

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D No.270 of 2021
Date of Decision: 9th July, 2021.

Maninderjit Singh @ Happy

...Appellant

Versus

State of Punjab

...Respondent

(Heard through Video-Conferencing)

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Ruhani Chadha, Advocate, for the appellant.
Mr. H.S.Sullar, Deputy Advocate General, Punjab.

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MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the order dated 19.02.2021 handed down by learned Additional Sessions Judge (while exercising the powers of the Judge, Special Court at Kapurthala) whereby the application preferred by the present appellant as well as his co-accused namely Sukhjinder Singh @ Bittu, Mohit Sharma@ Lacchi, Mangal Singh @ Mangal and Lovepreet Singh @ Love @ Dhillon under Section 167(2) of the Criminal Procedure Code (for short 'the Cr.P.C.') claiming default bail, has been dismissed, the appellant has preferred the instant appeal.

2. Bereft of unnecessary details, the facts, culminating in the appeal in hand, are that on 07.05.2020, a formal FIR bearing No.140 was registered against the appellant and his afore-named co-accused and also one Baljinder Singh at Police Station Sultanpur Lodhi District Kapurthala, under

Sections 384,465,467,468,471,473,489 IPC and Section 25 of the Arms Act as well as Sections 13/18 of the Unlawful Activity Prevention Act, 1967(for short “the UAP Act”) wherein the offences under Sections 120-B, 482, 121, 121-A, 122 IPC and Section 19 of the UAP Act are stated to have been added later-on. The appellant was arrested on 08.05.2020. The period prescribed under Section 167(2) Cr.P.C. for the presentation of the Police Report under Section 173 Cr.P.C. (Challan/Charge-sheet) was 90 days (which, of course, is extendable up to 180 days as envisaged under the proviso appended to Section 43-D(2) of the UAP Act). And the same was/is claimed to have expired/lapsed on 05.08.2020. However, on 03.08.2020, the concerned Additional Public Prosecutor filed an application before the Special Court at Kapurthala, seeking extension of the said period beyond 90 days. Notice of this application was given to the appellant and his co-accused for 04.08.2020. Since the Courts were functioning in a restrictive manner at that time due to the outbreak of Pandemic Covid-19, the said application was taken up by the Duty Officer/Judge on 05.08.2020 and was adjourned. In the meanwhile, on 06.08.2020, the appellant moved an application before learned Judicial Magistrate 1st Class, Sultanpur Lodhi, under Section 167(2) Cr.P.C. for claiming default bail as the Challan/Charge-sheet was not presented within the prescribed period of 90 days. But, vide order Annexure A-4 passed on the same day, the said application was ordered to be sent to the Special Court, Kapurthala as the Judicial Magistrate 1st Class had no jurisdiction to take cognizance of the offences alleged to have been committed in this case. On 07.08.2020, the application filed by the prosecution on 03.08.2020, seeking extension of time to present the Challan was allowed vide order Annexure

A-5 and the afore-said period was extended for another spell of 90 days. Whereafter, the appellant preferred criminal revision on 14.09.2020 to assail the said order dated 06.08.2020 (Annexure P-4), vide which the papers regarding the application moved by the appellant under Section 167 (2) Cr.P.C. were forwarded to the Special Court, Kapurthala. The case of the appellant is that it was/is during the pendency of the said criminal revision petition, it came to the knowledge of his counsel that his bail application was yet to be decided by the Special Court and his co-accused Sukhjinder Singh @ Bittu moved an application for the disposal thereof. But, vide the impugned order dated 19.02.2021, the Special Court, relying upon the decision of the Apex Court in **Rambeer Shokeen Vs. State of NCT of Delhi 2018 AIR (SC) 688**, dismissed the application moved by the appellant seeking default bail, as the application seeking extension of time for filing the charge sheet was moved on 03.08.2020, i.e. prior to the expiry of the statutory period of 90 days which expired on 05.08.2020. Hence, the present appeal.

3. We have heard Mr. Ruhani Chadha, learned counsel for the appellant and learned State counsel in this appeal and have also perused the file thoroughly.

