

106

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-824-2021
Date of Decision: 27.08.2021

Amit Chawla

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Bijender Dhankhar, Advocate,
for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

SUDIP AHLUWALIA, J. (ORAL)

Ld. Counsel for the petitioner has sent up the compendium of judgments in compliance of the previous order. He has relied upon the latest decision of the Apex Court passed in case being **Criminal Appeal No.699 of 2020**, decided on 26.10.2020 titled as **"M. Ravindran Vs. The Intelligence Office, Directorate of Revenue Intelligence"**, in which it was concluded by the Hon'ble Apex Court:-

"18. Therefore, in conclusion:

18.1 Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have 'availed of' or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2), Cr.P.C., 1973 read with Section 36A (4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary

delay after getting necessary information from the public prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.

18.2 *The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.*

18.3 *However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.*

18.4 *Notwithstanding the order of default bail passed by the Court, by virtue of Explanation I to Section 167 (2), the actual release of the accused from custody is contingent on the directions passed by the competent Court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid.”*

2. Facts in the present case are that the petitioner was arrested in connection with FIR No.187 dated 01.03.2018 under Sections 21 & 22 of the N.D.P.S. Act and Sections 18A, 18(C) and 27 of the Drugs and

Cosmetics Act, 1940, registered at City Police Station, District Sirsa. The Final Report of investigation/Challan was not submitted against him within the statutory period of 180 days, on account of which, he was permitted to release on statutory bail by the Ld. Additional Sessions Judge, Sirsa on 16.10.2019, vide the order at Annexure P-2.

3. The petitioner, however, could not submit his bail bonds as directed by the said Court. But no time limit was prescribed for furnishing such bail bonds. He subsequently filed an application seeking to furnish his personal bonds and surety bonds in terms of the original statutory bail granted to him. But, the same was dismissed by the Ld. Additional Sessions Judge, Sirsa, vide an impugned order passed on 30.07.2021 after observing *inter alia*:-

“6. In view of the above, it is evident that although the applicant was admitted to default bail vide order dated 16.10.2019 passed by Dr. Chander Hass, learned ASJ Sirsa on the ground that challan in this case has not been filed by the prosecution within stipulated time of 180 days, yet the present applicant-accused did not bother to furnish his personal bond and surety bonds and thereafter supplementary challan has been filed in this case on 1.11.2019. Under these circumstances the indefeasible right of applicant for grant of default bail stood extinguished in the light of judgment of Learned Apex Court of Uday Mohanlal Acharya vs. State of Maharashtra and Union of India through C.B.I. vs. Nirala Yadav as referred to in the

abovesaid judgment of Hon'ble High Court. Hence the present application stands declined and application for furnishing the bail bonds stands dismissed.”

4. Submission of Ld. Counsel for the petitioner in this regard is that the judgment of the Apex Court in ***Criminal Appeal No.394 of 2001***, decided on 29.03.2001 titled as “**Uday Mohanlal Acharya Vs. State of Maharashtra**”, in which it has been held that the indefeasible right of an accused to his statutory bail stood extinguished on his failure to furnish the bail bonds only reflects the dissenting view of Hon'ble Mr. Justice B.N. Aggarwal, while the majority view was still in favour of the accused, and therefore, he was permitted to be released on statutory bail by the Apex Court. The earlier decision of the Hon'ble Supreme Court reported in “**Raghubir Singh and others Vs. State of Bihar**”, 1987 AIR (SC) 149, is also directly on this point, wherein it was held that:-

“22. The result of our discussion and the case-law in this: An order for release on bail made under the proviso to Section 167(2) is not defeated by lapse of time, the filing of the chargesheet or by remand to custody under Section 309(2). The order for release on bail may however be cancelled under Section 437(5) or Section 439(2). Generally the grounds for cancellation of bail, broadly, are, interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him. The due administration of justice may be interfered with by intimidating or suborning witnesses, by interfering with investigation, by creating or causing disappearance of evidence etc. The course of justice may be evaded or attempted to be

evaded by leaving the country or going underground or otherwise placing himself beyond the reach of the sureties. He may abuse the liberty granted to him by indulging in similar or other unlawful acts. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days, after the defect is cured by the filing of a chargesheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case, one would expect very strong grounds indeed.”

5. Ld. State Counsel in all fairness concedes that the case of the petitioner is squarely covered by the aforesaid decisions.

6. This Court is also of the view that the petitioner's failure to furnish his bail bonds after having been granted statutory bail due to non-submission of Challan, where no time limit had been prescribed for furnishing such bonds, would not have the effect of extinguishing his indefeasible right to Default Bail where Challan was not submitted within the statutory period.

7. In view of the aforesaid three decisions of the Hon'ble Apex Court, consequently the present revision petition is allowed, after setting aside the impugned order, and the petitioner is permitted to be released on bail in accordance with the original order passed by the Ld. Court below on 16.10.2019 (Annexure P-2).

27.08.2021

**(SUDIP AHLUWALIA)
JUDGE**

Bhumika

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |