

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

PANKAJ KUMAR
2021.09.03 17:19
Assured the accuracy and
integrity of this document

CRR No.782 of 2021 (O&M)
Date of Decision.3.09.2021
Reserved on 24.08.2021.
(Heard through VC)

Rakesh @ Moni

...Petitioner

Vs

State of Haryana

...Respondent

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rajesh Khandelwal, Advocate
for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

-.-

JAISHREE THAKUR J.

1. The petitioner has approached this High Court under section 439 Cr.P.C. along with Section 482 Cr. P.C being aggrieved against the order 11.6.2021 passed by the Additional Sessions Judge, Hisar by which the application for default bail has been dismissed.

2. In brief the facts are that the petitioner herein was nominated as an accused in FIR No. 64 dated 21.10.2020 under section 328, 363, 366A, 376, and 506 IPC 1860 read with Section 6 of the POCSO Act 2012 (Sections 376D, 420, and 201 IPC and Section 67-B I.T. Act added later on) registered at Women Police Station, Hansi. It was alleged that the daughter of the complainant had been enticed by two boys namely Sunil and Moni and taken away in a car to an unknown place, where after consuming liquor she was raped. When she woke up she found herself without any clothes. The incident complained of was 40 days ago. In the FIR it was alleged that both the boys were daily threatening her daughter as they had video and photos of her daughter, apart from threatening to kill the prosecutrix's younger brother if she failed to listen to them. As the prosecutrix was a minor, strict action was

sought against the accused. On the registration of the FIR the statement of the prosecutrix was recorded under Sections 161 and 164 Cr.P.C. consequent to which the petitioner was arrested on 27.10.2020.

3. Learned counsel appearing on behalf of the petitioner contends that the FIR was registered on 21.10.2020 and the petitioner was arrested on 27.10.2020 and an incomplete challan was submitted on 23.11.2020 (admittedly without the cyber cell report). It is argued that the application for default bail has been dismissed without taking into consideration the fact that incomplete challan was presented and hence the petitioner would be entitled to bail under provisions of Section 167 (2) Cr.P.C. In support of his argument, he placed reliance upon a judgement rendered in **Fakhrey Alam vs State of U.P** passed in **Criminal Appeal No.319 of 2021 (arising out of SLP(Crl.) No. 6181/2020)** dated 15.03.2021. He would also rely upon a judgement rendered in the case of **Bikramjit Singh Versus State Of Punjab** in Criminal Appeal No. 667 of 2020 decided on 12.10.2020 to contend that the investigation must be completed expeditiously and default bail is not merely a statutory right but is also a fundamental right under Article 21 of the Constitution of India. Furthermore, reliance is placed upon judgement rendered in **Sharadchandra Vinayakdongre Vs. State Of Maharastra 1991 CriLJ 3329** to contend that a Magistrate cannot take cognizance of an incomplete challan.

4. Per contra, Mr. Dhruv Sihag AAG Haryana submits that the challan has been presented within specified time with all the necessary details furnished under section 173(2) Cr.P.C and in case it is not accompanied by the report of the cyber cell, it still will not be considered as an incomplete challan entitling the accused to default bail. Reliance has been placed upon **Narender Kumar Amin vs. CBI (Supreme Court) 2015 (2) RCR(Criminal) 566**. It

is submitted that the case law as relied upon by the counsel for the petitioner is distinguishable and not applicable to the facts of the present case.

5. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case and the case laws relied upon. Question which this Court is called upon to answer is whether in absence of analysis report of Cyber Cell having been attached with the police report filed in the Court under Section 173 Cr.P.C within the period specified to substantiate the commission of offence under Section 67-B of the IT Act, the accused shall be entitled to default bail under Section 167(2) of the Code of Criminal Procedure, 1973 (hereafter to be referred as "the Code")?

6. Section 173 Cr.P.C reads as:

Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the

person, if any, by whom the information relating to the commission of the offence was first given.

7. The term 'incomplete challan' would mean that relevant documents have not been furnished with the report filed under section 173(2) Cr.P.C. The legislature in its wisdom has outlined the time within which investigation is to be completed, with a view that a person cannot be kept in custody indefinitely till the investigation is complete. There is no dispute with the argument as set forth or the judgement relied upon by the counsel for the petitioner in **Fakrey Alam's case** (supra), that an accused will be entitled to grant of default bail under section 167 (2) Cr.P.C in case the investigation is not complete and charge sheet filed within the specified period as prescribed under the proviso; (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years (ii) sixty days, where the investigation relates to any other offence.

