

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

**CRM No.M-15699 of 2018 (O&M)
Date of Decision: July 09, 2018**

Harvinder Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.T.S.Tulsi, Senior Advocate with
Mr.D.S.Sobti, Ms.Priyanka Malik and Mr.S.Sandhu, Advocates
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 167(2) read with Section 439 Cr.P.C. for grant of default regular bail in case FIR No.10 dated 17.08.2017 under Sections 406, 409, 420, 467, 468, 471, 477-A, 120-B IPC and Section 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act, registered at Police Station Vigilance Bureau, Flying Squad-I, Mohali.

Notice of motion

Mr.Ramandeep Sandhu, Sr. DAG, Punjab, has put in appearance on behalf of the respondent-State and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

The perusal of the record shows that before the trial Court, an

application was filed only under Section 167(2) Cr.P.C. for grant of default

bail in the present FIR and the trial Court vide order dated 12.03.2018, dismissed the application. No application under Section 439 Cr.P.C. has been filed before the trial Court.

At the time of arguments, learned counsel for the petitioner argued on merits also that sanction has not been granted under Section 197 Cr.P.C. and there is another FIR against the present petitioner and second FIR cannot be lodged. He also argued that challan presented against the present petitioner is incomplete and indefeasible right accrued to the present petitioner, therefore, he argued that bail should be granted to the petitioner.

As the bail application has been filed under Section 167(2) Cr.P.C. only before the Court below, therefore, in the present bail petition, only this fact will be seen, whether the petitioner is entitled to bail under Section 167(2) Cr.P.C. or not. The other arguments and grounds that sanction under Section 197 Cr.P.C. has not been taken or what is the effect of second FIR or whether it can be registered or not, are to be seen in the regular bail application. As the petitioner has not filed regular bail application before the trial Court and these facts are, firstly to be decided by the trial Court, therefore, this Court will not look into these grounds and petitioner is at liberty to first file application under Section 439 Cr.P.C. before the trial Court.

Now, coming to the main argument regarding grant of bail under Section 167(2) Cr.P.C., learned counsel for the petitioner has argued that it is clear from the record that certain copies of documents have not been given to the petitioner at the time of supplying document under Section 207 Cr.P.C. and these were taken after filing of the application

Section 167(2) Cr.P.C. As per learned counsel for the petitioner, these documents were not attached with the challan and have been produced much later on after the presentation of challan and after expiry of statutory period under Section 167(2) Cr.P.C.

Admittedly, the challan has been presented within the statutory period under Section 167(2) Cr.P.C. The main argument of learned counsel for the petitioner is that challan was incomplete on three grounds. Firstly, the documents were not complete, secondly, that there were 9-10 allegations in the FIR and only on 3-4 grounds, investigation has been conducted so far and thirdly, there are so many accused in the FIR but challan has been presented qua some of the accused and investigation is still going on against other accused and it is clear that supplementary challan is to be submitted, as per prosecution version.

I find that, in the order dated 25.04.2018 passed by learned Addl. Sessions Judge, Mohali, it is stated that “today, applicant moved an application for intimating the Hon'ble Court with regard to non supply of complete Annexures/documents referred in the challan under Section 173 Cr.P.C. produced on 20.02.2018 in the Hon'ble Court. This application was ordered to be put up on 14.05.2018. In the meantime, the officials from Vigilance Bureau had come and supplied copy of annexures/documents to the applicants. Therefore, file was called and statement of the counsel of applicants in this regard was recorded.” The perusal of this order passed by learned Addl. Sessions Judge, Mohali, shows that the original documents have been placed on record by the Vigilance Bureau at the time of presentation of the challan. If complete copies have not been supplied to

complete copies and these are to be delivered by the Court, which are to be supplied by the prosecution or investigating agency. In this case, from the above order, it looks that only copies have been produced by the Vigilance Bureau, which have been supplied to the accused. The order, in no way, shows that prosecution has taken any permission to place on record any original document or any annexure/document.

Even if it is taken that some documents have been produced later on, even then, the Hon'ble Supreme Court in ***Nagender Kumar Amin vs. CBI and others, 2015(1) RCR (Criminal) 566***, has held as under:-

12. The learned senior counsel appearing for the de-facto complainant placed strong reliance upon the said order of the learned ACJM to contend that the cognizance of the offences alleged in the report, filed in the Court, was taken on 3.7.2013, but the same has not been challenged by the appellant. Therefore, it is not open for the appellant to seek default bail for non filing of the full set of documents along with the report on 3.7.2013.

*13. In this regard he squarely relied on the three Judge Bench judgment of this Court in **Central Bureau of Investigation v. R.S. Pai & Anr., 2002(2) R.C.R. (Criminal) 536 : (2002) 5 SCC 82** wherein at para 7, regarding relevant documents to be submitted at the time of charge sheet, it is held as under:-*

“7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court. In our view, considering the preliminary stage of prosecution and the context in which the police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which the prosecution proposes to rely, the word “shall” used in sub-section (5) cannot be interpreted as mandatory, but as directory.

*Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in **Narayan Rao v. State of A.P.** (SCR at p. 293) and it was held that the word “shall” occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207-A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained.”*

In the said decision it is held that if some mistake is committed in not producing the relevant documents at the time of submitting the report, it is always open to the investigating officer to produce the same with the permission of the court. The Bench proceeded further to observe that if further investigation is not precluded, then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation and the word “shall” used in sub-section (5) cannot be interpreted as mandatory, but as directory. Therefore, it is contended that the High Court is justified in refusing to grant Default Bail in favour of the appellant.

14. With reference to the aforesaid rival legal contentions we have examined the impugned order to find out the correctness of the findings and reasons recorded keeping in view the statutory provisions under Section 173 (2) and (5) read with Section 2 (r) of Cr.P.C. and with reference to the judgments on which both the learned senior counsel placed reliance upon. In our considered view, it is an undisputed fact that the charge sheet was filed on 3.7.2013 that is 90th day. Section 2 (r) of Cr.P.C. defines the expression “police report” as a report forwarded by a police officer to a magistrate under Section 173 (2) of Cr.P.C. The particulars to be furnished in the police report which are extracted as above are complied with in the instant case. Therefore, filing of the police report as required under Section 173 (2) is within 90 days in the instant case.

15. The High Court while dealing with this aspect has carefully

considered the aforesaid relevant aspects of the case and stated its reasons at para 10.1 which reads thus:

“10.1 From the above, it was seen that the contents of the charge-sheet set-out in its prefatory details, showed the revelations in the investigation. The Investigating Officer mentioned the role played by the accused persons. The Investigating Officer opined on the basis of the material collected by him during the investigation that the prima-facie commission of offence in his view was made out. It was evidently clear that the charge sheet as presented incorporated all the necessary details required under Section 173 (2) including that whether offence was committed and by whom, which was in terms of clause (d) of Section 173 (2) What is described as bare and empty format, in fact disclosed the contents necessary in law to be mentioned. It could not be viewed as a format hollow in its contents not to enable the Magistrate to take the cognizance.”

Therefore, the High Court is right in rejecting the prayer of default bail under Section 167 (2) of Cr.P.C. Upon the filing of the police report, cognizance was taken by the learned ACJM on 3.7.2013 which is evident from the order passed by him which is extracted above. It is pertinent to point out that the said order remains unchallenged by the appellant. Therefore, it is not open for him to turn around and contend that cognizance was not taken by the learned ACJM on 3.7.2013. On this count, the contentions urged by the learned senior counsel Mr. Ram Jethmalani appearing for the appellant are wholly untenable and liable to be rejected.

*16. The observation made at para 76 of the constitution Bench judgment of this Court in the case of K. Veeraswamy (supra) that the report is complete if it is accompanied by all documents and statement of witnesses as required under Section 173 (5) of Cr.P.C. cannot be construed as the statement of law, since it was not made in the context of the police report under Section 2 (r) read with Section 173 (2) (5) and (8) of Cr.P.C. On the contrary, the three Judge Bench of this Court in the decision in **Central Bureau of Investigation v. R.S. Pai's case (supra)**, after referring to the earlier judgment of the coordinate Bench in **Narayan Rao's case (supra)** categorically held that the word “shall” used in sub-Section (5) cannot be interpreted as mandatory, but directory. The said statement of law is made after considering the provisions of Section 2(r) read with Section 173 (5) and (8) of Cr.P.C. Therefore, filing of police report containing the particulars as mentioned under Section 173 (2) amounted to completion of filing of the report before the learned ACJM, cognizance is taken and registered the same. The contention of the appellant that the police report filed in this case is not as*

per the legal requirement under Section 173 (2) & (5) of Cr.P.C. which entitled him for default bail is rightly rejected by the High Court and does not call for any interference by this Court.

Therefore, in view of the above law, the challan cannot be held as incomplete. Secondly, it cannot be held that challan is incomplete on the grounds that the police has not investigated on all the allegations mentioned in the FIR. It is for the Investigating Officer to see what investigation he is to conduct and what he feels sufficient for presentation of the challan. Again, it is for the Investigating Officer to present challan against accused against whom he feels that sufficient evidence has been collected. There is no illegality if the Investigating Officer makes further investigation and if any evidence is collected against any accused, he can file the supplementary challan against those accused. On this ground also, it cannot be held that challan is incomplete. Therefore, as the report under Section 173 Cr.P.C. has been filed within the statutory period, the petitioner is not entitled to bail under Section 167(2) Cr.P.C.

Therefore, finding no merit in the present petition, the same is dismissed.

However, nothing stated above, shall constitute my opinion on merits of the case.

July 09, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No