

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

(201)

CRM-M-15566-2020

Date of Decision: November 02, 2020

Suresh @ Biliya

.. Petitioner

Versus

State of Haryana

.. Respondent

(Through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Bishnoi, Advocate,
for the petitioner.
Ms. Safia Gupta, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI, J.(ORAL)

Present petition has been filed under Section 167 (2) Cr.P.C for the grant of bail to the petitioner in respect of FIR No.48 dated 23.02.2020 under Sections 363, 366-A IPC, (Sections 376 (2) (n), 343, 506, 120-B of IPC 1860 and Section 6 of POCSO Act, 2012 added later on) registered at Police Station Adampur, District Hisar.

Learned counsel for the petitioner argues that the petitioner has been falsely implicated in the present FIR and the allegations mentioned in the said FIR are baseless and the petitioner has committed no illegality in any manner. Learned counsel for the petitioner submits that in pursuance to the abovementioned FIR, the petitioner was arrested on 01.03.2020 and thereafter, was sent to the judicial custody. Learned counsel for the petitioner further submits that no challan was submitted by the police within a period of 90 days of custody, which expired on 01.06.2020 and therefore,

the petitioner became entitled for default bail under Section 167 (2) Cr.P.C, which right was exercised by the petitioner by filing an application on 06.06.2020. The challan was presented subsequently by the police on 09.06.2020 and therefore, the petitioner was entitled for the grant of default bail in respect of his prayer/application dated 06.06.2020.

Learned counsel for the petitioner submits that the prayer of the petitioner for the grant of default bail has been rejected by the Additional Sessions Judge, Fast Track, Special Court, Hisar vide order dated 09.06.2020 on the ground that though the petitioner was arrested initially on 01.03.2020 but with regard to the offences, under Section 376 (2) (n) IPC and Section 6 of the POCSO Act, 2012, as those were imposed on 16.03.2020 and the petitioner was arrested on 16.03.2020 despite already being in the custody in the same FIR since 01.03.2020, the charge-sheet was preferred before the expiry of 90 days, when counted from 16.03.2020, hence, petitioner is not entitled for a default bail under Section 167(2) Cr.P.C.

Learned counsel for the respondent-State submits that though the petitioner was arrested on 01.03.2020 in pursuance to the FIR No.48 dated 23.02.2020, but Section 376(2)(n) IPC and Section 6 of the POCSO Act were added on 16.03.2020 and petitioner was again arrested for those offences on 16.03.2020, though he was already in custody in relations to the same FIR since 01.03.2020, hence, 90 days is to be counted from 16.03.2020 so as to consider the claim of the petitioner for the grant of default bail as envisaged under Section 167(2) Cr.P.C.

Learned counsel for the respondent-State supports the view which has been taken by the Additional Sessions Judge, Fast Track, Special

Court, Hisar vide order dated 09.06.2020 and prays that the prayer of the petitioner for the grant of default bail may kindly be rejected.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

As per Section 167(2) Cr.P.C, in case the challan is not presented within a period of 60/90 days of the custody, as the case may be, accused is entitled for the grant of default bail.

The said Section 167(2) Cr.P.C is as under:-

“(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 term not less than ten years;

(ii) sixty days where the investigation relates to any other offence,

And on expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purpose of that Chapter;]”

A bare perusal of the above reproduction would show that an accused can be kept in custody for a maximum period of 60 days or 90 days, keeping in view the allegations/sections of IPC imposed in the FIR. After the expiry of said period of 60/90 days of custody, as the case may be, the accused is free to pray for the default bail in case the challan is not submitted within the 60/90 days of the custody period. Section 167(2)

Cr.P.C envisage that an accused will be entitled for the default bail if after the expiry of 90 days of custody the challan has not been presented.

The only question, which arises for determination of this Court, is from which date, the custody period of 60/90 days is to be taken keeping in view the provisions of Section 167(2) Cr.P.C.

As per the petitioner, 90 days period is to be taken from the date of initial arrest for computing the custody period, as envisaged under Section 167(2) Cr.P.C., which in the present case is 01.03.2020, whereas, as per the respondents, the 90 days custody period is to be taken w.e.f. 16.03.2020, when Section 376(2)(n) of the IPC and Section 6 of the POCSO Act, 2012 were added to the FIR dated 23.02.2020 and the petitioner was shown to be arrested in pursuance to those added provisions on 16.03.2020, though, the petitioner on the said date was already in continuous custody in pursuance to the same FIR dated 23.02.2020 since 01.03.2019.

