

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 03RD DAY OF AUGUST, 2021

BEFORE

THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL PETITION NO.101403 OF 2021

BETWEEN

SRI. SANTOSH S/O. HARI KADAM
AGE. 38 YEARS,
OCC. FARMER AND EX. SARPANCH
R/O. GHATANE, TQ. MOHOL,
DIST. SOLAPUR, STATE. MAHARASHTRA

...PETITIONER

(BY SRI. ANAND R KOLLI, ADVOCATE)

AND

THE STATE OF KARNATAKA
REPRESENTED THROUGH PSI
BEVCOR POLICE STATION,
(THROUGH LEARNED STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA, DHARWAD)

...RESPONDENT

(BY SRI. RAMESH B CHIGARI, HCGP)

THIS CRIMINAL PETITION IS FILED U/S 439 OF CR.P.C.,
PRAYING TO SET ASIDE THE IMPUGNED ORDER PASSED BY THE
PRL. DISTRICT AND SESSIONS JUDGE AT KOPPAL IN
CRL.REV.PET. NO.21/2021 DATED 07/07/2021 THEREBY
CONFIRMING THE ORDER DATED 24/05/2021 PASSED BY THE
CIVIL JUDGE AND JMFC, YELBURGA AT YELBURGA IN
C.C.NO.01/2021 CONSEQUENTLY ENLARGE THE PETITIONER/
ACCUSED NO.1 ON REGULAR BAIL IN CRIME NO.78/2020
(C.C.NO.01/2021) FOR AN OFFENCES PUNISHABLE U/S 380,
457, 458, 382, 201 OF IPC AND 25(I-A) OF ARMS ACT 1959
REGISTERED BY THE BEVOOR POLICE STATION, KOPPAL
DISTRICT.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has filed this petition under Section 439 of Cr.P.C., for setting aside the order passed by the Principal Sessions Judge, Koppal in Criminal Revision Petition No.21/2021 dated 07.07.2021 confirming the order passed by the Civil Judge and JMFC, Yelburga in C.C.No.1/2021 for the offences punishable under Sections 380, 457, 458, 382, 201 of IPC and Section 25(I-A) of the Arms Act, 1959.

2. The brief facts of the case are that the petitioner has been arrayed as accused No.1 and he has been prosecuted for the offences punishable under Sections 380, 457, 458, 382, 201 of IPC and Section 25(I-A) of the Arms Act, 1959. Initially, crime was registered in Crime No.78/2020 of Bevoor police station and after investigation, the investigation officer has submitted charge sheet on 04.01.2021 at 3.00 pm against the accused persons. The present petitioner is shown as

accused No.1 in the charge sheet. The present petitioner was arrested on 06.02.2021. The supplementary charge sheet came to be filed on 17.05.2021 under Section 173(8) of Cr.P.C., Hence, it is contended that the charge sheet has not been submitted within 90 days from the date of his arrest and as such, he sought for statutory bail under Section 167(2) of Cr.P.C. The learned Magistrate has rejected the said petition and against the said order, the petitioner has filed revision before the learned Sessions Judge at Koppal and his revision petition also came to be rejected. Hence, he has approached this Court.

3. Heard the arguments advanced by both the parties and perused the records.

4. Learned counsel for petitioner would simply submit that he was arrested on 06.02.2021 and supplementary charge sheet was submitted on 17.05.2021 and as the supplementary charge sheet is not filed within 90 days, as per the statute, he is entitled for statutory bail

and both the Courts have erred in rejecting his application. He has also placed reliance on two citations.

5. Per contra, learned HCGP has objected the petition on the ground that the charge sheet was submitted against the present petitioner prior to his arrest only. Hence, he submits that the provisions of Section 167(2) of Cr.P.C. cannot be applicable to him. Hence, he would seek for rejection petition.

6. Having heard the arguments, it is evident that at the first instance, the petitioner has filed this petition under Section 439 of Cr.P.C. challenging the order of the Trial Court as well as Revisional Court. The petition itself is not maintainable as the provisions of Section 482 of Cr.P.C., were not invoked in this petition. The office ought to have raised objections in this regard, but for the best reasons known, no office objections have been raised.

7. Even otherwise on merits also, the petition is not maintainable as the charge sheet was submitted on 04.01.2021 itself, which is evident from the records

produced by the present petitioner himself. The present petitioner was arrayed as accused No.1 in the charge sheet. The charge sheet was submitted for the offences punishable under Sections 380, 457, 458, 382, 201 of IPC and Section 25(I-A) of the Arms Act, 1959 against the present petitioner. However, as some of the accused were absconding, the investigation officer in his charge sheet itself sought leave of the Court to submit supplementary charge sheet in due course. The supplementary charge sheet was submitted on 17.05.2021 by collecting some additional material. Section 173(8) of Cr.P.C., deals with supplementary charge sheet, which states as under:

173. Report of police officer on completion of investigation.

(1) xxxxx

(2) xxxxx

(3) xxxxx

(4) xxxxx

(5) xxxxx

(6) xxxxx

(7) xxxxx

(8) *Nothing in this section shall be deemed to preclude further investigation in respect of an*

offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the office-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).

8. Hence, for submitting supplementary charge sheet, leave of the Court is not required and the statute itself has given powers to the investigation officer to submit supplementary charge sheet, if any material is found. However, in the instance case, the charge sheet is submitted against the present petitioner on 04.01.2021 itself and he was arrested on 06.02.2021 i.e. after submission of the charge sheet.

9. Therefore, now it is necessary to consider Section 167(2) of Cr.P.C., which reads as under:

167. Procedure when investigation cannot be completed in twenty-four hours

(1) xxxxxx

(2) *The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorise 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.*

PROVIDED that,-

(a) the Magistrate may authorise 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 authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with 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, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;]

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a),

the accused shall be detained in custody so long as he does not furnish bail;].

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be:.]

PROVIDED FURTHER that in case of women under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognized social institution.]

10. Hence, as per Section 167(2) of Cr.P.C., the Magistrate can order for detention of the accused for maximum 90 days or 60 days as the case may be if the charge sheet is not filed and investigation is not concluded from the date of arrest. Section 167(2) of Cr.P.C., is applicable only when charge sheet is not laid down and it starts operative when accused is arrested during the course of investigation, but if charge sheet is filed against

particular accused and supplementary charge sheet is submitted against other accused or for additional evidence, the provisions of Section 167(2) of Cr.P.C., cannot be applicable. Hence, question of applicability of Section 167(2) of Cr.P.C., does not arise at all in the present case to the accused, against whom charge sheet has already been submitted and who was arrested subsequently. The learned counsel for petitioner has placed reliance on a decision of the Hon'ble Apex Court in Criminal Appeal No.699/2020 arising out of SLP (Criminal) No.2333/2020 and also Criminal Appeal No.319/2021 arising out of SLP (Criminal) No.6181/2020, but both the cases are pertaining to UAPA Act and further in both the cases, after arrest, charge sheet came to be filed. Hence, the principles enunciated in the above cases, cannot be made applicable to the facts and circumstances of present case on hand. In the present case, after submission of the charge sheet against the present petitioner, who is accused No.1, he was arrested and later on supplementary charge sheet is submitted. Supplementary charge sheet is only an

additional material collected against the accused persons. Hence, the petition is devoid of any merits and is misconceived and hence, it needs to be rejected both on maintainability and as well as on merits. Hence, the following;

ORDER

The petition is dismissed.

In view of dismissal of the above petition, pending interlocutory applications, if any, do not survive for consideration and are dismissed accordingly.

**Sd/-
JUDGE**

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