

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

CRM-M-45109 of 2016

Date of Decision: 23.12.2016

Gautam Kumar @ Gautam @ Gautam Sharma and another

...Petitioners

VERSUS

State of Punjab

...Respondents

CORAM : HON'BLE MS. JUSTICE RITU BAHRI

Present : Mr.Kushagra Mahajan, Advocate, for the petitioners.

Ms.Manpreet Dhaliwal, AAG, Punjab.

RITU BAHRI, J. (Oral)

Learned counsel for the petitioners submits that petitioners had preferred bail application under Section 167(2) Cr.P.C. for grant of bail to them on the ground that since 08.08.2016 they are in custody and the investigation in their case has not been completed and as period of 90 days has elapsed, therefore, it is their right for grant them bail.

Learned Juvenile Justice Board on 11.11.2016 observed that since the petitioners are in custody for more than 94 days and challan has not been presented against them, therefore, after getting the report of the Ahlmad the bail application of the petitioners was allowed at 3:30 p.m. vide order dated 11.11.2016 (Annexure P-1) but on the same date challan was presented at 3:50 p.m. and learned Court proceeded to hold that as the bail/surety bonds were not furnished as yet, therefore, the bail of the petitioners was declined by the learned juvenile Justice Board under Section 167(2) Cr.P.C. The revisional Court also dismissed the revision vide order dated 03.12.2016 (Annexure P-3) on the ground that challan has been presented within 90 days and thus the petitioners are not entitled to bail

under Section 167(2) Cr.P.C.

Learned counsel for the State has argued that challan in the present case had been presented on 06.11.2016 which is within the 90 days before the Court of Duty Magistrate and the same was presented before the Court of learned Juvenile Justice Board on 11.11.2016. Petitioner was initially granted bail on 11.11.2016 as challan had not been received by the Juvenile Justice Board. However, the order has been recalled wrongly by observing that initially the challan had been presented on 06.11.2016 before the Duty Magistrate.

Learned counsel for the petitioner submits that this aspect has been considered vide judgment of this Court in **Nishan Singh Vs. State of Punjab 1998(1) RCR (Criminal) 767**, whereas, it has been observed that presentation of challan within 90 days before the Magistrate who had not jurisdiction to try the matter would not be taken as challan has been presented within 90 days. The present case is squarely covered by the said judgment.

In view of the above, the impugned order 11.11.2016 (Annexure P-2) and impugned order dated 03.12.2016 (Annexure P-3) are set aside and order dated 11.11.2016 (Annexure P-1) granting bail to the petitioner is hereby restored on the same terms and conditions. The petitioner is given 15 days time to execute fresh bail/surety bond to the satisfaction of Illaqa Magistrate/Duty Magistrate, Amritsar.

December 23, 2016
anil

(RITU BAHRI)
JUDGE