If the interpretation, which has been given by the trial Court and is also being supported by the learned State counsel that 60/90 days period, as envisaged in Section 167(2) Cr.P.C., is to be counted from the date when the relevant sections in the FIR are imposed, which are subsequent to the arrest of the accused is accepted, the same would invariably mean that the accused can be kept in custody legally even beyond 90 days from his arrest, without entitling him the benefit of default bail, which is not borne out of the plain reading of Section 167(2) Cr.P.C.

In the present case, the FIR was registered against the petitioner on 23.02.2020 and the petitioner was arrested on 01.03.2020 and he was in continuous custody when Section 376(2)(n) of the IPC and Section 6 of POCSO Act, 2012 were added on 16.03.2019. If the interpretation given by

the trial Court vide impugned order dated 09.06.2020, which interpretation is also being supported by learned State counsel is accepted, then, the petitioner will not be entitled to claim default bail despite custody period of 90 days, as envisaged under Section 167(2) Cr.P.C., though, Section 167(2) Cr.P.C. limits the custody period to 60/90 days, as the case may be, at the maximum, before entitling the accused to claim the default bail. There is no exception carved out in the Section 167(2) Cr.P.C. to the effect that where the accused is in custody in respect of an FIR, his earlier custody period will stand washed off as and when any particular section of the IPC or violation of any other act is imposed in the same FIR subsequent to his/her arrest by the investigating agency, so as to count the period of 60/90 days, as envisaged under Section 167(2) Cr.P.C., in order to deny the benefit of default bail despite request by the accused in case the challan is not presented.

If the interpretation being advanced by the learned State counsel is applied to the present case, though, the petitioner remained in continuous custody period for the 90 days starting from 01.03.2020, but still will not be able to claim the default bail only on the ground that Section 376(2)(n) of the IPC and Section 6 of the POCSO Act, 2012 were added on 16.03.2019 and the custody period of the petitioner from 01.03.2020 till 16.03.2020 will stand washed off for computing custody period of 60/90 days, as envisaged under Section 167(2) Cr.P.C. No custody period can ever be washed off. Once, an accused has remained in custody, the same has to be counted for computing the period of 60/90 days as envisaged under Section 167(2) Cr.P.C. so as to enable him to file a default bail in case the charge-sheet is not submitted within the said time period of custody.

In my opinion, the words used in Section 167(2) Cr.P.C. are only custody period of 60/90 days, which invariably has to be taken from the date of initial arrest irrespective of the addition of certain other provisions, which accused might have violated in respect of the same incident, which might come to the knowledge of the investigating agency during investigation, still, the adding of those charges to the same FIR, subsequent to the arrest of the accused, the total period of custody of 60/90 days for filing the challan, has to be taken from the initial date of arrest only and not from the date when the subsequent charges have been added to the same FIR so as to determine the right of an accused to seek default bail under Section 167(2) Cr.P.C. There is no provision for extension of the custody period beyond 60/90 days of the initial arrest, as envisaged under Section 167(2) Cr.P.C., to file the charge-sheet so as to deny the benefit of default bail to the accused.

Not only this, in case, the interpretation being given by the State that 90 days period should start from the date when a new section is added in the same FIR, will lead to giving unbridled power to police and at times can be misused at the hands of the investigating agency to keep an accused in custody beyond 60/90 days of custody without entitling the accused for the default bail, which cannot be permitted under any circumstances. No interpretation, which causes prejudice to an accused, can be given to a statute keeping in view the simple language of a particular statute.

The intent of the provisions of Section 167(2) Cr.P.C. as enacted by the legislature, is that the accused should get speedy trial and the investigating agency has been bound to file the challan within a particular

time frame, hence, the interpretation of Section 167(2) Cr.P.C. has to be given keeping in view the intention of the legislature and the plain reading of the provision, without adding anything to the language of the statute.

