

**S.C ( Spl.) 66/2020**

**( Bhadreswar P.S case no. 204/2020 dated 15.08.2020 u/s 376(2)(I)/376  
I.P.C and section 6 of the POCSO Act )**

**State**

**Vs.**

Anil Shaw.....Accused.

**Order no.05 dated 18.11.2020**

Accused Anil Shaw files a bail application praying for releasing him on bail in this case.

The learned Special P.P. has filed the charge sheet bearing number.334/2020 dated 30.09.2020 for the offence u.s 376(2)(I)/376AB of I.P.C and section 6 of the POCSO Act against the accused Anil Shaw together with one set of xerox copy of the documents for supplying to the accused person.

Bail application filed for the accused Anil Shaw is taken up for hearing in presence of learned Advocate for the accused person and the learned Special P.P. Mr. Pranab Chakraborty.

Seen the bail application, perused the case record and considered.

It is submitted by the learned Advocate for the accused person that the accused has suffered the detention in jail custody for a period of 94 days and no charge sheet was submitted by the I.O in this case within the period of 90 days, as such the accused person is entitled to be released on statutory bail. Considering the above, the accused person may be released on bail.

Learned Special P.P opposes the prayer for bail of the accused person and submits that the charge sheet was not submitted within the statutory period because of the pandemic Covid-19. This is a heinous offence committed by the accused person. Apart from that the I.O had submitted the charge sheet within the stipulated period but the same was not filed before the Court because of pandemic Covid-19, as such the prayer for bail of the accused may kindly be rejected.

Having heard the submissions of learned Advocate for the accused person, learned Special P.P, seen the bail application, perused the case record and C.D, I find that this accused Anil Shaw was brought under arrest on 14.08.2020 and since then he is in jail custody. The accused is detained in jail custody for a period of 96 days.

It is found from the case record that the charge sheet has been submitted by the prosecution before this Court on 18.11.2020 which is after the expiry of 95 days. Therefore, the I.O has failed to submit the charge sheet in this case within the period of 90 days from the date of arrest of the accused.

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On the basis of the F.I.R of the defacto complainant Kusum Roy, the instant case being Bhadreswar P.S case no. 204/2020 dated 15.08.2020 u/s 376(2)(I)/376 I.P.C and section 6 of the POCSO Act was initiated against the accused Anil Shaw.

It is found from the case record that after the expiry of 90 days, the charge sheet has been submitted by the I.O in connection with this case. That the POCSO Act'2012 is a special statute.

Now the question is as to whether the benefit of u/s 167(2) Cr.P.C can be extended to the offence under the provision of POCSO Act'2012 or not.

This Court relies upon an order dated 07.07.2020 passed by the Hon'ble Delhi High Court in bail application no.1041/2020 Rakesh Vs. State of NCT of Delhi, it has been observed by the Hon'ble Delhi High Court in para 13 of the said order that “ Now, the law in relation to the right of an accused to bail in the event of charge sheet is not filed within the stipulated time frame u/s 167(2) Cr.P.C is well settled”. In **Achpal @ Ram Swaroop and another Vs. State of Rajasthan (2019), 14 SCC, 599**, the Supreme Court has reiterated the following position of law :

“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 Cr.P.C, is crystallised in the judgment of this Court in **Uday Mohanlal Acharya Vs. State of Maharashtra**. This case took into account the decision of this Court in **Hitendra Vishnu Thakur Vs. State of Maharashtra, Sanjay Dutt (2) Vs. State and Bipin Shantilal Panchal Vs. State of Gujarat. Pattanaik, J ( 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 : ( **Uday Mohanlal Acharya case , SCC p 473, para 13**)

“ **13.... 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 prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

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

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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.”

“12. The principles laid down in Jday Mohanlal Acharya have been consistently followed by this Court, namely in **State of W.B Vs. Dinesh Dalmia ; Sanjay Kumar Kedia Vs. Narcotics Control Bureau; Union of India Vs. Nirala Yadav and in Rambeer Shokeen Vs State ( NCT of Delhi )**. It must therefore be taken to be well settled that in terms of 3<sup>rd</sup> conclusion as recorded in Uday Mohanlal Acharya, 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.”

His Lordship has further been pleased to hold in para 15 of the order that-

“In view of the above, the applicant is entitled to default bail u/s 167(2) of Cr.P.C . Accordingly, this Court admits the applicant to regular bail on the following conditions “.....”.

