

Crime No.13/2022  
Police Station Cyber East  
Offence u/s 419, 420, 354(A),509, 384, 120(B) and 34 of IPC r.w  
65,66(D), 67 of I.T. Act  
P.S. Cyber East State Vs. Liyang

Order below bail application under section 167(2) of Cr.P.C.

1) Perused the application, say given to it by APP and case papers. Heard Adv. Prem Pandey for accused No.10. The present application moved by accused No.10) Liyang Chi Sheng u/s.167(2)(a)(II) of Cr.P.C. for grant of default bail. It is submitted by the accused that, he was arrested and his custody was granted to police on 27-07-2022. That the section invoked against the present accused and the section prescribed in the present case is less than or upto seven years therefore the limitation for filing the charge sheet is within the 60 days period from the date of first production before the court. The limitation for filing charge sheet expires on 25-09-2022. It is further stated that in such circumstances indefeasible right to accused No.10 accrues and he is entitled to default bail for want of non compliance of filing of charge sheet within prescribed time. It is finally prayed to grant default bail as per section 167(2) of Cr.PC.

2) The J.C. of this court had given his submission in which it is stated that till date no charge sheet is filed by I.O. in CR.No.13/2022. The learned APP in his say submitted that the charge sheet is not filed by till 02.55 p.m. that the report may be called and notice be issued to the concern I.O. through A.C.P. as to why charge sheet is not filed within prescribed time.

3) Considered submissions made by both parties. Perused the case papers. From its perusal it is revealed that the F.I.R. is lodged against



the present accused and others at police station Cyber East on 27-02-2022 at 15-20 for the offence punishable u/s.420 of IPC and sections 65,66(D),67 I.T. Act. It further reveals that the I.O. later on after investigation also included the sections 384, 120(B) and 34 of the IPC.

4) The accused was produced before the court for the first time on 27-07-2022 and was remanded to police custody till 02-08-2022. Thereafter, again on 02-08-2022 accused was produced before the court and again further police custody was granted to him till 08-08-2022. On 08-08-2022 again the accused was produced before the court and his further police custody was sought however, the same came to be rejected by the court and he along with other accused persons were remanded to Magisterial custody till 20-08-2022. Thus, from the above mention status of the case the accused was first produced before this court on 27-07-2022. The offence u/s.420 of IPC is punishable up to 7 years, Section 384 of IPC is punishable up to 3 years, section 120(B) of IPC is punishable as for abatement of the offence which is the object of the conspiracy and section 65 of I.T. Act is punishable up to 3 years, section 66(D) is punishable up to 3 years and section 67 I. T. Act is punishable up to 3 years. Thus, it is observed that the maximum punishment for sections is up to seven years and therefore the case falls within the ambit of section 167(2)(ii) of Cr.P.C. That the calculation of 60 days is as under:

Ist day of remand	27-07-2022
July	05 days
August	31 days
September	26 days
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	62 days



5) As per Sec.167(2)(a) which provides that the Magistrate may authorize 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 exists for doing so, but no Magistrate shall authorized the detention of the accused person in custody under this paragraphs 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 purpose of that Chapter.

6). Thus from the perusal of above provision the offence u/s.420 of IPC which is punishable upto 7 years is covered under Sec.167(2)(a)(II). The accused was first produced on 27-07-2022 and therefore as per Sec. 167(2)(a)(II) it was obligatory on the part of Investigation Officer to file the charge sheet within the stipulated period of 60 days. The 60 days period in the present case expired on 24-09-2022 and today is the 62<sup>nd</sup> day but no charge-sheet is filed. Hence, the right has accrued in the favour of the accused and he is entitled to get default bail. From the perusal of the case papers it appears that accused is not the permanent resident of District Mumbai and he is resident of District Bangalore, State Karnataka. No doubt the accused can be released on bail however,



it is also observed that his presence should be secured during the trial so that he should not mis-use the liberty granted by the court and in such circumstances solvent surety is essential. With the above observation made I proceed to pass the following order in the interest of justice.

Order

- 1] The application for releasing on default bail filed by accused No.10) Liyang Chi Sheng is hereby allowed.
- 2] The accused No.10) Liyang Chi Sheng be released on his furnishing Personal Bond and Solvent Surety bond of Rs. 30,000/- with one or more solvent surety in the like amount or cash surety in like amount for the period of four weeks. At the time of depositing cash bail, accused is directed to submit the copy of his address proof i.e. Aadhar Card, Pan card, ration card, driving license, bank passbook, voter ID card etc. on record which is condition precedent.
- 3] The accused should not tamper with the prosecution witnesses, evidence and shall not make any threat, inducement to any person acquainted with facts of case.
- 4] The accused should not commit any offence.
- 5] Issue notice to the Investigation Officer to explain within 7 days from today with special reasons supported by an affidavit and case diary as to why she could not file the charge-sheet within the prescribed time, failing which it will be presumed that she has nothing to say in the matter and further action would follow.



Application No. 619/22 Rs. 28/-  
Applied on. 28/09/2022 (J. M. Ambodkar)  
Delivered on 29/09/2022  
Date : 26/09/2022  
Metropolitan Magistrate,  
57<sup>th</sup> Court, Kurla, Mumbai.

TRUE COPY  
29-9-22  
Judicial Clerk  
Metropolitan Magistrate  
57<sup>th</sup> Court, Kurla, Mumbai