

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

**Crl. Misc. No.M-39463 of 2014 (O&M)
Date of Decision: July 31, 2017.**

Yash Pal Gupta

.....PETITIONER(s).

VERSUS

State of Punjab and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pankaj Bhardwaj, Advocate
for the petitioner (s).

Ms. Bhavna Gupta, D.A.G., Punjab.

Mr. Vinay Pandey, Advocate
for respondent No.2.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 439(2) Code of Criminal Procedure (for short-Cr.P.C.) for cancellation of bail under Section 167 (2) Cr.P.C. granted to respondent No.2 in case FIR No.62 dated 22.03.2014 registered for the offences punishable under Sections 406, 420 read with Section 120-B of Indian Penal Code (for short-IPC), at Police Station Phase-I, Mohali vide order dated 18.10.2014 passed by Judicial Magistrate 1st Class, Mohali, which was subsequently upheld vide order dated 22.10.2014 passed by learned Additional Sessions Judge, Mohali in Criminal Revision No.74 of 2014 filed by the State.

Firstly, I take admitted facts of the case.

Respondent No.2-Davinder Singh was arrested in this case on 20.08.2014. On 18.10.2014, he moved application seeking bail under Section 167(2) Code of Criminal Procedure (for short-Cr.P.C.) and learned Judicial Magistrate 1st Class (Duty), Mohali allowed the same with the observation as follows:-

“..... Report of Ahlmad is called. As per the report of Ahlmad, the period of 60 days has elapsed since the arrest of the accused which is from 20.08.2014. The challan is not presented by the investigating agency till today. Therefore, the **accused being in custody for more than 60 days**, is entitled for default bail. So, accused is ordered to be released on bail on furnishing bail bonds in the sum of Rs.50,000/- with one surety of alike amount.”

State of Punjab filed criminal revision against that order, which was dismissed by learned Additional Sessions Judge.

On behalf of respondent No.2, none appeared when the case was taken up in the morning session. In another petition bearing CRM-M-13864-2015 filed on behalf of respondent No.2, Mr. Abhinav Gupta, Advocate was representing him but he stated that he is not counsel in this petition.

After hearing the arguments of learned counsel for the petitioner and learned State counsel, I kept the case for orders for afternoon, when Mr. Vinay Pandey, Advocate appeared and filed memo of appearance on behalf of respondent No.2 and has sought adjournment.

Keeping in view the fact that this petition has been pending since 2014, he was asked to address arguments but he insisted on

adjournment, which was declined.

The question, which arises for consideration in this case is as to whether order passed by learned Magistrate giving the benefit of bail to respondent No.2 under Section 167(2) Cr.P.C. is legal and valid.

Respondent No.2 was arrested in this case for the offences punishable under Sections 406, 420 read with Section 120-B IPC.

Section 167(2) (a) Cr.P.C. reads as follows:-

“167. Procedure when investigation cannot be completed in twenty four hours.

(1)

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) the Magistrate may authorise 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 exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph 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 purposes of that Chapter.”

It is apparent on perusal of the above provision that the accused in custody becomes entitled to claim bail under Section 167(2) Cr.P.C. on expiry of 60 days of his detention, where the investigation relate to offences not punishable with sentence of death, imprisonment for life or imprisonment for a term not less than 10 years. Respondent No.2 in this case would have become entitled to claim bail under the above provision on expiry of 60 days but the learned Magistrate allowed the bail before the expiry of 60 days without attempting to calculate number of days of custody of respondent No.2 and relied solely on the report of Ahlmad to observe that period of 60 days has elapsed. Learned Revisional Court below calculated the days after his detention but wrongly observed that he has already spent 60 days in custody. Respondent No.2 would have completed the period of 60 days of his detention as ordered by learned Magistrate on 20.10.2014 and not on 18.10.2014 and would have become entitled to bail on 21.10.2014 as per provisions of Section 167(2) Cr.P.C. He remained in custody for 10 days in August after his detention in custody was authorised by Magistrate (day of arrest i.e. 20.08.2014 and day on which he was produced before Magistrate is excluded), 30 days in September and 18 days in October, which means his period of custody of 60 days had not expired on 18.10.2014. On 19.10.2014, challan is stated to have been produced in

Court.

As per the observations in case of *Pragyna Singh Thakur Vs. State of Maharashtra (2011) 10 Supreme Court Cases 445*, the period of 60 days is to be counted from the date of his order of remand. In case of *State of M.P. Vs. Rustam and others 1995 Supp (3) Supreme Court Cases 221*, it has been observed that the day on which the accused was remanded to judicial custody should be excluded while computing the period prescribed under the proviso to Section 167(2) Cr.P.C. The relevant observation in this regard are contained in para 3 of the judgment which reads as follows:-

“3. We find that the High Court was in error—both in the matter of computation of the period of 90 days prescribed as also in applying the principle of compulsive bail on entertaining a petition after the challan was filed as the so-called “indefeasible right” of the accused, in our view stood defeated by efflux of time. The prescribed period of 90 days, in our view, would instantly commence either from 4-9-1993 (excluding from it 3-9-1993) or 3-12-1993 (including in it 2-12-1993). **Clear 90 days have to expire before the right begins.** Plainly put, one of the days on either side has to be excluded in computing the prescribed period of 90 days. Sections 9 and 10 of the General Clauses Act warrant such an interpretation in computing the prescribed period of 90 days. The period of limitation thus computed on reckoning 27 days of September, 31 days of October and 30 days of November would leave two clear days in December to compute 90 days and on which date the challan was filed, when the day running was the 90th day. The High Court was, thus, obviously,

in error in assuming that on 2-12-1992 when the challan was filed, period of 90 days had expired.” (accused in this case was arrested on 03.09.1993).

