

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

Criminal Revision No.60 of 2022(O&M)

Date of Decision: March 09, 2022

Rohit Mehta

...Petitioner

Versus

Superintendent (Preventive), Central Goods &
Services Tax, GST Bhawan, F-Block, Rishi
Nagar, Ludhiana, Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Jagmohan Bansal, Sr.Advocate assisted by
Mr.Kapish Chawla and Mr.Mukul Singla, Advocates
for the petitioner.

Mr.Satya Pal Jain, Addl.Solicitor General of India assisted by
Mr.Sourabh Goel, Advocate for the respondent.

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HARINDER SINGH SIDHU, J.

Challenge in this petition is to the order dated 15.12.2021 passed by Ld. Additional Sessions Judge, Ludhiana, whereby the revision petition filed by the respondent (CGST Department) was allowed and the order dated 28.11.2021 of the Ld. Judicial Magistrate Ist Class (Duty), Ludhiana granting default bail u/s 167(2) Cr.P.C. to the petitioner was set aside.

The petitioner was arrested on 28.09.2021 for the alleged commission of offence under Section 132 of the Goods & Services Tax Act, 2017 (hereinafter for short 'the GST Act'). On 29.09.2021, he was produced before the Ld. Chief Judicial Magistrate, Ludhiana and was remanded to

judicial custody. The maximum punishment prescribed for the offence under the GST Act is five years. Hence complaint/challan was to be filed within 60 days. As the respondent failed to file the complaint within 60 days of his first remand/detention, the petitioner filed an application for default bail under Section 167(2) of the Code of Criminal Procedure on 28.11.2021. The Ld. JMIC (Duty) taking note of the fact that 60 days had elapsed without the complaint being filed ordered release of the petitioner vide order dated 28.11.2021, subject to certain conditions, including of furnishing bail bonds in the sum of Rs.1 Crore along with two local sureties in the like amount. However, on 28.11.2021 the petitioner could not furnish requisite bail bonds/surety bonds as one of the two sureties was not accepted. Meanwhile, the complaint was also filed. In view thereof, same day i.e. 28.11.2021, the Ld. JMIC passed following order that the right to bail accrued to the petitioner stood forfeited.

“At this stage, the Ahlmad of this Court has brought to the notice of the Court that the complaint/challan in the present case has been presented. Bail bond/surety bond have not been furnished despite having been provided sufficient time. Therefore, in view of these circumstances the right of bail as accrued to the accused stands forfeited. The application as such stand disposed of. Papers be sent back to the concerned Court forthwith.”

The order dated 28.11.2021 holding the right to bail of the petitioner as having been forfeited was challenged by the petitioner before the Ld. Additional Sessions Judge, Ludhiana by filing a revision petition. He also prayed for modification of the stringent conditions imposed in the

order granting default bail. The respondent – Department also filed a revision assailing the order granting default bail. It was their contention that the complaint was filed within a period of 60 days and thus, the petitioner was not entitled to default bail. Both the Revision Petitions were decided vide the impugned order dated 15.12.2021 by the Ld. Additional Sessions Judge, Ludhiana. The revision petition filed by the respondent- Department was allowed. The order granting default bail to the petitioner under Section 167(2) CrPC was set aside. The revision petition filed by the petitioner was dismissed.

It was held that since the complaint was filed on 28.11.2021, which was the 60th day, so no indefeasible right had accrued in favour of the petitioner to get default bail.

The facts are not in dispute. The petitioner was arrested on 28.09.2021. He was produced before the Ld. JMIC on 29.09.2021 and was remanded to judicial custody on that date. On 28.11.2021 he filed an application under Section 167(2) Cr.P.C. for grant of default bail which was allowed by an order of the same date. After the application of the petitioner was allowed, but before he had furnished the sureties and been released, the complaint was also filed by the Department the same day i.e., 28.11.2021. According to the petitioner the date of remand has to be included while calculating the sixty days period.

The days have been calculated by the petitioner in the following manner:

September 2021

02 Days

(including the first day of remand i.e. 29.09.2021)

<i>October 2021</i>	<i>31 Days</i>
<i>November 2021</i>	<u><i>27 Days</i></u>
<i>Total</i>	<i>60 Days</i>

On that basis the application having been moved on 28.11.2021, which was the 61st day was rightly allowed by the Ld. JMIC.

The contention on behalf of the respondent- Department is that the day of remand is to be excluded while calculating the sixty days period. In view thereof 28.11.2021 would be the Sixtieth day, the same day the complaint had been filed. The application of the petitioner for default bail filed on 28.11.2021 could not have been allowed.

The petitioner as also the respondents have relied on a number of decisions. It is not deemed necessary to refer to them. All that needs to be noticed is that taking note the conflicting views on the question of the inclusion or exclusion of the day of remand for the purpose of calculating the period, Hon'ble Supreme Court in **Enforcement Directorate Vs. Kapil Wadhawan & Anr (Criminal Appeal No.701-702 of 2020)** referred the matter to a Larger Bench observing as under:

“8. Since the earlier position of law was not considered and the latest decision is of a 3 Judge Bench, it is necessary for a Bench of appropriate strength to settle the law taking note of the earlier precedents. Unless the issue is appropriately determined, the Courts across the country may take decision depending upon which judgment is brought to the Court's notice or on the Courts own understanding of the law, covering default bail under Section 167(2)(a) II of Cr.P.C.

9. In the above circumstances, we feel it appropriate to refer the above-mentioned issue to a larger Bench of this Court for an

authoritative pronouncement to quell this conflict of views as the same shall enable the Courts to apply the law uniformly.”

In view of the aforesaid, leaning in favour of an interpretation to the benefit of the accused, it is deemed appropriate that the petitioner be directed to be conditionally released on bail. Accordingly, this petition is allowed. The order of the Ld. Additional Sessions Judge, Ludhiana allowing the revision petition of the respondent-Department and setting aside the order of the Ld. Judicial Magistrate granting default bail to the petitioner under Section 167(2) CrPC, is set aside. The petitioner is directed to be conditionally released on bail to the satisfaction of the Ld. Trial Court.

It is clarified that in case the decision of the Larger Bench of the Hon'ble Supreme Court is against the inclusion of the day of remand in calculating the period of custody, it would be open to the respondent to seek modification/ recalling of this order.

Disposed of.

March 09, 2021

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No