

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Crl. Misc. No. M-40891 of 2016

Date of decision: 15.12.2016

Kamal and another

...Petitioners

versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arun Sharma, Advocate,
for the petitioners.

Ms. Mahima Yashpal, AAG, Haryana.

RITU BAHRI, J.

This petition under Section 439 read with Section 167 (2) Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.98 dated 05.08.2016, under Sections 323/506 IPC and Section 4 of the Protection of Children from Sexual Offences Act, registered at Police Station, Women, Karnal.

Learned counsel for the petitioners states that the petitioners had moved an application for bail under Section 167 (2) Cr.P.C., before the trial Court, as no challan had been filed by the prosecution within a period of 90 days. Vide order dated 11.11.2016 (Annexure P-2) passed by the Additional Sessions Judge, Karnal, the said application was allowed and the petitioners were ordered to be released on bail under the default clause, subject to their furnishing bail bonds in the sum of Rs.2 lacs with two sureties in the like amount each. On the same day, at about 2.20 P.M., it was observed by the Court that challan under Section 173 Cr.P.C. had already been filed by the

prosecution at 11.50 A.M. After passing of the earlier order (Annexure P-2)

and before accepting the bail/surety bonds, the challan had been received by the Court. Accordingly, in view of the judgment passed by the Hon'ble Supreme Court in **Uday Mohan Lal Acharya Vs. State of Maharashtra**, 2001 (5) SCC 453, the earlier order (Annexure P-2) was declined.

In **Uday Mohan Lal Acharya's** case (supra), the Hon'ble Supreme Court was considering the case of an accused, who after expiry of 90 days, had filed an application for release on bail under Section 167 (2) Cr.P.C. Period of 90 days had expired on 16.08.2000 and the application was made on 17.08.2000. The bail application was declined by the Magistrate. Thereafter, the accused approached the High Court, where the Public Prosecutor had informed the Court that the charge sheet had been filed on 30.08.2000 and indefeasible right of the accused did not survive. Ultimately, the High Court refused to release the accused on bail. The Hon'ble Supreme Court after examining the law as laid down in **Sanjay Dutt Vs. State through C.B.I. Bombay(II)**, 1994 (3) RCR (Crl.) 684 allowed the bail by holding that on 17.08.2000 when the accused made an application, the charge sheet had not been filed, therefore, he had acquired indefeasible right to be released on bail. Even, if, the charge sheet had been filed during the pendency of bail application before the trial Court, it will not take away the right of accused to be released on bail under Section 167 (2) Cr.P.C. Ultimately, the SLP was allowed and a direction was given to the Magistrate to deal with the accused in accordance with law.

Ratio of the aforesaid judgment has not been rightly applied in the case of the present petitioners. In this case, at the time of filing of the application, the challan had not been presented and vide order dated 11.11.2016 (Annexure P-2), they had been ordered to be released on bail.

However, during the later hours of the day, at about 11.50 A.M., the challan had been presented. Ultimately, the trial Court refused to accept the bail/surety bonds of the petitioners.

In the facts of the present case, at the time of presentation of the application, no charge sheet had been filed, therefore, the first order dated 11.11.2016 (Annexure P-2) releasing the petitioners on bail had been rightly passed by the Additional Sessions Judge, Karnal. However, the said Court has gone wrong in not accepting the bail/surety bonds of the petitioners on the ground that the challan had already been presented at 11.50 A.M. As per ratio of the aforesaid judgment passed by the Hon'ble Supreme Court, the petitioners had acquired indefeasible right to get bail as challan had not been presented within 90 days.

Recently, in **Union of India through C.B.I. Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav**, 2014 (9) SCC 457, the Hon'ble Supreme Court was considering a case, where an application for bail was made as charge sheet had not been filed within the stipulated period of 90 days. After filing of the application, the prosecution had submitted an application for extension of time for filing the charge sheet. The Hon'ble Supreme Court held that the Magistrate was obliged to deal with the application on the day it was filed as the Court cannot act to extinguish the right of an accused, if the law so conferred on him. Following the verdict given in **Uday Mohanlal Acharyas's** case (supra), the Hon'ble Supreme observed as under:-

“40. On a careful reading of the aforesaid two paragraphs, we think, the two-judge Bench in Pragyna Singh Thakur's case has somewhat in a similar matter stated the same. As long as the majority view occupies the field it is a binding precedent. That apart, it has been followed by a three-Judge Bench in Sayed Mohd. Ahmad Kazmi's case. Keeping in

view the principle stated in Sayed Mohd. Ahmad Kazmi's case which has based on three-Judge Bench decision in Uday Mohanlal Acharyas's case, we are obliged to conclude and hold the principle laid down in Paragraph 54 and 58 of Pragyna Singh Thakur's case (which have been underlines by us) do not state the correct principle of law. It can clearly be stated that in view of the subsequent decision of a larger Bench that cannot be treated to be a good law. Our view finds support from the decision in ***Union of India and others v. Arviva Industries India Limited and others, (2014) 3 SCC 159.***"

In the present case, after granting bail to the petitioner vide order dated 11.11.2016 (Annexure P-2), their bail/surety bonds were not accepted by the Additional Sessions Judge, Karnal, as the charge sheet had been filed at 11.50 A.M. However, as per the ratio of the aforesaid judgment, if the accused refused to furnish his bail/surety bonds, only then he would lose his right to be released on bail. Once, the petitioners were granted bail in the first half of the day, the same Court could not refuse to accept their bail/surety bonds on the ground that the charge sheet had already been filed. Since the challan had not been presented at the time of filing of the application under Section 167 (2) Cr.P.C. and statutory period of 90 days had elapsed, the accused had acquired indefeasible right to be released on bail.

In view of the above discussion, this court feels that there is no need to detain the petitioners any longer and they are entitled to be released on regular bail in view of the provisions of Section 167 (2) Cr.P.C. Accordingly, this petition is allowed and petitioners are ordered to be enlarged on bail to the satisfaction of the trial Court.

15.12.2016
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No