Further, this question also came up for consideration before the Hon'ble Supreme Court of India in **Crl. Appeal No.1227 of 2001 titled State of Maharashtra Vs. Bharti Chandmal Varma @ Ayesha Khan, decided on 04.12.2001.** In the said case also, after the registration of an FIR, during the investigation of the said FIR, it was found that the acts attributed to the accused also invite the offence under Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred as 'MCOC Act'). For proceedings against an accused under MCOC Act, the approval from the competent authority is required and the said approval was granted to the State of Maharashtra on 21.04.2001 though, the accused in the said FIR was already arrested on 01.04.2001.

An argument was raised on behalf of the State of Maharashtra that 90 days period as envisaged under Section 167 (2) Cr.P.C will only be reckoned from when the police started investigating the offences under MCOC Act and not from the date when the accused was arrested on 01.04.2001. The Hon'ble Supreme Court of India negatived the said argument by holding that once, an act for which an FIR is registered, is the same though, certain charges are added to the FIR, the addition of the charges will not give the power for counting the 90 days period from the date when the subsequent charges have been added. The relevant paragraphs of the judgment are as under:-

“2. A huge quantity of counterfeit notes of Rs. 500 digit has been intercepted by the authorities and a case was registered by the Thane Police, Maharashtra. A number of persons were arrested

in connection with the said racket. We are now concerned only with the arrest of a lady by name Ayesha Khan (also called Smt. Bharati Chandmal Varma) the respondent in this case. After the arrest she was produced before the Metropolitan Magistrate who remanded her to custody. As a charge-sheet was not laid within 90 days thereof she applied for being released on bail as per the proviso to section 167(2) of the Code of Criminal Procedure, 1973 (for short 'the Code'). Though the Metropolitan Magistrate disallowed her prayer a single Judge of the High Court of Bombay allowed her to be released on bail solely on the aforesaid ground. The said order of the High Court is now being challenged by the State of Maharashtra.

3. *The main contention of the State is that the period of 90 days envisaged in Section 167(2) of the Code should be reckoned from the date when the police started investigation into the offences under the Maharashtra Control of Organised Crime Act, 1999 (its acronym is MCOC).*

xxxx xxxx xxxx xxxx xxxx

11. *Dealing with the first limb of the contention learned counsel elaborated it by reference to Section 23(1) of the MCOC Act, which contains an embargo that notwithstanding anything contained in the Code no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police. Hence it was submitted that investigation was impermissible until the approval has been accorded and its corollary is that the period for completion of investigation could be counted only from the date when investigation could legally be commenced.*

12. *For the application of the proviso to Section 167(2) of the Code there is no necessity to consider when the investigation could legally have commenced. That proviso is intended only for keeping an arrested person under detention for the purpose of investigation and the legislature has provided a maximum period for such detention. On the expiry of the said period the further custody becomes unauthorized and hence it is mandated that the arrested person shall be released on bail if he is prepared to and does furnish bail. It may be a different position if the same accused*

was found to have involved in some other offence disconnected from the offence for which he was arrested. In such an eventuality the officer investigating such second offence can exercise the power of arresting him in connection with the second case. But if the investigation into the offence for which he was arrested initially had revealed other ramifications associated therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to Section 167(2) would remain unextendable.”

A bare perusal of the above would show that the present case is covered by the judgment in **Bharti Chandmal Varma @ Ayesha Khan (supra)**, on all fronts.

The contention of the respondent-State is that the period of 90 days to file the challan should be taken from the date when Section 376(2) (n) IPC and Section 6 of the POCSO Act were added i.e. from 16.03.2020 so as to deny the petitioner the benefit of default bail, cannot be accepted in any manner.

In the present case, the petitioner had already approached the Court for the grant of default bail on 06.06.2020, whereas, admittedly the challan was filed on 09.06.2020. The subsequent filing of challan will not take away the accrued right to the petitioner.

In view of the above, the prayer of the petitioner is allowed. Petitioner is held entitled for the grant of default bail under Section 167 (2) Cr.P.C, keeping in view the facts recorded hereinbefore. Petitioner is directed to be released on bail subject to the satisfaction of the trial Court/Duty Magistrate, Hisar, if not required to be kept behind bars in any other case.

(HARSIMRAN SINGH SETHI)
JUDGE

November 02, 2020
harsha/naresh.k

Whether speaking/reasoned:	Yes
Whether reportable:	Yes