

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

**Criminal Misc. No. M-43154 of 2018 (O&M)
Date of decision: 17.10.2018**

Ashok Goyal

..Petitioner

Versus

Central Bureau of Investigation, Chandigarh

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. R.S. Rai, Sr. Advocate with
Ms. Madhu Tewatia, Advocate and
Mr. R.D. Gupta, Advocate
for the petitioner.

Mr. Sumeet Goel, Standing counsel
for the respondent-CBI.

Daya Chaudhary, J.

Criminal Misc. No.37272 of 2018

The present petition has been filed under Section 167(2) Cr.P.C. for release of petitioner on bail as challan has not been presented within the prescribed period and the petitioner has become entitled for default bail.

Learned senior counsel for the applicant-petitioner submits that the petitioner was arrested on 16.08.2018 and was remanded to Police custody on 17.08.2018 uptill 22.08.2018 and since then he is in judicial custody. Learned senior counsel further submits that period of 60 days has expired but no challan/final report has been filed and an indefeasible right has accrued to the petitioner in view of provision of Section 167(2) Cr.P.C.

Learned senior counsel also submits that in case, the challan is not filed within the statutory period, the accused becomes entitled to claim benefit of bail under the provisions of Section 167(2) Cr.P.C. Learned senior counsel has also relied upon judgment rendered by Hon'ble the Apex Court in ***Rakesh Kumar Paul vs. State of Assam, (2017) 15 SCC 67*** and judgments rendered by this Court in ***Jagtar Singh vs. State of Punjab, 2016(3) RCR (Criminal) 618, Master Bholu through his father and natural guardian Vinod Kumar vs. Central Bureau of Investigation, Criminal Appeal No. S-646-SB of 2018 decided on 06.06.2018.***

Learned counsel for CBI has raised a preliminary objection that the applicant-petitioner is not entitled for benefit of bail under Section 167 (2) of the Code as he is having remedy to file petition before the trial Court and without moving any application before the trial Court, straightway, the petition has been filed before this Court. However, learned counsel for CBI has not disputed the factum of non filing of challan within period of 60 days of arrest.

Heard arguments of learned counsel for the petitioner as well as learned counsel for CBI and have also perused the documents available on the file.

The petitioner has approached this Court by way of filing petition for grant of bail in view of provisions of Section 167(2) Cr.P.C. as period of 60 days has expired and no challan/final report has been filed. An objection has been raised by learned counsel for CBI that the application under Section 167(2) Cr.P.C. has been filed straightway before this Court without approaching the trial Court.

Admittedly, the petitioner filed a petition for grant of regular bail before this Court and during pendency of that petition, period of 60 days has expired but still challan has not been presented. The petitioner becomes entitled for default bail in view of provisions of Section 167(2) of the Code on expiry of statutory period of 60 days.

Same issue was there before this Court in ***Jagtar Singh's case (supra)*** wherein reliance was placed upon the judgment of case in ***Som Nath and another vs. State of Punjab, 2011(3) RCR (Criminal) 515***, wherein the accused became entitled to bail as per provisions of Section 167 (2) Cr.P.C. during pendency of regular bail. In that case also, an objection was raised that the petitioner-accused did not file any application for bail under Section 167(2) of the Code before the trial Court. The observation made in ***Som Nath's case (supra)*** in para No.16 is reproduced as under: -

“16. In the humble opinion of this Court, it would be futile exercise to ask the accused to approach the Magistrate first if argument is advanced that even during the pendency of the bail application before this Court, statutory period provided under Section 167(2) of the Code for filing the challan has expired. This Court can take note of the law and can consider the bail application itself without asking the accused to approach the Magistrate first. In the opinion of this Court, hypertechnical view should not be adopted to refuse the relief if accused is otherwise legally entitled for.”

By considering the observation made in ***Som Nath's case***

(supra), this Court granted bail in **Jagtar Singh's case (supra)** by holding that the challan was not presented within the statutory period and the petitioner became entitled to claim benefit under the provisions of Section 167(2) Cr.P.C. It was also held that the bail cannot be refused on hypertechnical objection by stating that straightway application has been moved before this Court without approaching the trial Court. Accordingly, in that case, the petitioner was released on bail in view of provisions of Section 167(2) of the Code.

