corporation without prior permission of the Addl. Sessions Judge, West Tripura, Agartala. If any breach is reported, the bail will be liable to be cancelled and for that purpose the investigating agency or any of its designated officers may approach the court of the Addl. Sessions Judge for appropriate order.

In terms of the above, this bail application stands allowed and disposed of.



सत्यमेव जयते

**JUDGE**