

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Crl. Misc. No.M-26899 of 2015

Date of Decision: 06.10.2015

Jagtar Singh

....Petitioner

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. K.S. Sidhu, Sr. Advocate
with Mr. A.S. Sandhu, Advocate
for the petitioner.

Mr. Rupam Aggarwal, D.A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

This petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in case FIR No.9 dated 23.07.2015 registered under Sections 7, 13(2), 88 of the Prevention of Corruption Act read with Sections 186, 353 and 323 of the Indian Penal Code registered at Police Station Vigilance Bureau, Ludhiana.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case because of enmity between the parties and nothing was recovered from him. The allegation of money has been levelled by showing that it was recovered from the pocket of the petitioner, whereas, the petitioner protested and a scuffle took place between him and the Vigilance persons. He further submits that just to

cover up their lapse, offence under Sections 186, 353 and 323 IPC has been added which would show the biased opinion of the Investigating Agency. Learned counsel also submits that there is no criminal background of the petitioner as no case was ever registered against him. The petitioner is in judicial custody since lodging of the FIR and nothing is to be recovered from him. The challan has not been presented so far and it may take some time even in presentation of challan and conclusion of trial. The petitioner, being a government servant, is not going to run away from the trial and he is possessing movable and immovable property. Learned counsel further submits that the petitioner is ready to abide by all terms and conditions to be imposed by this Court. Since, the challan has not been filed within the prescribed period, therefore, the petitioner has become entitled for bail as per provisions of Section 167(2) Cr.P.C but still his application has been dismissed by the Additional Sessions Judge, Ludhiana.

Learned counsel for the petitioner has relied upon the judgment of this Court in case ***Som Nath and another vs State of Punjab 2011(3) RCR (Criminal) 515*** in support of his contentions.

Learned counsel for the respondent-State submits that the petitioner has filed a petition for grant of regular bail not only before the lower Court but before this Court as well and no application has been moved under Section 167(2) Cr.P.C and as such, he is not entitled for bail as per provisions of Section 167(2) Cr.P.C.

The question for consideration before this Court is that in case, the challan is not filed within the statutory period and the application for regular bail is pending, then as to whether, the petitioner can be released on bail as per provisions of Section 167(2) of the Code.

Admittedly, during pendency of the regular bail, the statutory

period of filing challan has expired and subsequently, the bail application was dismissed without taking note of this fact that the challan has not been presented within the statutory period.

It is also not disputed that as per clause (i) of proviso to Section 167(2) of the Code, if minimum punishment for an offence is not less than 10 years then only period of 90 days for filing the challan would be applicable. In case, the offence is punishable for any term upto ten years then period of 60 days would be applicable to submit the challan.

In the present case, the offence is under Section 7 and 13(2) of the Prevention of Corruption Act read with Sections 186, 353 and 323 of the Indian Penal Code and the sentence is upto the period of ten years. The period of filing challan is 60 days. It is also not disputed that the challan has not been presented within a period of 60 days. This provision came up for consideration before the Allahabad High Court in **Sohan Lal vs State reported in 1991 Allahabad Criminal Reports, 383** as well as judgment of Division Bench of this Court in case **Om Parkash Gabbar vs State of Punjab reported in 1997(1) RCR (Criminal) 193**.

In **Om Paraksh Gabbar's** case (supra) in paras No.4 and 5, it has been observed as under :-

“4. This provision came up for consideration before the Allahabad High Court in Sohan Lal's case (supra). After a discussion of its implications, the learned Judge observed as under:-

“Section 167(2) (a) of the Code of Criminal Procedure lays down that the Magistrate may authorize the detention of the accused person, otherwise than in police custody, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so. But total period of detention shall not exceed 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. If the investigation relates to any other offence, the total period of detention shall not exceeds sixty days. The words “imprisonment for a term of not less than ten

years” mean that the maximum punishment shall be ten years. The term ‘not less than ten years’ is not to be confused with the terms ‘upto ten years’. In a case where the maximum punishment is upto ten years, the period of detention, which is permissible under Section 167(2) Cr.P.C. is only sixty days.”

To our mind, the paragraph above wholly sums up the clear intent of the provisions of Section 167(2) of the Code.

5. Mr. Randhawa, the learned State counsel has, however, relied upon the decision in Tejinder Singh Desanj’s case (supra). It is true that the decision is in favour of the State counsel, but we find that the learned Judge did not delve deep into the matter and after reproducing the words of the Section, straightaway came to his conclusions. We are of the opinion that the two different situations and in the offences wherein the ‘sentence up to ten years’ imprisonment is provided, the challan has to be filed within sixty days and in cases where the sentence provided is not less than ten years (by way of illustration Sections 304, 305, 307, 313 IPC etc.) the challan has to be filed within ninety days. We accordingly answer the reference as under:

The words “imprisonment for a term of not less than 10 years” occurring in Section 167 (2)(a)(i) of the Code mean that the minimum punishment provided should be ten years.

For the reasons recorded above, we are of the opinion that the judgment of the learned Single Judge in Tejinder Singh Desanj’s case (supra) does not lay down correct law and the same is over ruled. We, accordingly, accept the interpretation given by the Allahabad High Court in Sohan Lal’s case (supra).”

The issue, as in the present case, was also in **Som Nath’s** case (supra) that during pendency of the regular bail, the accused became entitled to bail as per provisions of Section 167(2) Cr.P.C. The objection was raised that the petitioner-accused has not filed application for bail under Section 167(2) of the Code. The observation made by this Court in **Som Nath’s** case (supra) in para No.16 is reproduced as under :-

“16. In the humble opinion of this Court, it would be futile exercise to ask the accused to approach the Magistrate first if argument is advanced that even during the pendency of the bail application

before this Court, statutory period provided under Section 167(2) of the Code for filing the challan has expired. This Court can take note of the law and can consider the bail application itself without asking the accused to approach the Magistrate first. In the opinion of this Court, hypertechnical view should not be adopted to refuse the relief if accused is otherwise legally entitled for.”

In the present case also, the accused was sent to judicial custody and thereafter, the application for regular bail was filed by him, which was dismissed. The challan was not filed within the statutory period. The petitioner became entitled to claim benefit under the provisions of Section 167(2) Cr.P.C but his bail application was dismissed only on this ground that no such application was filed by him. The petitioner has filed a petition under 439 Cr.P.C for grant of regular bail and not under Section 167(2) of the Cr.P.C and challan has not been presented so far.

As per **Som Nath's** case (supra), it would be futile exercise to ask the petitioner to avail the remedy under Section 167(2) of the Code by moving application under the said provisions. This Court can take note of the law and can consider the bail application itself without asking the accused to approach the lower Court as it is a hypertechnical objection and bail should not be refused on this ground as the petitioner is entitled to the relief as per provisions of Section 167(2) of the Code.

Accordingly, the petitioner is entitled to be enlarged on bail for non-filing of the challan within the statutory period.

Accordingly, this petition is allowed and the petitioner is directed to be released on bail on his furnishing bail/surety bonds to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Ludhiana.

(DAYA CHAUDHARY)
JUDGE

06.10.2015

gurpreet