This Court also relies upon a Judgment passed by the Hon’ble Supreme Court of India in Criminal Appeal no.452/2020 ( Arising out of SLP (CRL) no.2433/2020 in **S. Kasi Vs. State through the Inspector of police, Samaynallur Police Station Madurai District**, It has been observed by the Hon’ble Apex Court in para 17 that “The limitation for filing petitions/ applications/suits/ appeals / all other proceedings was extended to obviate lawyers/litigants to come physically to file such proceedings in respective Courts/ tribunals. The order was passed to protect the litigants/lawyers whose petitions/applications/ suits/appeals/all other proceedings would become time barred they being not able to physically come to file such proceedings. The was for the benefit of the litigants who have to take remedy in law as per applicable statute for a right. The law of limitation bars the remedy but not the right. When this Court passed the above order for extending the limitation for filing petitions/ Applications/suits / appeals / all other proceedings , the order was for the benefit of those who have to take remedy, whose remedy may be barred by time because they were unable to come physically to file such

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proceedings. The order dated 23.03.2020 cannot be read to mean that it ever intended to extend the period of filing charge sheet by police as contemplated under section 167(2) of the Code of Criminal Procedure. The investigating officer could have submitted/filed the charge sheet before the ( In-charge ) Magistrate. Therefore, even during the lockdown and as has been done in so many cases the charge sheet could have been filed/submitted before the Magistrate ( In-charge ) and the Investigating Officer was not precluded from filing/submitting the charge sheet even within the stipulated period before the Magistrate ( In-charge ).

The Hon'ble Apex Court has further been pleased to observe in para 26 of the judgment that "We, thus, are of the view that neither this court in its order dated 23.03.2020 can be held to have eclipsed the time prescribed u/s 167(2) of Cr.P.C nor the restrictions which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by section 167(2) of Cr.P.C regarding his indefeasible right to get a default bail on non submission of charge sheet within the time prescribed. The learned single judge committed single serious error in reading such restrictions in the order of this court dated 23.03.2020. "

It is also found from the section 31 of the provision of The POCSO Act,2012 that it has been specifically stated that -

" Save as otherwise provided in this Act, the provisions of the code of Criminal Procedure, 1973(2 of 1974) ( including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor".

From the aforesaid findings, I am of the considered view that the benefit of section 167(2) Cr.P.C can be extended to the accused having committed the offence u/s 376(2)(I)/376 I.P.C and section 6 of the POCSO Act . As the I.O has not submitted the charge sheet within the statutory period of 90 days, as such the accused person is entitled to get statutory bail.

So far as this case is concerned, the I.O has submitted the charge sheet after the expiry of 95 days from the date of arrest of the accused, as such the accused person is entitled to get the statutory bail/default bail due to non submission of charge sheet by the I.O within the statutory period as prescribed u/s 167(2) of Cr.P.C.

In the aforesaid facts and circumstances, I am inclined to allow the accused person to be released on bail. Accordingly, the prayer for bail of the

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accused Anil Shaw is considered and allowed.

Accused Anil Shaw may find a bail of Rs.20,000/- with two registered sureties of Rs.10,000/- each of like amount out of which one must be local on the condition that the accused shall not tamper the evidence of this case and cause threat to the victim girl and her parents and other witnesses of this case during his enjoyment of bail of this case , he shall not leave the jurisdiction of Bhadreswar P.S without permission of the Court as well as subject to the satisfaction of learned A.C.J.M, Chandernagore.

Learned A.C.J.M, Chandernagore is directed to receive the bail bond, if any, furnished by the accused and to issue the release order in favour of the accused Anil Shaw.

Seen the charge sheet filed by the prosecution against the accused Anil Shaw for the offence u/s 376(2)(I)/376 I.P.C and section 6 of the POCSO Act.

Perused the charge sheet, C.D and other documents and considered.

Cognizance is taken.

To 07.12.2020 for appearance and consideration of charge, in the meantime, copy be supplied to the learned Advocate for the accused.

C.D produced be returned to the learned Special P.P at once.

Let a copy of this bail order is sent to the learned A.C.J.M, Chandernagore for information and taking necessary action.

Dictated & corrected by me

Sd/- N.D Kalapahar

Additional Sessions Judge,  
Chandernagore

Sd/- N.D Kalapahar

Additional Sessions Judge,  
Chandernagore

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