

Bittoo Alias Subodh vs State Of Uttarakhand on 12 May, 2022

Author: Ravindra Maithani

Bench: Ravindra Maithani

HIGH COURT OF UTTARAKHAND AT NAINITAL

Third Bail Application No. 12 of 2022

Bittoo Alias Subodh

...Applicant

Versus

State of Uttarakhand

....Respondent

Present:-

Mr. Rajat Mittal, Advocate for the applicant.

Mr. Lalit Miglani, A.G.A. for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant Bittoo @ Subodh is in judicial custody, in Case Crime No.204 of 2020, under Section 306 IPC, Police Station - Vikasnagar, District Dehradun. He has sought his release on default bail.

2. Heard learned counsel for the parties and perused the record.

3. The bail rejection order reveals that 60 days period of custody of the applicant had expired on 23.07.2020 and 90 days period had expired on 22.08.2020. The applicant sent bail application through e-Mail on 06.09.2020. It was Sunday. Therefore, it was placed before the Court on 07.09.2020. On that date, the Court adjourned the hearing of bail application for 08.09.2020. But, the bail rejection order records that on 07.09.2020, chargesheet had already been submitted. Therefore, the Court refused default bail to the applicant.

4. Learned counsel for the applicant would submit that if within stipulated period, chargesheet is not filed, an accused is entitled to get bail under Section 167, sub-Section (2) of the Code of Criminal Procedure, 1973. It is also argued that it makes no difference that subsequently, the chargesheet is filed.

5. Reference has been made to principles of law, as laid down by the Hon'ble Supreme Court, in the case of M. Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence, (2021) 2 SCC 485.

6. In fact, in the case of M. Ravindran (supra), the Hon'ble Supreme Court formulated the questions in paragraph no.10, one of which 10.1(a) is as follows:-

"10.1. (a) Whether the indefeasible right accruing to the appellant under Section 167(2) CrPC gets extinguished by subsequent filing of an additional complaint by the investigating agency."

7. In paragraph 25 of the judgment, the Hon'ble Supreme Court answered the question and in Para 25.2 observed as hereunder:

"25.2. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the charge-sheet or a report seeking extension of time by the prosecution before the court; or filing of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher court."

8. Learned State counsel admits the legal position.

9. Since after expiry of the stipulated period, the applicant has already exercised his right to be released on bail on 06.09.2020, subsequent filing of the chargesheet on 07.09.2020 could not have extinguished the right of the applicant to be enlarged on bail.

10. Therefore, the bail application of the applicant deserves to be allowed. Since chargesheet has not been filed within the stipulated time, therefore, the applicant deserves to be enlarged on bail.

11. The bail application is allowed.

12. Let the applicant be enlarged on bail on his furnishing a personal bond and executing two reliable sureties, each of the like amount, to the satisfaction of the court concerned.

(Ravindra Maithani, J.) 12.05.2022 Ravi Bisht