4. Learned counsel for the appellant has contended that the appellant was arrested and produced in the Court on 08.05.2020 and the prescribed period of 90 days for the presentation of Challan lapsed on 05.08.2020 but the same was not filed till then and hence, an indefeasible right to be released on default bail had accrued to the appellant on 91st day, i.e 06.08.2020 and accordingly, he had moved an appropriate application on that

day itself to claim this right. He has, further, contended that though the application seeking extension of the above-said prescribed period was filed by the prosecuting agency on 03.08.2020 but the same was decided on 07.08.2020, i.e subsequent to the filing of the application, for default bail, by the appellant and thus, while ignoring his afore-mentioned right, his bail application has wrongly been dismissed by the learned Special Court and in these circumstances, the appellant is entitled to be released on bail under Section 167(2) Cr.P.C. read with Section 43-D(2) of the UAP Act. To buttress his contentions, he has placed reliance upon **M.Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence 2021(2) SCC 485; Bikramjit Singh vs. The State of Punjab, Criminal Appeal No.667 of 2020 (arising out of Special Leave Petition (Crl.) No.2933 of 2020); Gautam Navlakha vs. National Investigation Agency Criminal Appeal No.510 of 2021 (arising out of SLP (Criminal) No.1796 of 2021; Sayed Mohd. Ahmed Kazmi vs. State, GNCTD & Ors., Criminal Appeal Nos. 1695-1697 of 2012 arising out of SLP (Crl.) Nos.6965-6967 of 2012; Ranjit Singh @ Rana vs. State of Punjab, CRR No.2087 of 2014 decided on 08.11.2016 (P&H)(DB); Satish Kumar vs. State of Punjab & Another CRA-D-28 of 2021 decided on 05.05.2021 (P&H)(DB); Ranjit Singh @ Rana vs. State of Haryana CRR No.2087 of 2014 decided on 08.02.2017 (P&H)(SB); Pushpinder Singh @ Bobby vs. State of Punjab, CRM-M No.14874 of 2015 decided on 07.07.2015 (P&H)(SB); Kulwant Singh @ Neetu vs. State of Punjab, CRM-M No.8542 of 2015 decided on 24.03.2015 (P&H)(SB) and Arun Kumar and Others vs. State of Punjab, CRM-M No.4219 of 2015 decided on 11.03.2015 (P&H)(SB).**

5. Per contra, learned State counsel has argued that the prosecution had moved the application on 03.08.2020 seeking extension of the prescribed period of 90 days, well before the expiry of this period and the notice thereof was also given to the appellant for 04.08.2020 and thus, the same was already pending when the appellant moved the application for default bail on 06.08.2020 and hence, the right of the appellant to seek bail was to remain suspended till the decision of the application moved by the prosecuting agency for the extension of time. He has also referred to the observations made by the Hon'ble Supreme Court in **Rambeer Shokeen (supra)** in support of his arguments.

6. Before we proceed further, there is yet another aspect which we consider expedient and appropriate to deal with. Concededly, the appellant was arrested and produced before the competent Court/Magistrate on 08.05.2020. Though the appellant claims and even the Special Court has also mentioned in para 7 of the impugned order that the Challan was required to be presented up to 05.08.2020, i.e. within 90 days, from the date of the arrest of the appellant but if computed on the analogy of the calculation details as specified in para 3.3 of the judgment rendered by the three Judges' Bench of the Apex Court in **M.Ravindran (supra)**, the said period was to lapse on 06.08.2020 (May-23+June-30+July-31+August-6=90 days). Meaning thereby that the right to seek the default bail was to accrue to the appellant on 07.08.2020, i.e 91st day. But, be that as it may, since this fact, otherwise, would have no decisive bearing on the merits of this appeal, owing to the factual position prevalent in this case, we rest the matter at that.

7. Adverting to the factual backdrop of the matter, the issue that

emerges for our consideration is: whether the right to be released on bail, in default of the prosecution to submit the charge sheet up to 05.08.2020 (within the statutory period), had accrued to the appellant on 06.08.2020 when the prosecution's application, moved on 03.08.2020, seeking extension of time was already pending?

In our considered opinion, the matter is squarely covered by the decision of Hon'ble Supreme Court in **Rambeer Shokeen (supra)**, wherein it has been categorically observed that ***“where the application for seeking extension of time for filing the charge-sheet (Challan) had been filed by the Additional Public Prosecutor within time, before the expiry of 90 days and the same was pending on the date of filing of the fresh application by the appellant for statutory bail, the mere fact that the said period of 90 days from the date of initial arrest of the appellant in connection with the subject FIR had lapsed on that day, could not ineluctably entail in the grant of statutory bail to him and in law, only upon the rejection of the prayer for extension of time sought by the Additional Public Prosecutor, the right in favour of the appellant for grant of statutory bail could have ignited”***. As demonstrated above, in the present case, the statutory period to present the challan was to expire/lapse on 05.08.2020. The prosecution had moved the application seeking extension of time to submit the challan/chargesheet on 03.08.2020, well before the expiry of the said period and the same was accepted on 07.08.2020. Thus, in the light of the observations, recorded by the Apex Court in **Rambeer Shokeen (supra)**, as referred to above, it is quite explicit that the appellant was not entitled to default bail pleading that the challan/charge-sheet had not been filed within

the said period of 90 days or the order granting extension of time to present the challan was passed on 07.08.2020 i.e. after he (appellant) moved an application under Section 167(2) of Cr.P.C.