Same issue was also there before Hon'ble the Apex Court in **Rakesh Kumar Paul's case (supra)** and the relevant portion of the judgment is reproduced as under: -

“38.This Court also dealt with the decision rendered in Sanjay Dutt and noted that the principle laid down by the Constitution Bench is to the effect that if the charge sheet is not filed and the right for ‘default bail’ has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.

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40. In the present case, it was also argued by learned counsel for the State 12 (1996) 1 SCC 722 24 that the petitioner did not apply for ‘default bail’ on or after 4th January, 2017 till 24th January, 2017 on which date his indefeasible right got extinguished on the filing of the

charge sheet. Strictly speaking this is correct since the petitioner applied for regular bail on 11th January, 2017 in the Gauhati High Court – he made no specific application for grant of ‘default bail’. However, the application for regular bail filed by the accused on 11th January, 2017 did advert to the statutory period for filing a charge sheet having expired and that perhaps no charge sheet had in fact being filed. In any event, this issue was argued by learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the petitioner did not make any application for default bail – such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for ‘default bail’ or an oral application for ‘default bail’ is of no consequence. The concerned court must deal with such an application by considering the statutory requirements namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge sheet or challan has been filed and whether the accused is prepared to and does furnish bail.

....

Application of the law to the petitioner

45. On 11th January, 2017 when the High Court dismissed the application for bail filed by the petitioner, he had an indefeasible right to the grant of ‘default bail’ since the statutory period of 60 days for filing a charge

sheet had expired, no charge sheet or challan had been filed against him (it was filed only on 24 th January, 2017) and the petitioner had orally applied for 'default bail'. Under 25 (2012) 9 SCC 1 29 these circumstances, the only course open to the High Court on 11 th January, 2017 was to enquire from the petitioner whether he was prepared to furnish bail and if so then to grant him 'default bail' on reasonable conditions. Unfortunately, this was completely overlooked by the High Court.

46. It was submitted that as of today, a charge sheet having been filed against the petitioner, he is not entitled to 'default bail' but must apply for regular bail – the 'default bail' chapter being now closed. We cannot agree for the simple reason that we are concerned with the interregnum between 4th January, 2017 and 24th January, 2017 when no charge sheet had been filed, during which period he had availed of his indefeasible right of 'default bail'. It would have been another matter altogether if the petitioner had not applied for 'default bail' for whatever reason during this interregnum. There could be a situation (however rare) where an accused is not prepared to be bailed out perhaps for his personal security since he or she might be facing some threat outside the correction home or for any other reason. But then in such an event, the accused voluntarily gives up the indefeasible right for default bail and having forfeited that right the accused cannot, after the charge sheet or challan has been filed, claim a resuscitation of the indefeasible right. But that is not the case insofar as the petitioner is concerned, since he did not give up his indefeasible right for 'default bail' during the interregnum between 4th January, 2017 and 24th January, 2017 as is evident from the decision of the High

Court rendered on 11th January, 2017. On the contrary, he had availed of his right to 'default bail' which could not have been defeated on 11th January, 2017 and which we are today compelled to acknowledge and enforce.

47. Consequently, we are of opinion that the petitioner had satisfied all the requirements of obtaining 'default bail' which is that on 11 th January, 2017 he had put in more than 60 days in custody pending investigations into an alleged offence not punishable with imprisonment for a minimum period of 10 years, no charge sheet had been filed against him and he was prepared to furnish bail for his release, as such, he ought to have been released by the High Court on reasonable terms and conditions of bail."

In the present case, the petitioner was arrested on 16.08.2018 and was remanded to Police custody on 17.08.2018. He remained in Police custody from 17.08.2018 to 22.08.2018 and since then, he is in judicial custody. The period of 60 days has expired and admittedly, the challan/final report has not been presented. The petitioner has become entitled for bail as per provisions of Section 167(2) of the Code.

Accordingly, the present application is allowed and the applicant-petitioner (Ashok Goyal) is directed to be released on bail in view of provisions of Section 167(2) Cr.P.C. to the satisfaction of the trial Court/Duty Magistrate.

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In view of order passed by this Court in Criminal Misc. No.37272 of 2018, this petition has become infructuous.

Dismissed as having become infructuous.

17.10.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No