

CRM-M-40792 of 2020

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CRM-M-40792 of 2020
Date of decision:06.08.2021**

Pankaj @ Panki

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Munish Behl, Advocate
for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

SUVIR SEHGAL, J.

The Court has been convened through video conferencing due to Covid-19 pandemic.

Instant petition has been filed under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") for quashing the order dated 02.11.2020 (Annexure P-4) passed by the learned Additional Sessions Judge, Ambala, whereby, the revision petition filed by the petitioner against the order dated 07.10.2020 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Ambala, rejecting his application under Section 167(2) of Cr.P.C., has been dismissed.

Facts in brief, are that FIR (Annexure P-1) came to be registered on 30.07.2020 for offences under Sections 420, 489-A, 489-B, 489-C, IPC at Police Station Parao, Ambala Cantt., District Ambala on the allegation that Pankaj @ Panki (present petitioner) and Sagar were involved in counterfeiting currency notes and 175 currency notes of the denomination of Rs.2000/- each were recovered from them. On the disclosure statement made by Sagar and another accused, Sachin, who had supplied the printer was arrested.

Counsel for the petitioner has argued that the petitioner was arrested on 02.08.2020 and was remanded to judicial custody on the next day. He submits that as the period for presentation of the challan by the investigation expired on 01.10.2020, the petitioner filed an application seeking default bail on 07.10.2020 which has been illegally rejected, vide order 07.10.2020 (Annexure P-2) and upheld in revision vide order impugned herein. He submits that indefeasible right of the petitioner to seek bail, arose after investigating agency failed to present the challan within the prescribed period of 60 days.

Controverting the submissions of counsel for the petitioner, State counsel upon instructions from ASI Jaspal Singh, has submitted that the petitioner is accused of an offence under Section 489-B, IPC, which is punishable with imprisonment for life, therefore, investigating agency had an additional time period of 30 days to complete the investigation and present the challan. In other words, his submission is that application by the accused was not maintainable before expiry of the period of 90 days as

prescribed under Section 167(2)(a)(i), Cr.P.C.

I have considered the submissions of the parties.

The moot question to be determined in the petition is as to whether the petitioner is entitled to exercise the indefeasible right vested in him on the expiry of 60 days or 90 days from the date of his remand on account of non-presentation of the final report by the investigating agency.

It deserves to be noticed that offence under Section 489-B of IPC is punishable with imprisonment for life or with imprisonment of either description, for a term which may extend to 10 years, besides fine. The expression “imprisonment for life” has been interpreted by the Hon'ble Supreme Court in **Rakesh Kumar Paul Vs. State of Assam** and it has been held as under:-

“91. In my view the language of the statute is clear and unambiguous. Out of the three categories of offences, we need to deal only with that category of offences where the punishment prescribed is not less than 10 years. If an offence is punishable with death then whatever be the minimum punishment, the period of investigation permissible would be 90 days. Similarly, if the offence is punishable with life imprisonment, even if the minimum sentence provided is less than 10 years, the period of detention before ‘default bail’ is available would be 90 days.

92. Keeping in view the legislative history of [Section 167](#), it is

clear that the legislature was carving out the more serious offences and giving the investigating agency another 30 days to complete the investigation before the accused became entitled to grant of ‘default bail’. It categorises these offences in the three classes:

- I First category comprises of those offences where the maximum punishment was death;*
- II Second category comprises of those offences where the maximum punishment is life imprisonment.*
- III The third category comprises of those offences which are punishable with a term not less than 10 years.*

93. In the first two categories, the legislature made reference only to the maximum punishment imposable, regardless of the minimum punishment, which may be imposed. Therefore, if a person is charged with an offence, which is punishable with death or life imprisonment, but the minimum imprisonment is less than 10 years, then also the period of 90 days will apply. However, when we look at the third category, the words used by the legislature are “not less than ten years”. This obviously means that the punishment should be 10 years or more. This cannot include offences where the maximum punishment is 10 years. It obviously means that the minimum punishment is 10 years whatever be the maximum punishment.”

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98. A bare reading of [Section 167](#) of the Code clearly indicates

that if the offence is punishable with death or life imprisonment or with a minimum sentence of 10 years, then [Section 167\(2\)\(a\)\(i\)](#) will apply and the accused can apply for ‘default bail’ only if the investigating agency does not file charge-sheet within 90 days. However, in all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then [Section 167\(2\)\(a\)\(ii\)](#) will apply and the accused will be entitled to grant of ‘default bail’ after 60 days in case charge-sheet is not filed.”

From the above interpretation of the provision by the Hon'ble Supreme Court, it is apparent that in case of an offence, which is punishable with imprisonment for life, irrespective of the minimum sentence provided therein, Section 167(2)(a)(i) applies and the right of the accused to invoke the provision arises only after expiry of the period of 90 days from the date of his remand.

In the present case, the petitioner was arrested on 03.08.2020 and the period available with the investigating agency for presenting the final report was available upto 31.10.2020. However, the petitioner presented the application seeking default bail before expiry of the said period. Consequently, the application is pre-mature and has been rightly dismissed by both the Courts below. As such this Court does not find any illegality and impropriety in the orders passed by the Courts below.

The petition is accordingly dismissed.

(SUVIR SEHGAL)
JUDGE

August 06, 2021
savita

<i>Whether Speaking/Reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>