

# Kirta Ram vs State Of Rajasthan on 29 November, 2018

**Author: Vijay Bishnoi**

**Bench: Vijay Bishnoi**

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR

S.B. Criminal Misc. Bail No. 6229/2018

Kirta Ram, S/o Babu Lal, B/c Jat, R/o Bhurtiya Village, Nagana  
P.S., District Barmer

(Lodged In Dist. Jail, Chittorgarh)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

Connected With

S.B. Criminal Misc. Bail No. 5238/2018

Bhupendra S/o Devi Lal Brahmin, R/o Khodip, P.s. Nikumbh,  
District Chittorgarh Raj. At Present Lodged At District Jail,  
Chittorgarh

----Petitioner

Versus

State Of Rajasthan

----Respondent

For Petitioner(s)	:	Mr R.K.Charan
		Mr B.Ray Bishnoi
For Respondent(s)	:	Mr Ashok Upadhyaya

HON'BLE MR. JUSTICE VIJAY BISHNOI

Judgment / Order 29/11/2018 Both these bail applications arise out of one and same FIR, therefore, they have been heard together and are being decided by this common order.

Being aggrieved with their arrest in connection with FIR No.338/2017 of Police Station, Sadar, Nimbahera for the offences punishable under Sections 332,353,307 IPC, 8/15 of NDPS Act (2 of 8) [CRLMB-6229/2018] and under Section 3/25 of the Arms Act, the petitioners have preferred these bail application under Section 439 Cr.P.C.

Brief facts of the case are that complainant, who is a police officer and at the relevant time was posted as SHO, Police Station, Sadar Nimbahera, lodged an FIR at Police Station, Nimbahera on 16.10.2017, inter alia, alleging therein that on 15.10.2017 at 11:17 P.M. he along with other police officials conducted Nakabandi at Narsakhedi Circle, at that time they saw a Mahindra Bolero

Camper bearing registration number HR-19H- 8793 coming from Ghatera - Kadmali; when the said vehicle was got intercepted, its driver - petitioner -Kirta Ram alighted from the vehicle and ran away, and while he was being chased by police officials, he fired gunshot towards them, which was hit to Constable Ugma Ram near to his right shoulder. It is stated in the FIR that petitioner-Kirta Ram, driver of the aforesaid vehicle was apprehended but he threw the firearm in the dark, from which he opened the fire. It is further stated in the FIR that Constable Ugma Ram was sent to Nimbahera Hospital for treatment as the blood was oozing out from the injury sustained by him, and the complainant and other police officials, in presence of two motbirs, searched the vehicle and found 2 quintals and 17 kgs. of poppy husk. It is also stated in the FIR that a country made pistol, with which a magazine having 7 live cartridges, was also found in the desk-board of the vehicle. On being asked by the police about licences of the contraband-poppy husk, country made pistol as well as the firearm, which was thrown by accused - petitioner- Kirta Ram after firing on Constable-Ugma Ram, the accused told that they do not have any licence for the same. It is also stated in the FIR that the samples of contraband were taken from the bags (3 of 8) [CRLMB-6229/2018] recovered from the aforesaid vehicles. One other person, who was also in the vehicle and apprehended by the police, is petitioner - Bhupendra. After investigation, police filed charge-sheet against the petitioners under Section 8/15, NDPS Act and Sections 332, 353, 307 IPC on 17.05.2018.

The petitioners preferred a bail application under Section 167(2) CrPC read with Section 36A(4) of the NDPS Act before the trial court while contending that as the investigating agency has failed to file charge-sheet against the petitioners within stipulated time as prescribed under the law, the petitioners are entitled to be released on bail under Section 167(2) CrPC read with Section 36A(4) of NDPS Act. The said application preferred on behalf of the petitioners came to be rejected by the trial court vide order dated 24.05.2018. Hence, the petitioners have preferred these bail applications under Section 439 CrPC read with Section 167(2) CrPC and 36A(4) of the NDPS Act.

Learned counsels for the petitioners have argued that the trial court has grossly erred in rejecting the bail application of the petitioners while not taking into consideration the fact that the investigating agency has failed to file charge-sheet against the petitioners within a period of 180 days after their arrest. It is submitted that though the period of 180 days expired on 13.04.2018, however, on that day, the charge-sheet could not be filed and a very vague and cryptic application was filed on behalf of the SHO concerned through Public Prosecutor praying for extension of time. It is submitted that the trial court without applying its mind extended the time for filing the charge-sheet against the petitioners up to 02.05.2018, on that day also, no charge-sheet was filed and again an application was filed on behalf (4 of 8) [CRLMB-6229/2018] of the investigating officer for extension of time and the trial court again extended time for filing charge-sheet up to 15.05.2018. On 15.05.2018, again an application was filed on behalf of the prosecution and the trial court granted further two days' time i.e. up to 17.05.2018 to file charge-sheet. On 17.05.2018, when the charge-sheet was filed, the trial court rejected the bail application of the petitioners.

Learned counsels for the petitioners have submitted that as a matter of fact on 02.05.2018, the petitioners already moved an application under Section 167(2) CrPC read with Section 36A(4) of NDPS Act because no charge-sheet was filed by the investigating agency, therefore, on 02.05.2018 itself, right was accrued to the petitioners to be released on bail but the trial court without taking

into consideration the said fact illegally rejected the bail application filed by the petitioners.

Learned counsels for the petitioners have argued that Hon'ble Supreme Court as well as this Court, in catena of decisions, have categorically held that if the prosecution has failed to file charge-sheet within statutory period, then application filed on behalf of the accused-persons for releasing him on bail is liable to be allowed and they are entitled to be released on compulsive bail under Section 167(2) CrPC read with Section 36A(4) of NDPS Act. Learned counsels for the petitioners have, therefore, prayed that the bail applications of the petitioner be allowed and they be released on bail.

