

Sr.No.115

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

CRM-M-3070 of 2021(O&M)

Date of decision:22.01.2021

Ramesh Kumar

... Petitioner(s)

versus

State of Haryana

... Respondent (s)

Coram: Hon'ble Mr. Justice Jasgurpreet Singh Puri

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

Mr. Munish Sharma, AAG, Haryana.

Through Video Conference

Jasgurpreet Singh Puri, J.(Oral)

Present petition has been filed under Section 482 Cr.P.C for quashing of the impugned order dated 16.12.2020 (Annexure P-3) passed by the learned Additional Sessions Judge, Bhiwani vide which the petitioner was directed to surrender before the learned Trial Court within 10 days.

The petitioner was taken into custody on 06.05.2020 and on the expiry of period of 60 days the petitioner was granted default bail under Section 167(2) Cr.P.C vide Annexure P-2 dated 06.07.2020. Since the challan of the case was not presented, the aforesaid order was passed by the Sub Divisional Judicial Magistrate, Tosham on the ground that since 60 days have expired the petitioner is entitled to default bail.

However, the State of Haryana filed revision against the aforesaid order in the Court of Additional Sessions Judge, Bhiwani and vide Annexure P-3 dated 16.12.2020, the Additonal Sessions Judge, Bhiwani set

aside the aforesaid order with a direction to the accused to surrender before the learned Trial Court within 10 days from the date of the order.

The subject matter involved in the present case was that as to whether the petitioner could have been entitled to default bail under Section 167(2)(a)(i) or 167(2)(a)(ii) Cr.P.C or not. In other words, whether the petitioner was entitled to bail after a period of 60 days or after a period of 90 days. An FIR against the petitioner was lodged under Sections 420, 467, 468, 471, 120-B IPC at Police Station Tosham, District Bhiwani. Section 467 IPC provides for an imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years. The aforesaid Section is reproduced as under:-

“467. Forgery of valuable security, will, etc.—

Whoever forges a document which purports to

be a valuable security or a will, or an authority

to adopt a son, or which purports to give

authority to any person to make or transfer any

valuable security, or to receive the principal,

interest or dividends thereon, or to receive or

deliver any money, movable property, or

valuable security, or any document purporting

to be an acquittance or receipt acknowledging

the payment of money, or an acquittance or

receipt for the delivery of any movable property

*or valuable security, shall be punished with
1[imprisonment for life], or with imprisonment
of either description for a term which may
extend to ten years, and shall also be liable to
fine.”*

Section 167 Cr.P.C provides for procedure when investigation can not be completed in 24 hours. However, in proviso to Section 167(2) Cr.P.C, it has been provided that no Magistrate shall authorise the detention of the accused in person in custody under this paragraph for a total period exceeding 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than 10 years and 60 days is provided where the investigation relates to any other offence. In the present case, the petitioner was involved in an offence which provides imprisonment for life or with imprisonment of either description for a term which may extend to 10 years.

Learned Sub Judicial Magistrate, Tosham granted default bail to the petitioner under 167(2)(a)(ii) in view of the fact that one of the imprisonments provided under Section 467 IPC was a sentence upto 10 years whereas in revision petition the learned Additional Sessions Judge, Bhiwani set aside the order on the ground that since one of the sentences provided in the aforesaid sections was imprisonment for life, the provisions of Section 167(2)(a)(i) will apply and 167(2)(a)(ii) will not apply. Learned Additional Sessions Judge also relied upon the law laid down by the Hon'ble Supreme Court in ***Rakesh Kumar Paul vs. State of Assam 2017(3) RCR (Criminal) 996***. The relevant portion of the aforesaid judgment contained in

Para No.91, 92, 93, 98, 111 is reproduced as under:-

91. In my view the language of the statute is clear and unambiguous. Out of the three categories of offences, we need to deal only with that category of offences where the punishment prescribed is not less than 10 years. If an offence is punishable with death then whatever be the minimum punishment, the period of investigation permissible would be 90 days. Similarly, if the offence is punishable with life imprisonment, even if the minimum sentence provided is less than 10 years, the period of detention before 'default bail' is available would be 90 days.

