

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SMT. JUSTICE ANJULI PALO

ON THE 21st OF MARCH, 2022

CRIMINAL REVISION No. 469 of 2022

Between:-

**VICKY@ SHAHRUKH ANSARI
S/O SAHIL ANSARI ,
AGED ABOUT 22 YEARS,
OCCUPATION: LABOURER
R/O BEHIND AMHIYA POLICE STATION
AMAHIYA DISTRICT
REWA M.P. (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI PUSHPENDRA DUBEY, ADVOCATE)

AND

**STATE OF MADHYA PRADESH
THROUGH PS CITY KOTWALI
DISTRICT REWA M.P.
(MADHYA PRADESH)**

.....RESPONDENTS

(BY MS. SWATI GEORGE, PANEL LAWYER)

This revision coming on for admission this day, the court passed the following:

ORDER

In this revision under Section 397/401 of the Code of Criminal Procedure, the applicant has challenged the validity of the order dated 22.01.2022 passed by learned Special Sessions Judge, district -Rewa whereby application under Section 167 (2) of the Code of Criminal Procedure has been dismissed.

2. Learned counsel for the applicant submits that the Court below has committed gross error in dismissing the application under Section 167 (2) of the Code of Criminal Procedure ignoring the mandatory provision of Section 173 (1-A) of the Code of Criminal Procedure. It is further contended that the investigation for offence under Section 376 should be completed within sixty days. It is further contended that the applicant was arrested on 14.11.2021

but as the charge-sheet was not filed by the police within sixty days, the applicant filed an application under Section 167 (2) of the Cr.P.C.

3. Heard learned counsel for the parties and perused the impugned order.

4. The applicant is facing trial for offences under Sections 363, 366-A and 376D of the Indian Penal Code as well as Section 5/6 of the Protection of Children from Sexual Offences. The Court below while deciding the application under Section 167 (2) of the Code of Criminal Procedure, has held that the Superintendent of Police sought time of further 30 days to file the charge-sheet before expiration of sixty days from the arrest of the accused on the ground that other co-accused persons are absconding. As per Section 167 (2) of the Cr.P.C., in respect of offences punishable for capital sentence, life imprisonment or imprisonment more than ten years, the accused/applicant can be released after expiry of ninety days. However, the fact remains that in view of Section 167 (2) of the Cr.P.C., benefit of release on bail can be granted after expiry of period of ninety days. The present case involves the question as to whether Section 167(2)(a)(i) of the Cr.P.C. prescribing the period of ninety days for filing of charge-sheet applies to offences under Sections 363, 366A, 376D of the IPC and Section 5/6 of the Protection of Children from Sexual Offences Act or Section 167(2)(a)(ii) of the Cr.P.C. prescribing the period of sixty days for filing of charge-sheet applies to the same.

5. In this context, it is appropriate to refer to the decision in the case of *Rajeev Chaudhary Vs. State of (NCT) Delhi : 2001 (5) SCC 34* wherein Hon'ble Supreme Court while dismissing the appeal preferred by the accused observed as under:-

"5. From the relevant part of the aforesaid sections, it is apparent that pending investigation relating to an offence punishable with imprisonment for a term "not less than 10 years", the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days. For rest of the offences, period prescribed is 60 days. Hence in cases, where offence is punishable with imprisonment for 10 years or more, accused could be detained up to a period of 90 days. In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be

10 years or more. Further, in context also if we consider clause (i) of proviso (a) to Section 167(2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for 9 of 17 which punishment could be imprisonment for less than 10 years. Under Section 386 of the Indian Penal Code, imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years."

6. The position of law which emerges from judgments of Hon'ble Supreme Court in *Rajeev Chaudhary Vs. State of (NCT) Delhi : 2001 (5) SCC 34* and *Rakesh Kumar Paul Vs. State of Assam : 2017 (15) SCC 67* is that period of detention of the accused person in custody under Section 167(2)(a)(i) of the Cr.P.C. would be ninety days for the (i) offences punishable with death, (ii) offences punishable with imprisonment for life; and (iii) offences punishable with imprisonment for a term "not less than 10 years" which has been interpreted to mean "imprisonment for 10 years or more" and for rest of the offences including the offences punishable with imprisonment for a term upto ten years, it would be of sixty days.

7. In the case at hand the accused appellant is facing trial for offences under Sections 363, 366A and 376 D as well as Section 5/6 of the Protection of Children from Sexual Offences Act, 2012. Punishment for offence under Section 5/6 of the Protection of Children from Sexual Offences Act, 2012 is for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine. Hence, the period of detention of the accused person in custody under Section 167(2)(a)(i) of the Cr.P.C. would be ninety days.

8. In view of the above, the impugned order passed by the Court below does not suffer from any illegality, perversity or irregularity warranting interference by this Court in exercise of revisional jurisdiction of this Court. Hence, the **revision is dismissed.**

(SMT. ANJULI PALO)
Judge

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