

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29607-2021 (O&M)
Date of Decision: 28.10.2021

Amandeep Singh Bhui

... Petitioner

Versus

Inspector (Preventive) Central Goods and Service Tax.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Jagmohan Bansal, Senior Advocate, with
Mr. Aman Garg and Mr. Anurag Sharma, Advocates,
for the petitioner.

Mr. Sourabh Goel, Sr. Standing Counsel,
for the respondent.

HARNARESH SINGH GILL, J.

By way of the present petition, the petitioner seeks setting aside of the order dated 15.07.2021 passed by the learned Additional Sessions Judge, Ludhiana, whereby the prayer of the petitioner to set aside/modify stringent conditions imposed by the learned Chief Judicial Magistrate, Ludhiana, while granting default bail to the petitioner under Section 167(2) Cr.P.C., was declined.

The petitioner is an accused in a complaint under Section 132(1)(b)(c) and (I) punishable under Section 132(1)(i) of the CGST Act, 2017 read with corresponding Sections of Punjab SGST Act, 2017 and IGST Act, 2017.

When the prosecution did not produce the challan within the prescribed period of 60 days, the petitioner had filed an application for grant of default bail under Section 167(2) Cr.P.C. Said application was allowed by the learned Chief Judicial Magistrate,

Ludhiana, vide order dated 22.02.2021. The relevant part of the said order would read as under:-

“.....So, in view of the legal provisions, facts and pronouncement discussed above, this Court is of the considered opinion that accused Amandeep Singh Bhui, is accordingly entitled for bail under Section 167(2) of Cr.P.C. Hence, accused Amandeep Singh Bhui is admitted to bail in this complaint titled `Amandeep Singh Bhui Vs. Inspector (Preventive) of CGST Act, 2017, on his furnishing bail bonds in the sum of Rs. One crore with two sureties in the like amount (atleast one local) and subject to the conditions mentioned below:-

1. Accused shall furnish a bank guarantee/FDR for an amount of Rs.50 lakh to be forfeited to the State in case of violation of any of the terms and conditions imposed vide this order.
2. to 9. xxx xxx xxx.”

Aggrieved against the aforesaid stringent conditions, the petitioner filed a revision petition before the Court of Session. However, vide order dated 15.07.2021, the learned Additional Sessions Judge, dismissed the said revision petition. Still aggrieved, the petitioner has filed the present revision petition.

Learned Senior counsel appearing for the petitioner would vehemently submit that once the petitioner was granted default bail by the trial Court, imposition of the condition of furnishing bail bonds in the sum of Rupees One Crore with two sureties in the like amount (at least one local), and furnishing of a bank guarantee/FDR for an amount of Rs.50 lakh, which in violation of any of the terms and conditions imposed, would stand forfeited to the State, is totally illegal.

It is further submitted that the grant of bail under Section 167(2) Cr.P.C. is not a discretionary relief and rather the same flows from the statutory provisions and such statutory right cannot be

impeached by imposition of the conditions, much less the stringent ones, as have been imposed vide the impugned order.

In support of his arguments, learned Senior Counsel for the petitioner relies upon various judgment of the Hon'ble Apex Court i.e. Saravanan Vs. State, (2020) 9 SCC 101; Bikramjit Singh Vs. The State of Punjab, 2020(4) RCR (Criminal) 713; Fakhrey Alam Vs. State of Uttar Pradesh, 2021(1) ALT (Crl.) 404; Sheikh Ayub Vs. State of M.P., (2004) 13 SCC 457 and Sandeep Jain Vs. National Capital Territory Delhi, (2000)2 SCC 66.

Still further, it is argued that the offence alleged entails the sentence for a maximum period of 5 years and thus, imposition of the stringent and onerous conditions vide the impugned order are not tenable in the eyes of law.

It is further argued that the petitioner was granted default bail vide order dated 22.02.2021 passed by the trial Court, but he is still in jail as he was unable to fulfill the conditions imposed by the trial Court. Thus, having been arrested on 23.12.2020, the petitioner has already spent an under trial period of nearly one year.

On the other hand, Mr. Sourabh Goel, learned Standing Counsel for the respondent, while controverting the arguments raised by the learned Senior counsel for the petitioner, would submit that while granting the default bail to the petitioner under Section 167(2) Cr.P.C., the Court is and was well within its right to impose any conditions. He further submits that the petitioner being accused of economic offences and having played fraud upon the State exchequer, is not entitled to any relief from this Court. He would further submit that imposition of the conditions by the trial Court, was well within its discretion and, therefore, no fault can be found with the same.

Still further, while referring to the orders passed by the Coordinate Benches of this Court, in CRM-M-4374-2021 – Sahil Jain

Vs. Joint Commissioner, CGST, Ludhiana, decided on 03.03.2021 and CRM-M-16487-2021 – Pawan Kumar Vs. State of Punjab and another, decided on 28.05.2021, the counsel for the respondent submits that the present petition being similar in nature and involving similar controversy, is liable to be dismissed.

