

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

**CRM-M No.9915 of 2017
Date of Decision-01.06.2017**

Ajit Singh @ Jit Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Puja Chopra, Advocate
for the petitioner.

Mr. P.S. Ghuman, Addl., AG, Punjab.

RAJ MOHAN SINGH, J.

[1]. Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.267 dated 27.09.1995 registered under Sections 302,34,506,120-B IPC at Police Station Saddar Ferozeur, District Ferozepur.

[2]. After registration of the case, the petitioner became proclaimed offender and he surrendered before the Court on 06.12.2016. Thereafter, petitioner was sent to judicial custody on 06.12.2016 till 09.12.2016. Notice was issued to the Investigating Officer. On 09.12.2016, petitioner was not produced and in order to secure his presence, production warrants were issued for 23.12.2016. Again on 23.12.2016, petitioner was not produced before the Court and production warrants were again issued for 02.01.2017. On 02.01.2017, also the petitioner was not produced and production warrants were issued for 13.01.2017. In the

meanwhile, petitioner was produced on 07.01.2017 and on the same day, an application was moved by the Investigating Officer seeking permission to arrest the petitioner. Application was allowed and Investigating Officer was permitted to arrest the petitioner. An application for police remand was moved and the same was allowed upto 10.01.2017. Police remand was extended upto 11.01.2017. Thereafter, it was declined and the petitioner was remanded to judicial custody upto 25.01.2017. Thereafter, judicial custody of the petitioner was extended vide different orders.

[3]. Learned counsel for the petitioner submitted that the petitioner has completed period of 90 days in custody on 06.03.2017 and therefore, he is entitled to bail under Section 167(2) Cr.P.C. The aforesaid prayer was declined by the Additional Chief Judicial Magistrate, Ferozepur vide order dated 07.03.2017. Challan was presented in the case on 06.03.2017. At the time of filing of the application under Section 167(2) Cr.P.C, challan was not presented. Learned counsel further submitted that an indefeasible right has accrued to the petitioner for release on bail under Section 167(2) Cr.P.C in default of completion of the investigation and filing of the challan within the time prescribed. This right is enforceable by the accused before filing of the challan. The expression “if not already availed of” used in **Sanjay Dutt Vs. State through CBI, Bombay, 1994(3)**

RCR (Criminal) 684 was explained by the Hon’ble Apex Court in

Uday Mohanlal Acharya Vs. State of Maharashtra, 2001(2)

RCR (Criminal) 452, wherein conclusion was drawn to the effect that the aforesaid expression must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in paragraph (a) of proviso to sub-Section (2) of Section 167 Cr.P.C if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same. The availing of indefeasible right by the accused would not stand extinguished, if an accused entitled to be released on bail by application of the proviso to sub-Section (2) of Section 167 Cr.P.C, makes the application before the Magistrate, but the Magistrate erroneously refuses to entertain and then the accused moves the higher Forum and during this period before the higher Forum, a charge-sheet is filed, then the right of the accused would not stand extinguished, rather the accused has to be released on bail.

[4]. In the instant case, learned counsel for the petitioner submitted that the period of detention has to be considered w.e.f 06.12.2016 when the petitioner surrendered and was sent to judicial custody by the Magistrate. The filing of application under Section 167(2) Cr.P.C was within the time prescribed. On the

other hand, learned State counsel submitted that the period has to commence with effect from the date on which the petitioner was formally arrested by the police i.e.07.01.2017.