92. Keeping in view the legislative history of [Section 167](#), it is clear that the legislature was carving out the more serious offences and giving the investigating agency another 30 days to complete the investigation before the accused became entitled to grant of 'default bail'. It categorises these offences in the three classes:

I First category comprises of those offences where the maximum punishment was death;

II Second category comprises of those offences where the maximum punishment is life imprisonment.

III The third category comprises of those offences which are punishable with a term not less than 10 years.

93. *In the first two categories, the legislature made reference only to the maximum punishment imposable, regardless of the minimum punishment, which may be imposed. Therefore, if a person is charged with an offence, which is punishable with death or life imprisonment, but the minimum imprisonment is less than 10 years, then also the period of 90 days will apply. However, when we look at the third category, the words used by the legislature are “not less than ten years”. This obviously means that the punishment should be 10 years or more. This cannot include offences where the maximum punishment is 10 years. It obviously means that the minimum punishment is 10 years whatever be the maximum punishment.*

98. *A bare reading of [Section 167](#) of the Code clearly indicates that if the offence is punishable with death or life imprisonment or with a minimum sentence of 10 years, then [Section 167\(2\)\(a\)\(i\)](#) will apply and the accused can apply for ‘default bail’ only if the investigating agency does not file charge-sheet within 90 days. However, in all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then [Section 167\(2\)\(a\)\(ii\)](#) will apply and the accused*

will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed.

111. In view of the above discussion, my findings are as follows:

1. I agree with both my learned brothers that the amendment made to the [Prevention of Corruption Act, 1988](#) by the Lokpal and Lokayuktas Act, 2013 applies to all accused charged with offences under this Act irrespective of the fact whether the action is initiated under the Lokpal and Lokayuktas Act, 2013, or any other law;

2. [Section 167\(2\)\(a\)\(i\)](#) of the Code is applicable only in cases where the accused is charged with (i) offences punishable with death and any lower sentence; (ii) offences punishable with life imprisonment and any lower sentence and

(iii) offences punishable with minimum sentence of 10 years;

3. In all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then [Section 167\(2\)\(a\)\(ii\)](#) will apply and the accused will be entitled to grant of 'default

bail' after 60 days in case charge-sheet is not filed.

4. The right to get this bail is an indefeasible right and this right must be exercised by the accused by offering to furnish bail."

Hon'ble Supreme Court has dealt in detail with regard to the interpretation of the aforesaid Section 167(2) Cr.P.C and various categories have also been discussed in the aforesaid judgment. In Para No.98 it has been further made clear that a perusal of the provisions of Section 167 Cr.P.C would make it clear that if the offence is punishable with death or life imprisonment or with a minimum sentence of 10 years then 167(2)(a)(i) will apply and an accused can apply for default bail only if the investigation agency has not filed a chargesheet within 90 days. However, in cases where the minimum sentence is less than 10 years but the maximum sentence is **not a death sentence or life imprisonment** then 167 (2)(a)(ii) will apply. Accused will be entitled to grant default bail after 60 days in case chargesheet is not filed. In the present case, Section 467 IPC provides for life imprisonment as well and therefore, in view of law laid down by the Hon'ble Supreme Court in ***Rakesh Kumar Paul's case (Supra)*** and the provisions of Section 167 Cr.P.C, the provisions of 167(2)(a)(i) will apply. It can not be said that since one of the sentence provided under Section 467 IPC is upto 10 years then the provisions of Section 167(2)(a)(ii) will apply. However, clearly Section 467 IPC provides for imprisonment for life, therefore, by no stretch of imagination it can be said that 60 days would be the period. The facts and circumstances in the present case are squarely

covered by the law laid down by the Hon'ble Supreme Court in ***Rakesh Kumar Paul's case (Supra)***.

In view of the above, there is no illegality in the orders passed by the learned Additional Sessions Judge, Bhiwani. Consequently, the present petition is dismissed. However, nothing stated hereinabove, shall be construed to be an expression on the merits of the case.

22nd January, 2021
Shivani Kaushik

[JASGURPREET SINGH PURI]
JUDGE

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