

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRR-11878-2018 (O&M)
Date of Decision: 12.3.2019

Sunil Kumar @ Sunny

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Jasraj Singh, Advocate,
for the petitioner.

Mr. Ramdeep Partap Singh, DAG, Punjab.

RAJ SHEKHAR ATTRI, J.

The petitioner has challenged order dated 17.11.2018 passed by learned Additional Sessions Judge, Hoshiarpur vide which the application for grant of bail under Section 167(2) of the Code of Criminal Procedure was dismissed.

Briefly stated, it is the case of the prosecution that on 29.7.2018 at about 11:00 p.m., the petitioner called the prosecutrix out of her house. When she came out, she was taken on a motor cycle in a deserted house situated in the area of village Shergarh and committed rape upon her.

The petitioner surrendered himself on 14.8.2018 and continued in custody till date. However, the final police report under Section 173 of the Cr.P.C. (commonly known as *challan*) was submitted on 12.11.2018.

It has been submitted by the petitioner that before

submission of the challan, the petitioner has already undergone the period of 90 days in custody till 11.11.2018 as under : -

August	:	18 days
September	:	30 days
October	:	31 days
Till 11.11.2018		11 days

The application of the petitioner was dismissed by the court below on the ground that if first day of the custody is excluded and counting of days be started from 15.8.2018 before submission of the challan i.e. 12.11.2018, the petitioner has not completed the period of 90 days.

I have heard learned counsel for the parties and gone through the record.

The intention of the legislature is to minimise the investigation period so that the rights and liberties of the arrested person may not be curtailed. The opening words of Section 173 of the Cr.P.C. issues directions to the investigating agency to complete the investigation without unnecessary delay. This is in accordance with the principle of Anglo-Saxon criminal law, on which the Indian law is based, that the accused is entitled to demand that justice is not delayed.

The law evidently views with disfavour detention in the custody of the police, and even in the case of an accused person, such detention can be allowed only in special cases and for reasons to be stated in writing and not as a matter of course, whenever it may be asked for by an investigating police officer. These provisions of the law should be

strictly complied with by the subordinate courts.

Section 57 of the Cr.P.C. specifically provides that if the investigation is not completed within 24 hours, then it be completed within a period of 15 days and in no case within 90 days, where investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years; or within 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. The default bail granted under this sub-section shall be equated the bail granted under the provisions of Chapter XXXIII for the purposes of that Chapter.

This section comes into operation only if the investigation cannot be completed within the period of 24 hours fixed by section 57, and if the magistrate authorises detention in the custody of the police, he is enjoined to record his reason for so doing.

In the case in hand, the computing of the period of 90 days is relevant. The petitioner surrendered on 14.8.2018 and the challan was submitted on 12.11.2018. On 14.8.2018, he was sent to the judicial custody. Thus, his detention was authorised by learned Magistrate and this day shall be counted as authorised detention for the purpose of completion of the period of 90 days.

Hon'ble the Supreme Court in the case of **Uday Mohanlal Acharya v. State of Maharashtra**, 2001 (2) RCR (Criminal) 452 (SC) has held that the accused has indefeasible right to be released on bail

under Section 167(2) Cr.P.C. on account of default on the part of the Investigating Agency to present the challan within the time stipulated under Section 167 Cr.P.C. Even after the presentation of challan, but beyond the period as prescribed under the statute, the right, which is crystalized in favour of the accused, cannot be defeated. Their Lordships of Hon'ble the Supreme Court on consideration of the provisions of the statute and discussing the same in detail, as also the earlier judgments culled out following conclusions :-

“1. Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days in the whole.

2. Under the proviso to aforesaid sub-section (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years and 60 days where the investigation relates to any other offence.

3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the Investigating Agency in the completion of the investigation within the period prescribed and the accused is

entitled to be released on bail, if he is prepared to and furnish the bail, as directed by the Magistrate.

4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have accrued in his favour on account of default on the part of the Investigating Agency in completion of the investigation within the specified period, the Magistrate/Court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the Investigating Agency. Such prompt action on the part of the Magistrate/Court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the Investigating Agency in completing the investigation within the period stipulated.

5. If the accused is unable to furnish bail, as directed by the Magistrate, then the conjoint reading of Explanation 1 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.

6. The expression 'if not already availed of' used by this

Court in Sanjay Dutt's case (supra), 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 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 through 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.”

This Court in **Mehar Singh v. State of Punjab**; CRM-M-17764-2009 decided on 3.9.2009 while relying upon the judgment of Hon'ble Supreme Court as well as other precedents of this Court, had extended the benefit of default bail to the accused who surrendered before the Judicial Magistrate on 28.2.2009 and after completion of 90 days, he was given benefit of bail.

Keeping in view the circumstances of the case, this revision is allowed and the impugned order dated 17.11.2018 stands set aside. A direction is issued to the Court where the proceedings are pending, to enlarge the petitioner-accused on bail to its satisfaction and subject to the conditions, if any, so imposed.

(**RAJ SHEKHAR ATTRI**)
JUDGE

March 12, 2019
Paritosh Kumar

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>