

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(232)

CRR-264-2021(O&M)
Date of Decision: 28.2.2022

Nikki

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Rahil Mahajan, Advocate for the petitioner.

Ms. Sakshi Bakshi, A.A.G., Punjab.

RAJESH BHARDWAJ.J (Oral)

The petitioner has approached this Court by way of filing the present revision petition praying for grant of default bail under Section 167 (2) Cr.P.C.

As per factual matrix, the present FIR was lodged by father of the victim (name concealed). The sum and substance of the allegations in the FIR is that his victim daughter was 16 years 4months old and the petitioner by taking benefit of circumstances enticed her away on 19.5.2020. The FIR was lodged to take legal action against the culprit.

The investigation commenced and petitioner surrendered on 17.11.2020 and was sent to the judicial custody. Thereafter, he approached learned Special Court, S.A.S Nagar, Mohali praying for grant of default bail under Section 167(2) Cr.P.C, however, after hearing both the parties, the same was declined vide order dated 17.2.2021. Aggrieved by the same petitioner has approached this Court by way of filing the present revision petition.

Due to ongoing pandemic the present petition remained pending in this High Court and the petitioner approached the Hon'ble Supreme Court. The Hon'ble Supreme Court disposed of the matter vide its

order dated 31.1.2022 by passing the following order:-

“Heard learned counsel appearing for the petitioner and carefully perused the material available on record.

Application seeking exemption from filing certified copy of the impugned orders is allowed.

Taking into consideration the fact that the default bail application of the petitioner is pending before the High Court of Punjab & Haryana at Chandigarh since 9.3.2021, we request the said Court to expedite the hearing of the said bail application and dispose of the same preferably within a period of four weeks from today.

With the above observation, the Special Leave Petitions are disposed of.”

The only point to be determined in this case is as to whether the day on which the petitioner was remanded to custody is to be counted while computing the period of 90 days required for completion of investigation and if yes then the petitioner would be entitled to the default bail under Section 167(2) Cr.P.C.

Learned counsel for the petitioner has vehemently contended that the learned Trial Court has misread the legal propositions and has drawn erroneous conclusion in rejecting the default bail as prayed for by the petitioner. Counsel has relied upon the various judicial precedents of the Hon'ble Supreme Court as well as of this High Court. Counsel fairly admits that there are judgments in favour of the petitioner and against him as well. He has drawn attention of this Court to the judicial precedent in case of ***Enforcement Directorate v. Kapil Wadhawan & Anr. in Criminal Appeal No.701-702 of 2020*** decided on 23.2.2021 wherein the Hon'ble Supreme Court has referred the matter to the Larger Bench and held as under:-

“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.”

Learned counsel for the petitioner fairly submits that he has prayed for the default bail which is an indefeasible right of the petitioner, however, in view of the reference made by Hon'ble Supreme Court he does not press the merits of the case at this stage. Counsel further relies upon the judgments of this Court, wherein the issue involved was that as to whether non-filing of the CFSL Report along with challan in a case under N.D.P.S Act amounts to incomplete challan. This Court in case of ***Julfkar Vs. State of Haryana, Crl. Rev. No.1125 of 2020 decided on 16.09.2020*** sent the reference to a Division Bench and in the meanwhile conditional bail had been granted to the petitioner. Another reference was made by this Court in case of ***Suresh Vs. State of Haryana, Crl. Rev. No.1135 of 2020 decided on 18.11.2020***, wherein also his lordship granted a conditional bail to the petitioner. Counsel submits that though the offence in the present case and that of the cases referred above are different, however, the issue involved is the same. The Hon'ble Supreme Court has also sent a reference to the larger Bench in view of the conflicting opinions. The counsel submits that the petitioner surrendered before the JMIC on 17.11.2020 and was sent to the judicial custody. Thereafter the investigating agency filed the challan on 15.2.2021. Counsel submits that if the date of the surrender i.e. 17.11.2020 is taken into account then the filing of the challan on 15.2.2021 would be on the 91st day and hence obviously an indefeasible right of bail would accrue in favour of the petitioner. It is submitted that since the matter is subjudice

in the light of the reference made by Hon'ble Supreme Court, the petitioner deserves to be granted conditional bail.

On the other hand learned State counsel has fairly accepted the legal propositions. She has also relied upon various judicial precedents, however, there is no dispute regarding the main issue being pending adjudication in view of the reference made by Hon'ble Supreme Court.

I have heard learned counsel for the parties at length and have gone through the record carefully.

In view of the facts and circumstances of the case, it is apparent that the only issue involved in the present case is whether the date of remand (the order of the Judicial Magistrate sending the accused to the judicial custody) is to be counted or excluded while computing the period of 90 days. Admittedly, the matter has been referred by the Hon'ble Supreme Court to a Larger Bench and is subjudice. This Court in the cases of *Julfkar Vs. State of Haryana* and *Suresh Vs. State of Haryana* (supra) in the similar circumstances has granted the interim/conditional bail to the accused. Following the earlier judicial precedents, this Court finds it appropriate that the petitioner deserves to be granted a conditional bail. Consequently, the present revision petition is disposed of at this stage and the petitioner is ordered to be conditionally released on bail to the satisfaction of the learned Trial Court/Duty Magistrate. It is clarified that in case of the petitioner not being covered by the decision of larger Bench of the Hon'ble Supreme Court pending consideration, the state would be at liberty to seek cancellation/modification/recalling of this order. The Trial Court/Duty Magistrate is to ensure heavy surety while accepting bail/surety bonds of the petitioner.

Disposed of.

(RAJESH BHARDWAJ)
JUDGE

28.2.2022

lucky

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No