[5]. Paragraph (a) of proviso to sub-Section (2) of Section 167 Cr.P.C deals with the detention of the accused person under the authority of the Magistrate. The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of 15 days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding 90 days as applicable in the instant case. The computation of period of remand in terms of proviso to Section 167 Cr.P.C has to be in consonance with interpretation attached to Section 167(2) and (2A) Cr.P.C. The total period of detention should not exceed 90 days as is applicable in the instant case. The total period in police custody should not exceed 15 days. The custody namely police custody or judicial custody under Section 167(2) Cr.P.C has to be read cumulatively. The judicial Magistrate to whom the Executive Magistrate has forwarded the arrested accused can order detention in such custody namely police custody or judicial custody under Section 167(2) for the rest of first 15 days after deducting the period of detention ordered by the Executive Magistrate. This is so because of combined reading of Section 167(2) and (2A) Cr.P.C. The aforesaid analogy was explained by

Hon'ble Apex Court in **Central Bureau of Investigation, Special Investigation Cell-1, New Delhi Vs. Anupam J. Kulkarni, 1992(2) RCR (Criminal) 147**, after relying upon the ratio of **Natabar Parida Vs. State of Orissa, AIR 1975 Supreme Court 1465**.

[6]. Learned counsel for the petitioner further submitted that the detention of the accused either in police or judicial custody from time to time should not exceed total period of detention of 15 days in the whole. Within this period of 15 days, there can be more than one order changing the nature of such custody either from police to judicial or *vice versa*.

[7]. Learned counsel further relied upon **Budh Singh Vs. State of Punjab, 2001 CriLJ 2942** and contended that the ratio of **Central Bureau of Investigation, Special Investigation Cell-1, New Delhi Vs. Anupam J. Kulkarni's case (supra)** was followed. Even in a case where some more offences were incorporated in the same transaction at a later stage, the total period of detention in police custody cannot be beyond 15 days.

[8]. On the other hand, learned State counsel relied upon **Union of India through CBI Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, 2014(3) RCR (Criminal) 534**. The said case was in respect of filing of application under Section 167(2) Cr.P.C in time and thereafter, prosecution filed an application for extension of time for filing the charge-sheet. The

ratio of the aforesaid judgment was on different premise, where the Magistrate did not decide the application on the same day, rather adjourned the application. The Court held that the Magistrate cannot act to extinguish the right of an accused if the law so confers on him.

[9]. Learned State counsel further relied upon **Puneet Kumar Vs. State of Punjab, 2016(3) RCR (Criminal) 35**. The perusal of the aforesaid judgment shows that the aforesaid case was related to the situation where Clause (i) of Section 167 (2) (a) Cr.P.C would apply and it was held that the accused has no right to bail before expiry of said period under Section 167 Cr.P.C. Apparently, the facts involved in the aforesaid case are different than the one involved in the present case. Learned State counsel also relied upon **Pragyna Singh Thakur Vs. State of Maharashtra, 2012(1) RCR (Criminal) 302**. The facts of aforesaid case were in respect of calling the accused for interrogation, which was not treated to be equivalent to arrest. The accused was formally arrested and remanded to police custody. In that eventuality, it was held that the accused would be entitled to bail if the challan was not put up within 90 days from police custody.

[10]. After hearing the contentions of both the sides, it can be noticed that the words “in such custody as such Magistrate thinks fit for a term not exceeding 15 days in the whole”

occurring in sub-Section 2 of Section 167 Cr.P.C have to be construed that the police custody, if any, should be within this period of first 15 days and not later or alternatively in a case if such remand had not been obtained or the number of days of police custody in the first 15 days are less, asking of the police for police custody for full period of 15 days not availed earlier has to be negated. The custody after the expiry of first 15 days can only be a judicial custody during the rest of the period of 90 days. The police custody if found necessary can be ordered only during first period of 15 days.

[11]. In the present case, the petitioner himself surrendered before the Court on 06.12.2016 and was sent to judicial custody. The arrest of the petitioner was shown by the police only on 07.01.2017. Petitioner remained in judicial custody throughout. As per ratio of **Central Bureau of Investigation, Special Investigation Cell-1, New Delhi Vs. Anupam J. Kulkarni's case (supra)**, which was followed consistently, the accused person cannot be remanded to police custody after coming to an end the period of 15 days. The custody after the expiry of first 15 days can only be a judicial custody.

[12]. In view of above, without meaning anything on the merits of the case, I deem it appropriate to accept this petition and enlarge the petitioner on regular bail in terms of Section

167(2) Cr.P.C., subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate.

[13]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

01.06.2017
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Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No