Though learned counsel for the appellant has relied upon the judgment rendered by the Division Bench of this Court while deciding the reference in NDPS cases in **Ranjit Singh @ Rana (supra)** to strengthen his contentions but that too does not further the cause of the appellant. Rather, to the contrary, it was observed: ***“on the expiry of the period of investigation fixed under the Code and the Act, the accused has got indefeasible right to be released on bail but such a right has been circumscribed by conferring right on the prosecuting agency to come out with a report seeking extension of time, as contemplated under the Act, before the expiry of the period fixed thereunder and if such report, filed before the said period, lingers on for a day or two for determination on account of obligation on the part of the Court to put the accused on notice, the indefeasible right of the accused gets suspended till such a request emanated from the Public Prosecutor is judiciously determined.”*** In the present case, as mentioned earlier, the report/application of the prosecuting agency qua extension of the said period was decided on the very 92nd day of the remand of the appellant to custody.

8. We have also examined the decisions rendered by the Hon’ble Supreme Court as also by this Court in **M.Ravindran (supra); Bikramjit Singh (supra); Gautam Navlakha (supra); Sayed Mohd. Ahmed Kazmi (supra); Satish Kumar (supra); Ranjit Singh @ Rana (SB) (supra); Pushpinder Singh @ Bobby (supra); Kulwant Singh @ Neetu (supra)** and **Arun Kumar and Others (supra)** that have been relied upon by learned

counsel for the appellant but these are of no avail to the appellant to seek the relief as prayed for in this appeal because the facts and circumstances of the afore-cited cases are clearly distinguishable.

In **M.Ravindran (supra)**, the appellant-accused had applied for the default bail on 181st day of his arrest and the Public Prosecutor had not moved any application for seeking the extension of time to investigate the crime, prior to the filing of the said application by the appellant on that day or earlier thereto and had, rather, participated in the arguments on the said bail application till 4:25 PM on that very day and thereafter, the additional complaint had been lodged against the appellant and hence, it had been held that the appellant was deemed to have availed of his indefeasible right to bail the moment he filed the application and was entitled to be released on bail notwithstanding the subsequent filing of the additional complaint. However, in the present case, as discussed earlier, the prosecution had filed the application seeking extension of the afore-said prescribed period well before the filing of the application by the appellant for claiming the relief of default bail.

9. In **Bikramjit Singh (supra)**, the Apex Court interpreted “Court” which has jurisdiction under UAP Act and held that the Magistrate’s jurisdiction was non-existent, the “Court” being either a Sessions Court (in absence of the notified Special Court) or the Special Court itself. The decision with respect to the right of the accused therein to default bail was given in the background of this observation. The appellant-accused was arrested and remanded to custody by the concerned Magistrate on 22.11.2018 and the period of 90 days expired on 21.02.2019 and the appellant moved an

application for seeking default bail which was dismissed on 25.02.2019 on the ground that the Magistrate had already extended the time from 90 days to 180 days vide order dated 13.02.2019. The appellant challenged the said order by way of Criminal Revision wherein the Special Judge passed an order on 25.03.2019 setting aside the said order dated 13.02.2019 while observing that the Illaqa Magistrate was not competent to pass any order on the application moved for seeking extension of the time for filing the Challan and therefore, the order passed by him on the said application was not sustainable in the eyes of law and thereafter, on the very next day, i.e 26.03.2019, the charge-sheet/Challan had been filed before the Special Judge and meanwhile, the order dated 25.02.2019 qua the dismissal of the application of the appellant-accused for default bail was challenged by way of a Revision Petition which was dismissed by the Special Judge on 11.04.2019 and the application preferred by the appellant afresh on 08.04.2019 was also dismissed whereas in the instant case, the application moved for the extension of the period for filing the Challan/charge-sheet had been allowed by the Special Court vide the order Annexure A-5 and not by the Illaqa Magistrate.

10. Then, as regards the verdict rendered by the Apex Court in **Gautam Navlakha (supra)**, it is pertinent to mention here that throughout during the course of arguments, learned counsel for the appellant was not able to refer to any observation, as made therein, squarely covering the facts and circumstances of this case. Even otherwise, the afore-cited judgment dwells mainly on a different tangent, i.e the concept of house arrest vis-à-vis the provisions contained in Section 167 Cr.P.C.

