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

CRR-1106-2020

Date of Decision: 28.09.2020

Nardeep Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. M.S. Kathuria, Advocate,
for the petitioner.

Mr. Randhir Thind, DAG, Punjab.

SUDIP AHLUWALIA, J. (ORAL)

[1]. This revision petition is directed against the order dated 12.03.2020 passed by the Ld. Judicial Magistrate Ist Class, Ludhiana in a case bearing Case No.CHI/45695-2019.

[2]. It transpires from the order that on 17.12.2019, Statutory bail had been granted to the petitioner under Section 167(2) of the Cr.P.C. as challan had not been submitted till that date and he had already remained in custody pending investigation for 90 days by that time in FIR No.78, dated 15.09.2019, under Sections 363/366-A, 376 of the IPC and Sections 3 and 4 of the POCSO Act, registered at Police Station Ladhawal, Ludhiana. However, before he could furnish his bail bonds in terms of the bail order passed earlier on the said date, the challan was filed at about 5.00 p.m., following which, the prayer of the Investigating Officer was allowed, the statutory bail was already granted to him was cancelled vide the impugned order.

[3]. Ld. Counsel for the petitioner had earlier relied upon the decisions of the Hon'ble Supreme Court in this regard passed in "**Aslam Babalal Desai Vs. State of Maharashtra**", AIR 1993 SC 1 and "**Raghubir Singh and others Vs. State of Bihar**", 1987 AIR 149, according to which the default bail once granted under Section 167(2) of the Cr.P.C., on account of non-submission of charge-sheet/challan within the statutory period, cannot be cancelled except on merits under Sections 437 or 439 of the Cr.P.C.

[4]. In the impugned order, however, the Ld. Court below had relied upon a separate decision of the Hon'ble Supreme Court passed in "**Uday Mohanlal Acharya Vs. State of Maharashtra**" 2001(2) RCR (Criminal) 452 and also the decision of Hon'ble Orissa High Court passed in "**Pratima Nayak Vs. State of Orissa**" 2011 (4) RCR (Criminal) 421, according to which, once the default bail under Section 167(2) of the Cr.P.C. gets granted, but challan if submitted before the accused is actually released on bail, his indefeasible right to claim such default bail would stand extinguished.

[5]. On the last date, this Court had adjourned the proceedings for today to consider the Hon'ble Supreme Court's decision passed in **Uday Mohanlal Acharya's case (supra)**, to understand how it was in conflict with the previous decisions in **Aslam Babalal Desai's case (supra)** and **Raghubir Singh and others case (supra)**.

[6]. On going through the aforesaid decision relied upon by the Ld. Court below, however, it is seen that the majority Benches had decided in favour of the accused/appellant, and the minority decision of Justice B.N. Aggarwal, to the effect that on account of filing of the challan before the

accused could be released on statutory bail, his indefeasible right under Section 167(2) of the Cr.P.C. stood extinguished, alone was relied upon by the Ld. Court below, and in complete ignorance of the majority decision going in favour of the accused. *Ex-facie*, this is a case of some oversight on the part of the Ld. Court below in ascertaining the ratio of the conflicting decision in ***Uday Mohanlal Acharya's case (supra)***. Needless to add, the judgment of Hon'ble Orissa High Court separately relied upon by the Ld. Court below is inconsequential in view of the aforesaid three decisions of the Hon'ble Supreme Court which all are in favour of the petitioner.

[7]. Ld. State counsel in all fairness concedes to this position of law.

[8]. For the aforesaid reasons, the present revision petition is allowed, after setting aside the impugned order, and a direction is passed upon the Ld. Court below to accept the bail bonds, if any, which may be furnished on behalf of the petitioner in compliance of the previous order granting him statutory bail passed on 17.12.2019.

[9]. Needless to mention, cancellation of such bail already granted can only be ordered on merits of the case under Section 437 or 439 of the Cr.P.C., and not merely on account of the fact that challan had been presented by the Investigating Authorities after the said order was passed.

28.09.2020*Bhumika***(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No