

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

241

CRR-44 of 2021

Date of Decision: 05.09.2022

Balwinder Singh @ Billa

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Kunal Vinayak AAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

The present revision petition has been filed seeking quashing of the impugned order dated 04.01.2021 vide which the extension of time of three months had been allowed by the learned Addl. Sessions Judge, Amritsar and also vide the order of even date by which the application filed by the petitioner for grant of statutory bail under Section 167 (2) of the Code of Criminal Procedure was declined.

The learned counsel for the petitioner has submitted that he does not wish to press the prayer with regard to quashing of the order dated 04.01.2021 vide which the application for grant of extension of time was allowed and he would confine the prayer in the present case only to the extent of challenging the order passed by the learned Addl. Sessions Judge, Amritsar, by which his application for grant of default bail under Section 167(2) of the Code of Criminal Procedure was

declined.

The petitioner was arrested on 01.07.2020. He was produced before the Court on the same day. The quantity involved was commercial in nature and therefore challan was required to be presented within a period of 180 days. The period of 180 days expired on 28.12.2020 after excluding 1st of July 2020 which was the date of remand. The prosecution agency filed an application for grant of extension of time on 27.12.2020, i.e. one day prior to the expiry of 180 days. The petitioner filed an application for grant of statutory bail under Section 167(2) of the Code of Criminal Procedure on 31.12.2020. Both the applications were taken up together on 04.01.2021 and the application for grant of extension of time was allowed and time was extended and three months further time was granted for presentation of challan and the statutory bail application was declined on the same date, i.e. on 04.01.2021.

Learned counsel submitted that so far as the exclusion of date of 1st of July 2020 is concerned, since there are conflicting judgments of the Hon'ble Supreme Court of India with regard to the said fact as to whether the date on which the remand was taken is to be excluded or included, the matter has now been referred to a larger Bench by the Hon'ble Supreme Court of India in **Enforcement Directorate, Government of India versus Kapil Wadhawan and another Etc.** (Criminal Appeal Nos.701-702 of 2020, date of decision 23.02.2021) and therefore after excluding 1st of July 2020, 180 days would expire on 28.12.2020. He submitted that the State has filed an affidavit and has also attached the application which was filed by the investigating agency vide Annexure R-1 and a perusal of the same would show that although the application was moved on 27.12.2020 but

it also shows that the report of the APP was made only on 04.01.2021 which was after the application moved by the petitioner for the grant of statutory bail, i.e. on 31.12.2020 and therefore the mere fact that an application for grant of extension of time was moved by the investigating agency on 27.12.2020 will have no effect since the report was made by the learned APP only on 04.01.2021. He submitted that immediately on the expiry of the period of 180 days, i.e. on 28.12.2020 the right of the petitioner for grant of default bail became indefeasible and it was the duty of the Court to release the petitioner on bail forthwith. He referred to a judgment of the Hon'ble Supreme Court in **M. Ravindran versus The Intelligence Officer, Directorate of Revenue Intelligence, 2021(2) SCC 485** and submitted that it has been laid down by the Hon'ble Supreme Court that once the accused files an application for default bail under Section 167(2) then he is deemed to have availed of or enforced his right to be released on default bail, after expiry of the stipulated period for investigation. He further submitted that it was further observed by the Hon'ble Supreme Court that the right to be released on default bail continuously remains enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application, or subsequent filing of the charge-sheet **or a report** seeking extension of time by the prosecution before the Court, or filing of the charge-sheet during the interregnum. He submitted that in the present case after the filing of the application for grant of statutory bail, the report of the APP was received as per Annexure R-1 and even the charge-sheet has been filed thereafter and therefore in view of the law laid down by the Supreme Court of India **M. Ravindran** (supra), the rights of the petitioner were protected and became indefeasible on 28.12.2020. He further submitted that the mere fact

