

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

(Through Video Conferencing)

CRR-1334-2021

Date of decision: 12.11.2021

Mahinder Singh @ Mohinder Singh

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sidhant Vermani, Advocate
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab
for the respondent-State.

Mr. Sandeep Wadhawan, Advocate
for the complainant.

MANJARI NEHRU KAUL, J. (ORAL)

Learned counsel has challenged the order dated 21.10.2021 vide which the prayer of the petitioner for grant of bail under Section 167 (2) Cr.P.C. in case FIR No.201 dated 15.10.2015 under Sections 376 and 506 IPC and Section 3 of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “the SC/ST Act”) registered at Police Station Lopoke, District Amritsar was declined.

Learned counsel contends that no doubt the final report under Section 173 Cr.P.C. was presented before the Court concerned (JMIC, Ajnala) within the stipulated period of 90 days on 01.07.2021, however, the Court returned the same after 03 months i.e. on 06.10.2021, with directions to present it before the Court of competent jurisdiction i.e. Special Court dealing with offences under the SC/ST Act. He further submitted that the petitioner in the meantime moved an application under Section 167(2) Cr.P.C. seeking default bail before the Special Court concerned on 13.10.2021, which came to be dismissed on

21.10.2021 vide impugned order annexed with the petition. Still further, he submitted that the report under Section 173 Cr.P.C. was presented on 19.10.2021 only after the application under Section 167(2) Cr.P.C. had been moved by the petitioner before the Special Court concerned. Learned counsel has vehemently urged that since the final report under Section 173 Cr.P.C. (challan) had been presented before the Court of competent jurisdiction beyond the stipulated time frame of 90 days, he had acquired his indefeasible right to default bail. It was also submitted that since the petitioner had already moved an application under Section 167(2) Cr.P.C. for grant of default bail, the subsequent filing of the challan on 19.10.2021 would not in any manner extinguish his right to get default bail as had been held by the Apex Court in *Uday Mohan Acharya Vs. State of Maharashtra : (2001) 5 SCC 453*. Learned counsel also placed reliance upon *Satish Kumar and others Vs. State of Punjab and another : 2021 (3) RCR (Criminal) 115* in support of his submissions.

On being put to notice, the learned State counsel contended that once the challan stood presented within the stipulated period of 90 days before a Court, if at all an error qua the jurisdiction had occurred it could not come to the rescue of the petitioner more so since he was involved in a heinous crime and had also been declared a proclaimed offender after the registration of the FIR in question. It was submitted that the impugned order in the facts and circumstances could not thus be faulted with.

Heard learned counsel for the parties and perused the material on record.

It would be apposite to reproduce the relevant provision of Section 167(2) Cr.P.C. which reads as thus:-

"(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

- (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, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;*

A bare reading of the aforesaid provisions makes it abundantly clear that inalienable right to default bail under Section 167(2) Cr.P.C. is intrinsically linked with Article 21 of the Constitution of India which provides for personal liberty. The Apex Court in ***S.Kasi Vs. State through Inspector of Police : 2020 Criminal LR (SC) 843*** has also held that the right of an accused to be set at liberty takes precedence over the right to carry on investigation and submit charge-

sheet irrespective of the merits of the case against him. It needs to be reiterated that while considering an application under Section 167(2) Cr.P.C., the merits of the case cannot be delved into. Hence, the submissions of the learned State counsel that since the petitioner had committed a heinous offence under Section 376 IPC and 3 of the SC/ST Act, he should not be extended the concession of default bail, is devoid of merit.

Adverting to the case in hand, undoubtedly, the challan was presented on 01.07.2021 i.e. within 90 days before JMIC, Ajnala. However, the same was presented before a Court, which did not have the jurisdiction either to try the case much less take cognizance of the offence. It was after three months of the presentation of the challan on 06.10.2021, which was much beyond the statutory period of prescribed 90 days, the JMIC, Ajnala returned it with the directions that it be presented before the competent Court i.e. the Special Court constituted to try cases under the SC/ST Act. This Court is therefore not inclined to accept the submissions made by the learned counsel for the State that once the challan stood presented before a Court of law within the stipulated time period, the non-presentation of challan before the Court of competent jurisdiction would not entitle the petitioner to the grant of default bail under Section 167(2) Cr.P.C. The petitioner cannot be made to suffer on account of a jurisdictional error, which has occurred on the part of the investigating agency while presenting the challan, and the subsequent delay of three months by the Court of JMIC, Ajnala in directing the presentation of the challan before the Court of competent jurisdiction. This Court in *Satish Kumar's case (Supra)* has also

observed that once the investigation stands completed the report under Section 173 Cr.P.C. has to be filed only before the Court of competent jurisdiction.

The Apex Court in *Bikramjit Singh Vs. State of Punjab, 2020 (4) RCR (Criminal) 713* categorically held that sub section (2) of Section 167 Cr.PC is the part of the procedure established by law under Article 21 of the Constitution of India and if the investigating agency fails to present the challan within the prescribed statutory period, the right to bail to an accused under the proviso to Section 167(2) Cr.P.C. becomes absolute and indefeasible.

As a sequel to the above discussion without commenting upon the merits of the case, the instant petition is allowed and the impugned order dated 21.10.2021 is set aside. The petitioner is ordered to be admitted to bail in terms of Section 167(2) Cr.P.C., the satisfaction of the trial Court/Duty Magistrate concerned.

12.11.2021

Vinay/sonia

(MANJARI NEHRU KAUL)
JUDGE

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