8. However , in the case of **Central Bureau of Investigation v. R.S. Pai & Anr., 2002(2) RCR (Criminal) 536 : (2002) 5 SCC 82** a three member bench has held that:

"7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court. In our view, considering the preliminary stage of prosecution and the context in which the police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which the prosecution proposes to rely, the word "shall" used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents

gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in Narayan Rao v. State of A.P. (SCR at p. 293) and it was held that the word "shall" occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained."

9. The ratio as settled in **Central Bureau of Investigation v. R.S. Pai & Anr.**, (supra) was subsequently followed in **Narinder Kumar Amin case** where it was reiterated that the word "shall" used in sub-Section (5) cannot be interpreted as mandatory, but directory in nature. In that case too Police filed charge-sheet within 90 days but all documents were not attached. It was held that if the report filed before the Court satisfies all the requirements of Section 173(2) then it is sufficient compliance of filing a report. Whereas in the **Fakrey Alam Case** the charge sheet itself was filed after a period of 180 days had expired, and that too after the application for default bail had been filed. Therefore, the distinguishing factor is that in **Fakrey Alam's** case the charge sheet was filed after the stipulated period of 90 days whereas in the instant case the charge sheet was filed but without the cyber cell report annexed relating to uploading of objectionable photos.

10. The court would also like to distinguish the judgments as relied upon by the counsel for the petitioner as rendered by the coordinate benches and this court itself in **Mukesh Chand vs State of Punjab CRM-M No.16247 of 2020**, **Subhash vs State of Haryana CRM-M-13929 Of 2020**, in **Krishan Murari Joshi vs State of Punjab CRM-M-20083 of 2018**. In the judgment referred to in **Mukesh Chand** (supra), default bail had been allowed as the investigation was not completed despite a period of 2 ½ years having elapsed, which judgment would not be applicable in the instant case. Most of the cases referred to are under the NDPS Act, when the challan was presented without the Chemical Examiner's report. The judgment rendered by the Division Bench of this High Court in **Ajit Singh @ Jeeta and another Vs. State of Punjab, CRR No.4659 of 2015**, has categorically held that in the absence of FSL report having been filed along with the challan, the challan was incomplete as the FSL would define the nature of the recovered substance and whether it would be a banned substance or not. Similarly relying on Ajit Singh case (supra) default bail was allowed in **Krishan Murari Joshi's case (supra)**, as the Viscera report was not available with the challan presented. The said viscera report would establish whether poison had been administered or not to invoke Sections 406, 498A, 306 IPC.

11. Admittedly, the petitioner herein has been nominated as an accused in FIR No. 64 dated 21/10/2020 registered at police station Hansi under Sections 328, 363, 366A, 376, and 506 IPC 1860 read with Section 6 of the POCSO Act 2012 and (Sections 376-D, 420, and 201 IPC and Section 67-B I.T. Act added later on). The petitioner was arrested on 27.10.2020 and the matter was investigated. Before the completion of 90 days the challan was presented on 23.11.2020 without the report from the cyber cell. An application was filed under section 167 (2) Cr.P.C. on 10.6.2021 seeking default bail, which

application was dismissed on 11.6.2021 leading to the filing of the present criminal miscellaneous petition.

12. The petitioner has been nominated as an accused under the substantive Section of 376 IPC read with Section 6 of the POCSO Act 2012, for which the punishment could be up to ten years or beyond. The challan presented is complete in all respects as against Section 376 IPC and Sections 328, 363, 366-A, 506 IPC, 420, 201 IPC, as statement of the victim itself is sufficient to convict a person. Even if there is no evidence as in a cyber-cell report regarding an offence under section 67-B of the IT Act evidence, (for which there is a lesser punishment which may extend to five years with fine), evidence has been collected qua the substantive sections invoked against the accused. Therefore, the petitioner in view of the ratio as settled in **Narinder Kumar Amin case** would not be entitled to default bail.

13. As an upshot of my finding, there is no ground made out to interfere with the impugned order passed by the Additional Sessions Judge, Hisar. Consequently, the instant petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

September 3, 2021

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No