

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

Criminal Revision No. 771 of 2017 (O&M)

Date of decision : September 05, 2017

Vivek AgnihotriPetitioner

Versus

State of Punjab and anotherRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sourabh Arora, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

Mr. Vivek Singla, Advocate for
Mr. Vivek Salathia, Advocate
for respondent No. 2.

LISA GILL, J.

The petitioner seeks the setting aside/modification of order dated 03.01.2017 passed by the learned Judicial Magistrate First Class, Amritsar to the extent that bail bonds of the petitioner have not been accepted.

The petitioner is an accused in FIR No. 0371 dated 22.09.2016. He filed an application seeking bail under Section 167 (2) Cr.P.C. as the challan had not been presented by the police despite lapse of 90 days of the custody of the petitioner. Bail under Section 167 (2) Cr.P.C. was afforded to the petitioner on 02.01.2017. Order dated 02.01.2017 reads as under:-

“ File taken up today on the application moved by the accused at 10.30 a.m. for bail under Section 167 (2) Cr.P.C. Report of the Ahlmad seen. The accused in the custody since 27.09.2016 for last 97 days. The challan has not been presented by the police despite lapse of 90 days of the custody of accused. The right of accused to be released on bail has become indefensible.

The accused is ordered to be released on bail on furnishing bail bonds in the sum of Rs. 1 lac with one surety in the like amount, subject to the condition that the accused shall not temper with the investigation and the accused shall appear as and when called and the accused shall not threatened intimidate the witnesses. The accused shall not leave the jurisdiction of the court without permission.

Bail bond and surety bond not furnished.”

It is noted by the learned Judicial Magistrate First Class, Amrtisar that the requisite bail bond and surety was not furnished by the petitioner. Thereafter on 02.01.2017 itself, final report under Section 173 Cr.P.C. was presented. The petitioner on the next day i.e. 03.01.2017 moved an application to furnish the bail bonds pursuant to order dated 02.01.2017.

Bail bonds furnished by the petitioner on 03.01.2017 after the presentation of the challan on 02.01.2017 were not accepted by the learned Judicial Magistrate First Class, Amritsar. The petitioner is aggrieved of order dated 03.01.2017, whereby his bail bonds have not been accepted, in view of the judgment of the Hon'ble Supreme Court in **Uday Mohanlal Acharya versus State of Maharashtra 2001(5) SCC 453.**

It is vehemently argued that once bail was afforded to the petitioner on 02.01.2017 inability of the petitioner to furnish the bail bonds on the same day should not work to his detriment. Presentation of the challan on 02.01.2017 after the passing of the order granting him bail cannot

be used to deprive the petitioner of the benefit under Section 167 (2) Cr.P.C.

Heard learned counsel for the parties.

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

“(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 subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

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[Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;]

The language of the statute is unambiguous. When the accused on being granted bail, does not furnish the bail bonds and challan is presented in the meanwhile, the indefeasible right of the accused is extinguished.

The Hon'ble Supreme Court in Uday Mohanlal Acharya's case (supra) has observed as under:-

“ If the accused is unable to furnish bail, as directed by the Magistrate, then the conjoint reading of Explanation I and proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in paragraph (a) will not be unauthorised, and, therefore, if during that period the investigation is complete and charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.”

Keeping in view the facts and circumstances as above, I find no ground to interfere in exercise of revisional jurisdiction in this case.

Present petition is, accordingly, dismissed.

September 05, 2017
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No