



03/12/08

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Misc. Petition No.251 of 2008

Applicants  
(In Jail)

1. Devchand alias Raju, S/o Shri Kallu Nishad, Aged about 30 years, Resident of Get Dafai - Bhalumada
2. Lallu alias Raju, S/o Nandau aged about 25 years, Resident of Bhalumada,

Both the Tahsil of Kotma, District - Anuppur (M.P.)

*Versus*

Respondent

State of Chhattisgarh, Through District Magistrate, Distt. Baikunthpur - Korea (C.G.)

Application Under Section 482 of the Code of Criminal Procedure

(SB: Hon'ble Mr. T.P. Sharma, J.)

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Present:

Shri Prakash Tiwari, learned counsel for the applicant.  
Ms. Sangeeta Mishra, learned Panel Lawyer for the State.

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**ORAL ORDER**  
(Passed on 28-11-2008)

The petition is directed against the order dated 05-05-2008, passed in Criminal Revision No.04/2008, by the Sessions Judge, Baikunthpur affirming the order dated 03-11-2007 passed in Criminal Case No.329/2007 whereby the learned Chief Judicial Magistrate, Baikunthpur has rejected the application filed on behalf of the applicants under Section 167(2)



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of the Code of Criminal Procedure, 1973 on the ground that the application is premature.

2. Learned counsel for the applicants submits that the applicants were arrested on 05-08-2007 and they were produced before the Court on 06-08-2007. They were in custody from 06-08-2007 to 03-11-2007. Learned counsel further submitted that on 90<sup>th</sup> day, the applicants have filed an application under Section 167(2) of the Code of Criminal Procedure, 1973 stating that the alleged offence is punishable with death/imprisonment for life, therefore, if charge-sheet is not filed within 90 days of the arrest of the accused, then they are entitled for bail but the same has been dismissed by the Court below.

3. Learned counsel for the applicants placed reliance on the judgment in the matter of *Mahesh v. State of M.P.*, reported in 2008 (3) M.P.H.T. 47 in which it was held that if after stipulated time as provided in proviso of sub-section (2) of Section 2 of the Code of Criminal Procedure, 1973, any application for bail is filed and filing of such bail petition, subsequently charge sheet is filed then the petition for bail cannot be rejected on the ground of subsequent filing of the charge sheet.

4. In the instant case, it is not disputed that the charge-sheet has been filed by the prosecution within 90 days and even according to applicants, they have filed an application on 90<sup>th</sup> day because the prosecution has not filed the charge-sheet within the stipulated period in accordance with proviso to sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973. If the charge sheet is not filed within 90 days of the detention of the accused then in accordance with proviso to sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973, the accused is entitled for bail. In the present case, the prosecution has filed



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the charge sheet on 90<sup>th</sup> day, i.e. within the stipulated period, therefore, no right has been accrued in favour of the applicants for their release in accordance with proviso to sub-section (2) of Section 167 of the Code of Criminal Procedure. The Court below has rightly rejected the application of the applicants. The Court below has not committed any illegality and the petition being devoid of merit is liable to be dismissed.

5. Accordingly, the petition is hereby dismissed.

6. In view of the above order, I.A. No.01/2008, an application for grant of bail stands disposed of.

Kvr

Sd/-  
T.P. Sharma  
Judge