I have heard learned counsel for the parties.

The right to default bail arises when the investigating agency is not able to complete the investigation and put up the challan within the stipulated period, as the case may be. As has been held in catena of judgments by the Hon'ble Apex Court as also this Court, such a right is an indefeasible right. The accused, thus, does derive such a benefit due to the failure on the part of the investigating agency/prosecution. Such right having been recognized as a Fundamental Right in a plethora of judgments, cannot be equated with the discretionary right of the Court, wherein the Court in its discretion may impose any condition, as may be deemed fit so as to enlarge the accused on bail.

The Hon'ble Apex Court in Saravanan's case (supra), has held that default bail under Section 167(2) Cr.P.C. is an indefeasible right and no condition of deposit of the alleged amount involved in the alleged crime can be imposed by the Court while granting default bail/statutory bail to the accused. The relevant extracts from the judgment would read as under:-

“8. We have heard the learned counsel for the respective parties at length.

The short question which is posed for the consideration of this Court is, whether while releasing the appellant/accused on default bail/statutory bail under Section 167(2), Cr.P.C., any condition of deposit of amount as imposed by the High Court, could have been imposed?

9. Having heard the learned counsel for the respective parties and considering the scheme and the

object and purpose of default bail/statutory bail, we are of the opinion that the High Court has committed a grave error in imposing condition that the appellant shall deposit a sum of Rs.8,00,000/ while releasing the appellant on default bail/statutory bail. It appears that the High Court has imposed such a condition taking into consideration the fact that earlier at the time of hearing of the regular bail application, before the learned Magistrate, the wife of the appellant filed an affidavit agreeing to deposit Rs.7,00,000/. However, as observed by this Court in catena of decisions and more particularly in the case of Rakesh Kumar Paul (supra), where the investigation is not completed within 60 days or 90 days, as the case may be, and no charge-sheet is filed by 60th or 90th day, accused gets an “indefeasible right” to default bail, and the accused becomes entitled to default bail once the accused applies for default bail and furnish bail. Therefore, the only requirement for getting the default bail/statutory bail under Section 167(2), Cr.P.C. is that the accused is in jail for more than 60 or 90 days, as the case may be, and within 60 or 90 days, as the case may be, the investigation is not completed and no charge-sheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail. No other condition of deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C. As observed by this Court in the case of Rakesh Kumar Paul (supra) and in other decisions, the accused is entitled to default bail/statutory bail, subject to the eventuality occurring in Section 167, Cr.P.C., namely, investigation is not completed within 60 days or 90 days, as the case may be, and no charge-sheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail.

9.1 As observed hereinabove and even from the impugned orders passed by the High Court, it appears that the High Court while releasing the appellant on default bail/statutory bail has imposed the condition to deposit Rs.8,00,000/ taking into consideration that earlier before the learned Magistrate and while

considering the regular bail application under Section 437 Cr.P.C., the wife of the accused filed an affidavit to deposit Rs.7,00,000/-. That cannot be a ground to impose the condition to deposit the amount involved, while granting default bail/statutory bail.

9.2. The circumstances while considering the regular bail application under Section 437 Cr.P.C. are different, while considering the application for default bail/statutory bail. Under the circumstances, the condition imposed by the High Court to deposit Rs.8,00,000/-, while releasing the appellant on default bail/ statutory bail is unsustainable and deserves to be quashed and set aside.....”

Thus, in view of the judgment of the Hon’ble Supreme Court in Saravanan’s case (supra), I am of the considered opinion that the default bail under Section 167(2) Cr.P.C. cannot be equated with the discretion of the Court under Sections 437, 438 or 439 Cr.P.C., wherein the Court has got ample power to impose any condition as would be deemed fit on the facts and in the circumstances of the case. The indefeasible right under Section 167(2) Cr.P.C., accrued due to the failure on the part of the investigating agency to complete the investigation and present the challan within the stipulated period would, therefore, be a right free from any inhibition or embargo.

The order passed by the Coordinate Bench in Sahil Jain’s case (supra) is of no help to the respondent for the reason that in view of the judgment of the Hon’ble Apex Court in Saravanan’s case (supra), the default bail is a statutory right and not a discretionary relief.

In view of the above, this Court is of the view that the conditions of deposit of Rupees One crore with two sureties in the like amount (atleast one local) and furnishing of bank guarantee /FDR for an amount of Rs.50 lakh to be forfeited to the State in case of violation of any of the terms and conditions of the order, as contained

in the order dated 22.02.2021 passed by the Chief Judicial Magistrate, Ludhiana, are set aside. However, the remaining conditions shall remain intact. The order dated 22.02.2021 passed by the Chief Judicial Magistrate, Ludhiana, stands modified accordingly, setting forth the stage for release of the petitioner on default bail, subject to the furnishing of bail/surety bonds to the satisfaction of the trial Court.

Allowed in the above terms.

28.10.2021
ds

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*