

HIGH COURT OF ORISSA ; CUTTACK

CRLREV NO.160 OF 2014

From an order dated 22.2.2014 passed by learned S.D.J.M.,
Bhubaneswar in G.R. Case No.731/2008.

Niranjan Pradhan

... Petitioner

Versus

State of Odisha

... Opposite Party

For petitioner : M/s. Ashwini Kumar Das,
P.Sahoo & S.N.Biswal.

For opposite party : Standing Counsel

P R E S E N T :

THE HONOURABLE MR. JUSTICE S.K.MISHRA

Date of judgment: 24.04.2014

S.K.Mishra,J. The simple question that arises for determination in this case is whether the period the accused was on interim bail shall be counted as to be under custody while deciding an application under Section 167(2) of the Code of Criminal Procedure, 1973(hereinafter referred to as the "Code" for brevity).

The petitioner has been remanded to judicial custody on 24.12.2013 for the alleged commission of offences under Sections 420/406/120-B of the Indian Penal Code. His application for bail was rejected and he was sent to judicial custody. It is submitted by the learned counsel for the petitioner that as per the statutory provision of Section 167(2) of the Code after lapse of 60 days an application was filed before the learned S.D.J.M., Bhubaneswar in G.R. Case No.731/2008 to release the petitioner on bail. The learned S.D.J.M., Bhubaneswar has held that because of the fact that the petitioner was released on interim bail vide order dated 15.1.2014 for 11 days on conditions and the petitioner surrendered before the learned S.D.J.M. on 28.1.2014, he cannot be said to have been in custody for 60 days for the purpose of investigation.

2. In this connection, the reported case of ***Kanaksinh Mohansinh Mangrola Vs. State of Gujrat***; (2006) 9 SCC 540 was cited by the learned counsel for the petitioner which lays down that the day the appellant was in custody as he was on interim bail for 15 days from 13.4.2005 and his application could have been considered on merits instead of dismissing the same on the ground of non-maintainability.

3. Section 167 of the Code provides for the procedure when investigation cannot be completed twenty-four hours. Sub-section

(2) of Section 167 of the Code provides that the Magistrate to whom an accused person is forwarded under this Section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. It is provided that the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody for a total period exceeding – (i) one hundred twenty days, where the investigation relates to an offence punishable within death, imprisonment for life or imprisonment for a term of not less than ten years; (ii) sixty days, where the investigation relates to any other offence. So the provision of Section 167 of the Code speaks about the judicial custody to a person during investigation. In case the investigation cannot be completed within 24 hours, the procedure to be followed by the court as has been enshrined in Section 167 of the Code. Since the interim application for bail has been allowed and he was still under the process of the Code, this Court is of the opinion that the period of

interim bail should be taken into consideration in calculating the 120 days or 60 days as the case may be for granting compulsive bail under Section 167 of the Code.

4. In that view of the matter, this Court comes to the conclusion that the order dated 22.2.2014 passed by the learned S.D.J.M., Bhubaneswar in G.R. Case No.731 of 2008 is liable to be set aside. Hence the CRLREV is allowed. The aforesaid order is set aside. It is ordered that the petitioner be released on bail by the learned S.D.J.M., Bhubaneswar in the aforesaid case on such terms and conditions as deemed just and proper by him.

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S.K.Mishra, J

Orissa High Court, Cuttack
Dated April, 2014/A.K. Behera.