11. Again, in **Sayed Mohd. Ahmed Kazmi (supra)**, the appellant-

accused had been arrested on 06.03.2012 and was produced in the Court on 07.03.2012 and the prescribed period of 90 days was to come to an end on 03.06.2012 but prior thereto, the prosecution sought extension of the period of his custody for another 90 days and learned Chief Metropolitan Magistrate had allowed the same vide the order dated 02.06.2012 which was assailed by way of a Criminal Revision Petition and learned Additional Sessions Judge had observed therein that it was only the Sessions Court and not the Chief Metropolitan Magistrate which had the competence to even extend the judicial custody of the appellant and finally, this Revision Petition was allowed while holding the custody of the appellant to be illegal and then, on 17.07.2012, an application had been moved by the appellant for seeking default bail which was adjourned to the next day, i.e 18.07.2012 and on that day, the State/prosecution moved a fresh application for seeking further extension of the custody of the appellant and the investigation period and the same was allowed on 20.07.2012 with retrospective effect from 02.06.2012 without considering the afore-said application of the appellant. However, in the present case, the application for seeking extension of the said prescribed period was moved by the prosecution in the Special Court and was prior in time to that of the appellant for the default bail.

12. Further, in **Satish Kumar (supra)**, the Challan in the criminal case registered under the provisions of UAP Act, besides the other offences under the Indian Penal Code and the Arms Act, had been presented in the Court of Judicial Magistrate 1st Class whereas it was required to be filed in the Special Court concerned and therefore, it was observed that once the charge-sheet/Challan was filed in the Court having no competence to try the

case, the custody of the appellants beyond the statutory period of 90 days was without any sanctity of law and it entitled them with an indefeasible right of bail under Section 167(2) Cr.P.C. whereas in the case in hand, the application for seeking extension of the above-said statutory period for filing the Challan had, admittedly, been presented in and was allowed by the Special Court.

13. The observations, as made by the learned Single Benches of this Court in **Ranjit Singh @ Rana (supra); Pushpinder Singh @ Bobby (supra); Kulwant Singh @ Neetu (supra)** and **Arun Kumar and Others (supra)**, would not be of any help to the appellant to seek default bail, in view of the decision of the Apex Court rendered in **Rambeer Shokeen (supra)**.

14. This brings us to yet another aspect of the matter. Since the Challan was not presented till 05.08.2020, the appellant moved an application on 06.08.2020 under Section 167(2) Cr.P.C. praying for default bail before learned Judicial Magistrate Ist Class, Sultanpur Lodhi who, as mentioned earlier, vide order (Annexure P-4) passed on that date itself, forwarded the papers to the Special Court, at Kapurthala, which was already seized of the matter as also the application seeking extension of the judicial custody of the appellant. However, though the appellant contested the application for extension of the period for submitting the Challan, which was accepted on 07.08.2020, but it appears he did not choose to pursue and press his application for default bail. That is why even the Special Court has specifically recorded in para 13 of the impugned order **“it is pertinent to mention here that at the time of deciding the application for extension of time, neither learned counsel for the accused/applicants nor learned Addl. PP for the State has brought the fact regarding pendency of applications under Section 167(2) Cr.P.C. before learned Illaqa Magistrate into**

the notice of undersigned". Not only that, and as indicated earlier, the prayer of the prosecuting agency for extension of time to present the Challan was granted vide order dated 07.08.2020, which has, since, attained finality. And more than a month thereafter and for the reasons best known to him, the appellant filed a revision petition on 14.09.2020 to challenge the order dated 06.08.2020 (Annexure P-4), passed by learned Judicial Magistrate Ist Class, Sultanpur Lodhi. And strangely, the case sought to be set out by the appellant was/is that it was during the pendency of the said Revision Petition, it came to the knowledge of his counsel that the application under Section 167(2) Cr.P.C. was still pending and therefore, after 6 months of the date of the filing of his original bail application under Section 167 (2) Cr.P.C, he moved an Interim Application (Annexure A-7) on 12.02.2021 before the Special Court for deciding his application for default bail. Be that as it may, since we have examined the matter on merits and find that in terms of the dictum of the Apex Court in **Rambeer Shokeen (supra)**, the appellant was/is not entitled to the relief of default bail, we do not wish to delve any further into this aspect.

15. Thus, as a sequel to the fore-going discussion, it follows that the present appeal, being sans any merit, deserves dismissal. We order accordingly.

(ARUN PALLI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

09th July, 2021.

Seema/Manoj Bhutani

Whether speaking/reasoned?	Yes/No
Whether Reportable?	Yes/No