Similar matter came up before this Court in CRM-M-4568 of 2011 titled **Gurmej Singh Vs. State of Punjab (2011) 3 RCR (Cri) 258** and it was observed as follows:-

“In the present case, accused was arrested on 23.12.2010 and was sent to judicial custody on 24.12.2010. Offences under Section 7, 13 (2) of Prevention of Corruption Act are not punishable for minimum period of 10 years imprisonment, therefore, challan under Section 173 Cr.P.C. was to be filed within 60 days as provided under proviso (a)(ii) of Section 167 (2) Cr.P.C., which stood expired on 22.2.2011 even if first day i.e. 24.12.2010 is excluded for counting of clear 60 days in view of my judgement dated 9.2.2011 in the case of **Ram Kishore @ Banti Vs. State of Haryana, Crl. Misc. No.M-37622 of 2010**. In the case of **Ram Kishore (supra)**, I have held as under:-

“Now, question arises as to how stipulated period of 90 days or 60 days, as the case may be, counted?

*Undisputedly, petitioner was produced before the learned Magistrate on 31.08.2010, while he was arrested by the police on 30.08.2010. As per the dictum of the Apex Court in the matter of **Chaganti Satyanarayana and others vs. State of Andhra Pradesh** reported in **1986(3) SCC 141**, the period of 90 days or 60 days, as the case may be, has to be computed from the date of the order of the Magistrate on remand and not from the date of arrest by the police.*

Now, period of 90 days in the present case

has to be computed from the date of the order of the Magistrate. Now, question comes as to whether the day of the order of the Magistrate shall be excluded for the purpose of computing the period or shall be included.

In the opinion of this Court, accused shall be detained for clear 90 days in an offence punishable with death, life imprisonment and for the offence punishable for not less than 10 years and shall be released on bail after expiry of 90 days on 91st day if challan is not filed within stipulated time. Meaning thereby, clear 90 days or 60 days detention is permissible under clause (i) & (ii) of the proviso to Section 167(2) of the Code.

In the opinion of this Court, the date of remand must be excluded for the purpose of counting of clear 90 days because next day will start in the midnight of the day when custody is ordered. Since in the present case, custody was directed on 31.08.2010, hence period of 90 days would commence in the intervening night of 31st August and 1st September, 2010. Meaning thereby, first day would be 1st of September, 2010. If clear 90 days are counted from 01.09.2010 then 29.11.2010 would be the last day to submit the challan, it will come to an end in the intervening night on 29.11.2010 and 30.11.2011 (sic 30.11.2010). Meaning thereby, police was well within its jurisdiction to submit the challan on or before the intervening night on 29.11.2010 and 30.11.2010.”

Law for computing the period of 60 days or 90 days as per

Section 167(2) Cr.P.C. is well settled and the order passed by learned

Magistrate enlarging the benefit of bail to respondent No.2 on 18.10.2014 is apparently against the provision of law. If I examine the case from another angle by including the day on which respondent No.2 was arrested in the period of 60 days, even then on 18.10.2014, the period of 60 days had not expired.

Petitioner is seeking cancellation of bail wrongly granted to respondent No.2. A question which may arise here is that if a bail has been allowed erroneously to the accused, whether the same can be cancelled until and unless it is proved that he has not misused the concession of bail allowed to him. When examined on this point, I find that when a bail has been allowed against the specific provisions of law, the same is required to be cancelled. The accused is barred from raising the plea that he has not misused the concession of bail allowed to him against the provisions of law as contained in Section 167(2) Cr.P.C.

As a sequel of my above discussion, I am of the considered view that learned Magistrate as well as learned Revisional Court below have committed grave error of law which call for rectification by setting aside both the orders. Consequently, this petition is allowed and the bail allowed to respondent No.2 vide order dated 18.10.2014 is cancelled. Respondent No.2 is directed to be taken into custody forthwith.

It is, however, made clear that nothing contained in this order will restrict the right of respondent No.2 to seek regular bail and in the event of his applying the same, his application will be decided on merits without referring to any observation made herein.

As per order passed in the connected petition CRM-M-13864-

2015, drafts of ₹35 lakh produced in Court by Crispy Khera Gill were ordered to be deposited with Registrar (Judicial) of this Court. As the compromise between the parties has not materialized these drafts be returned to the petitioner against proper receipt.

Copy of this order be also placed in CRM-M-13864-2015.

July 31, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:	√ Yes/No
Whether Reportable:	√ Yes/No