

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH
(Heard through Video Conferencing)**

Crl. Revision No. 1197 of 2020 (O&M)
Date of Decision: January 5, 2021
Reserved on 22.12.2020

Loua Gilbert

...Petitioner

Versus

U.T., Chandigarh

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashish Pal Kaushal, Advocate
for the petitioner.

Mr. AM Punchi P.P. U.T. Chandigarh.

JAISHREE THAKUR, J.

1. The petitioner herein seeks to challenge the order dated 9.3.2020 as passed by the Additional Session Judge, Chandigarh whereby the application for furnishing of bail bonds stands dismissed.

2. In brief, the facts as stated by the petitioner are that he was arrested on account of being allegedly found be in possession of 207 grams of heroin and FIR No. 441 dated 05.12.2019 was registered against him under Section 21 NDPS Act, 1985 at Police Station 39 Chandigarh. The petitioner preferred a bail application under 167 (2) of the Code of Criminal Procedure (Henceforth referred to as '**the Code**') after the expiry of 60 days, since the final report submitted was without the CSFL report. The said application was allowed by the Additional Sessions Judge, Chandigarh on

24.02.2020 with a condition that the accused, that is the petitioner, would furnish bail bonds for a sum of ₹1 lakh, along with one local surety with a similar amount. It is stated that after the said order was passed, an application was moved for furnishing bail bonds in terms of the order dated 24.2. 2020, however the same was dismissed on ground that a supplementary challan had been furnished to the court on 07.03.2020.

3. Mr. Ashish Pal Kaushal, learned counsel appearing on behalf of the petitioner, would contend that once default bail had been allowed under Section 167 of the Code, there was no occasion to deny bail merely on account of the fact that a supplementary challan has been filed in the meanwhile. It is submitted that in the judgement rendered in **Achpal @ Ramswaroop and others Versus State of Rajasthan 2018 (4) RCR (Criminal) 433**, it has been held that the letter and spirit behind the enactment of Section 167 of the Code of Criminal Procedure mandates that the investigation is to be completed within the prescribed limitation and that a Magistrate cannot authorise detention of the accused in custody beyond the said period of 60 or 90 days, as the case may be, on the failure of the investigating agency to submit a final report. It is argued that the petitioner would be entitled to default bail in terms of the order passed on 24.2.2020.

4. Notice was issued on the revision petition filed, pursuant to which appearance has been caused on behalf of the Chandigarh Administration and a detailed reply filed.

5. Mr. A.M Punchhi, learned Public Prosecutor for Union Territory, Chandigarh opposes the petition on the ground that the petitioner

herein has concealed relevant facts. It is submitted that the petitioner had applied for regular bail before the Additional Sessions Judge, Chandigarh which was rejected by order dated 9.6.2020 and thereafter the petitioner filed **Crl. Misc. M 17933 of 2020 titled Loua Gilbert @ Obiwulu Versus U.T., Chandigarh**, before this Court which was dismissed as withdrawn by an order dated 24.7.2020. It is only after the rejection of the petition for grant of regular bail that the instant Criminal Revision petition has been filed seeking to challenge the order dated 9.3.2020. It is argued that the petitioner is a foreign national and the bail bond/bail conditions fixed were such that the petitioner would not flee the country. It is submitted that after having application for regular bail stands dismissed by the High Court, default bail cannot be granted. Learned counsel places reliance upon the judgement rendered in **Union of India through CBI vs. Nirala Yadav 2014 (3) RCR (Criminal) 534 SC**.

6. Since the petitioner has not been able to controvert the fact that regular bail stands dismissed, it can be assumed that the facts are not in dispute.

7. Default bail was allowed to the petitioner on 24.2.2020 as the final report was incomplete, being without the chemical examiner's report. The default bail imposed certain conditions to ensure the continued presence of the petitioner. However, the petitioner was unable to furnish the bail bond along with a local surety and by then a supplementary report was filed on the 7.3.2020 along with the CFSL report regarding the chemical in question, which was found to be heroin. Therefore, when the application for

funishing of bail bonds was filed two days thereafter, the Additional Sessions Judge rightly rejected it by relying on a decision rendered in **Union of India through C.B.I. vs. Nirala Yadav (SC) 2014 (3) RCR (Criminal) 534 SC**. In fact, the conditions for grant of default bail have been culled out in **UdayMohanlal Acharya v. State of Maharashtra 2001 (2) R.C.R (Criminal) 452**. The same are reproduced as under:

- "1. Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days on the whole.*
- 2. Under the proviso to the aforesaid sub-section (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than in the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.*
- 3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.*
- 4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it*

forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

5. If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.

6. The expression "if not already availed of" used by this Court in Sanjay Dutt case must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in para (a) of the proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same."(emphasis supplied)."

The indefeasible right of the petitioner for grant of default bail stood extinguished in the light of the judgements, both in **Uday Mohanlal Acharya Vs State of Maharashtra (Supra)** and subsequently referred to in **Union of India through C.B.I. Vs Nirla Yada vs case (Supra)**, as the bail

bonds were not furnished before the supplementary challan was presented.

8. Even otherwise, the petitioner has not disclosed the fact that after the order passed rejecting the application for furnishing bail bonds, his application for grant of regular bail already stands dismissed up till this Court. Once the regular bail of the petitioner too stands dismissed, he cannot be permitted to argue for default bail as well. At best, he should have challenged the order passed by this Court dismissing his application for regular bail.

9. Dismissed.

January 5, 2021
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No