

ORISSA HIGH COURT
CUTTACK

CRLREV NO. 887 OF 2007

From an order dated 31.07.2007 passed by Smt. P. Panigrahi,
S.D.J.M., Angul in C.T. Case No.704 of 2007.

Prakash Kumar Naik
and another

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Petitioner

Versus

State of Orissa

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Opp. Party

For petitioner : Mr. B. B. Routray

For Opp.party : Mr. R. Pattnaik
Addl. Standing Counsel

PRESENT :

THE HONOURABLE MR. JUSTICE PRADIP MOHANTY

Date of hearing & judgment : 08.10.2007

PRADIP MOHANTY, J. The order dated 31.07.2007 passed by the S.D.J.M., Angul in C.T. Case No.704 of 2007 is assailed in the instant revision.

2. Fact of the case in brief is that the petitioners along with others have been implicated under Sections 366/376/34 IPC in Nalco P.S. Case No.40 of 2007 corresponding to C.T. Case No.704 of 2007 pending before the S.D.J.M., Angul. After completion of sixty days in custody, a petition was filed by the advocate for the petitioners under proviso (a)(ii) to Section 167(2) Cr.P.C. to release them on bail. The learned S.D.J.M. considered and rejected the same by the impugned order.

3. Learned counsel for the petitioners submits that in connection with the aforesaid case, accused-petitioners were arrested on 30th May, 2007. Next day, i.e., on 31st May, 2007, they were produced before the S.D.J.M., Angul, who remanded them to judicial custody. The forwarding report reveals that the accused-petitioners are liable for commission of offences punishable under Sections 366/34 IPC. No charge-sheet having been filed within 60 days, on the 61st day, i.e., on 31.07.2007, a petition was filed under proviso (a)(ii) to Section 167(2) Cr.P.C. to release the petitioners on bail. But the learned S.D.J.M. under erroneous appreciation of fact and misconception of law rejected the same, which warrants interference by this Hon'ble Court.

4. Mr. Pattnaik, learned Addl. Standing Counsel vehemently opposes the same and submits that the S.D.J.M. has rightly rejected the petition since the offence under Section 366 IPC prescribes punishment for ten years and as such the maximum period for submission of charge sheet is 90 days (120 days as per Orissa Amendment).

5. A bare reading of the proviso (a)(i) to Section 167(2) Cr.P.C. would go to show that where the investigation relates to an offence punishable with death, imprisonment for life, or imprisonment for a term not less than ten years, the Magistrate can authorize detention of the accused person in custody for 90 days (120 days in Orissa). For all other offences, the period is 60 days as per proviso (a)(ii) of the said section. In other words, the Magistrate cannot detain a person beyond the above period of 120 days or 60 days, as the case may be. On expiry of the above period, if final form is not filed, the accused shall be released on bail, and his further detention would be unwarranted and illegal.

6. Perused the LCR and the affidavit filed by the OIC, Nalco P.S. In para-7 of the said affidavit, it is stated that the accused-

petitioners, namely, Prakash Kumar Nayak and Ramakanta Naik, are liable under Section 366/34 IPC. In para-8 thereof it is stated that the accused-petitioners were arrested on 30.05.2007 and forwarded to the court of S.D.J.M., Angul on 31.05.2007. The maximum punishment provided for the offence under Section 366 IPC is imprisonment for ten years. Therefore, the proviso (ii) to Section 167(2) will apply. The detention without a charge-sheet beyond 60 days is illegal and unwarranted. In the instant case, the learned Magistrate without verifying the forwarding report and without calling for a report from the I.O. simply rejected the prayer of the petitioners. Whether charge-sheet has been filed or not is a matter of record and when liberty of the citizen is involved, without verifying the record or without calling for a report the learned Magistrate should not have rejected the application under Section 167(2)(a)(ii) Cr.P.C. It is, therefore, concluded that in the present case the learned S.D.J.M. has infringed the constitutional and procedural mandate by rejecting the application.

In view of the above, this Court sets aside the impugned order and directs the S.D.J.M., Angul to admit the petitioner to bail on such terms and conditions as deemed proper in the circumstances of the case.

7. The revision is accordingly allowed.

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PRADIP MOHANTY, J.

**High Court of Orissa, Cuttack,
 October 8, 2007/Samal**