Per contra, learned Public Prosecutor has vehemently opposed the bail applications and argued that as a matter of fact the trial court from time to time has extended the period for filing charge-sheet against the accused-persons and also extended the (5 of 8) [CRLMB-6229/2018] judicial custody and taking into consideration the said facts, it cannot be said that the investigating agency has failed to file charge-sheet against the petitioners during the statutory period and, therefore, they are not entitled to be released on bail under Section 167(2) CrPC read with Section 36A(4) of the NDPS Act.

Heard learned counsel for the parties.

The facts of the case, not in dispute, are that the petitioners were arrested on 16.10.2017 for commission of offences punishable under Sections 8/15 of NDPS Act, Sections 332,353,307 IPC and Section 3/25 of Arms Act and the allegations against them is that they were transporting narcotic contraband above commercial quantity. As per the provisions of Section 36A(4) of the NDPS Act, the statutory period for filing charge- sheet in the cases where the narcotic contraband is above the commercial quantity is 180 days, however, the said period can be extended up to the period of one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for detention of the accused beyond the period of 180 days.

In the present case, the statutory period of 180 days for filing charge-sheet against the accused-petitioners was going to expire on 13.04.2018, however, on 12.04.2018, a charge-sheet was filed by the investigating agency before the trial court and the trial court fixed the matter for 13.04.2018. On 13.04.2018, investigation Officer through Special P.P. moved an application for extension of 20 days' time and the trial court returned the charge- sheet for removing the deficiencies and for seeking prosecution sanction against the accused-persons for the offence punishable under Section 3/25 of the Arms Act and extended the period of (6 of 8) [CRLMB-6229/2018] judicial custody of the petitioners for 20 more days and also extended the time for filing charge-sheet up to 02.05.2018. On 02.05.2018 again, the trial court granted time to file charge-sheet up to 15.05.2018 and judicial custody of the petitioners was also extended up to that date. On 15.05.2018 again, time was granted to file charge-sheet up to 17.05.2018 and the judicial custody of the petitioners was also extended. On 17.05.2018, charge-sheet was filed.

It is also not in dispute that on 13.04.2018 when the trial court extended the time for filing charge-sheet for 20 more days and also extended the judicial custody of the petitioners, no bail application under Section 167(2) CrPC as well as under

Section 36A(4) of the NDPS Act was preferred by the petitioners and the said application for the first time was preferred on 02.05.2018.

The trial court while rejecting the bail application of the petitioners observed that the judicial custody of the petitioners was extended for 20 more days on 13.04.2018 and on expiry of said 20 days on 02.05.2018, again the time for filing the charge- sheet was extended up to 15.05.2018 while extending the judicial custody of the petitioners. On 15.05.2018 also, time was granted to the investigating agency to file charge-sheet on 17.05.2018 and the judicial custody of the petitioners was also extended up to 17.05.2018.

Learned trial court was of the opinion that on 02.05.2018 when the extended period of 20 days was going to expire, the prosecution had already moved an application for extending further 20 days' time for filing charge-sheet and, therefore, as per the law laid down by the Hon'ble Supreme Court (7 of 8) [CRLMB-6229/2018] in Rambeer Shokeen vs. State of NCT of Delhi reported in AIR 2018 SC 688, when the application for extending the time of judicial custody preferred on behalf of the investigating agency is pending and has not been decided, and no right has been accrued to the petitioners till the said application is decided and hence, the said application cannot be granted.

The Hon'ble Supreme Court in Rambeer Shokeen vs. State of NCT of Delhi (supra) has held as under:

"24. As held by the Constitution Bench of this Court, the consideration of application for grant of statutory bail in a situation, as in the present case, was dependent on rejection of prayer of the Additional Public Prosecutor for extension of time. When such prayer is made, it is the duty of the Court to consider the report/application for extension of period for filing of the charge-sheet in the first instance; only if it was be rejected could the prayer for grant of statutory bail be taken forward. In no case, the hearing on statutory bail application precede the consideration of prayer for extension of the period for filing of the charge-sheet made by the Additional Public Prosecutor."

In the present case, it is not dispute that on 13.04.2018 when the statutory period 180 days of filing charge- sheet against the petitioners was going to expire, the investigating officer through the Special P.P. already moved an application for extension of time and the same was granted by the trial court and the time for filing charge-sheet was extended up to 02.05.2018 and the judicial custody of the petitioners was also extended up to that period. On 02.05.2018 again an application was moved on behalf of the investigating officer through Special P.P. for extending the time and the trial court had also extended time up to 15.05.2018, however, on 02.05.2018 itself, an application was moved on behalf of the petitioners to be released on bail under (8 of 8) [CRLMB-6229/2018] Section 167(2) read with Section 36A(4) of the NDPS Act, however, when the application on behalf of the investigating officer through the Special P.P. had already been moved for extending the period of filing charge-sheet and for extending the judicial custody of the petitioners, as per the

law laid down by the Hon'ble Supreme Court in Rambeer Shokeen vs. State of NCT of Delhi (supra), there was no stage of considering the said application of the petitioners.

Having regard to the totality of facts and circumstances of the case and having taken into consideration the law laid down by the Hon'ble Supreme Court in Rambeer Shokeen vs. State of NCT of Delhi (supra), I do not find any illegality in the order passed by the trial court, whereby the application preferred by the petitioners under Sections 167(2) CrPC and under Section 36A(4) of the NDPS Act has been dismissed.

Hence, there is no force in these bail applications and the same are, therefore, dismissed.

(VIJAY BISHNOI),J m.asif/PS Powered by TCPDF (www.tcpdf.org)