that an extension application was moved one day prior to the expiry of 180 days will have no effect in view of the aforesaid judgment of the Supreme Court in ***M. Ravindran*** (supra), since the report was filed after the application filed by the petitioner. The mere pendency of extension application itself cannot take away the rights of the petitioner which have otherwise become absolute and indefeasible in terms of Section 167(2) of the Code of Criminal Procedure and in view of the judgment of the Supreme Court as aforesaid. He further referred to another judgment of a co-ordinate Bench of this Court in **CRR-973 of 2020, titled as Onkar Chand @ Kala v. State of Punjab, date of decision 29.06.2020**, vide Annexure P-12, in which it was observed that in such like cases where application for extension of time was decided at a later date, then the effect of the same cannot be given from the date of application otherwise it will amount to giving effect retrospectively. He submitted that in view of the aforesaid position, the petitioner is entitled to for the grant of default bail under Section 167(2) of the Code of Criminal Procedure and the impugned order is liable to be set aside.

On the other hand, Mr. Kunal Vinayak, learned AAG, Punjab has submitted that when an application for extension for grant of time was filed prior to the expiry of 180 days there were winter vacations in the Court and when the Courts opened, then the file was taken up and the extension was granted and the bail was declined and has submitted that in view of the aforesaid position once the investigating agency has already filed an application for extension of time prior to the expiry of 180 days, the rights of the petitioner will not become absolute and indefeasible.

He further submitted that on the application for grant of extension of

time, copy was given to the learned counsel for the petitioner before the learned trial court and he did not file the reply to the same and instead filed an application for grant of bail.

I have heard the learned counsel for the parties.

The dates as aforementioned are not disputed by the learned State counsel. The issue involved in the present case was as to what will be the effect of filing of an application for grant of extension prior to the expiry of 180 days but decision of the same has taken place after the expiry of 180 days and in the interregnum period the accused/petitioner moved an application for grant of default bail after the expiry of 180 days.

The arguments raised by learned counsel for the State that a copy of the application for grant of extension of time was supplied to the learned counsel for the petitioner before the learned trial court is insignificant in the light of the fact that in case the petitioner is entitled for grant of default bail under Section 167(2), then the rights become absolute and indefeasible and such kind of procedural things will not have any significance and cannot take away the rights of the accused which are otherwise vested in him under a statute.

The Hon'ble Supreme Court of India in ***M. Ravindran*** (supra) observed as follows:-

“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), CrPC 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 charge-sheet or a report seeking extension of time by the prosecution before the Court; or filing of the charge-sheet 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 charge-sheet, 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.”

As per the aforesaid judgment, whenever the period of 180 days expire, then on the expiry of the aforesaid period the rights of an accused become absolute and indefeasible. The mere fact that thereafter in case **any charge-sheet**

or a report on an application seeking extension of time is filed by the prosecution, it would not make any difference. In the present case, the facts are clear from the Annexure R-1. Although application for extension of time was filed prior to the expiry of 180 days but the report of the APP is of the date 04.01.2021 which is after the expiry of 180 days and also after the application moved by the petitioner for grant of default bail and therefore in view of the aforesaid judgment of the Hon'ble Supreme Court in *M. Ravindran* (supra) the rights of the petitioner became absolute and indefeasible immediately on the expiry of 180 days, i.e. after 28.12.2020 and the petitioner preferred an application for grant of default bail on 31.12.2020. Apart from the same, a co-ordinate Bench of this Court in *Onkar Chand @ Kala* (supra) also observed that retrospective effect cannot be given to the date of decision in the application which was filed for grant of extension of time.

In view of the aforesaid facts and circumstances, this Court is of the view that the present petition deserves to succeed and consequently the order dated 04.01.2021 is hereby set aside. Petition stands allowed and the petitioner shall be released on default bail under Section 167(2) of the Code of Criminal Procedure subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

(JASGURPREET SINGH PURI)
JUDGE

September 05, 2022
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No