

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

**CRM-M-31525 of 2021 (O&M)
Date of Decision:-11.02.2022**

Sandeep Kumar Puri

...Petitioner

Versus

Inspector (Preventive), Central Goods & Services Tax, Ludhiana

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present:- Mr. Deepak Gupta, Advocate
for the petitioner.

Mr. Sourabh Goel, Senior Standing Counsel
for the respondent.

(Proceedings conducted through Video Conferencing)

SURESHWAR THAKUR J.(Oral)

1. The petitioner is an accused qua commission of an offence, under Clause (b), (c) and (l) of Sub Section 1 of Section 132 of the CGST Act, 2017 as punishable under Section 132(1)(i) of CGST Act, 2017.
2. The Inspector (Preventive) of CGST Commissionerate, Ludhiana, failed to in the statutory period concerned, institute a report/challan against the bail petitioner, before the learned Magistrate concerned. Therefore, the petitioner instituted an application under Section 167(2) Cr.P.C. before the learned Chief Judicial Magistrate, Ludhiana,

therein, he claim availment of default bail, on the score that the prosecution failed to within the statutorily prescribed period, institute report/challan before the learned trial Judge concerned. The above application was though allowed through an order made on 27.4.2021. However, the learned Chief Judicial Magistrate, Ludhiana, imposed the hereinafter extracted conditions, which are argued by learned counsel for the petitioner to be harsh, oppressive and exploitative, and also argued by him, to denude him of the benefit of the default bail as became accorded to him. The petition beoming aggrieved from the afore made order, made a challenge thereto, through his casting a revision bearing No.79 of 2021, before the Additional Sessions Judge, Ludhiana. The Additional Sessions Judge, Ludhiana, upon the afore revision, though proceeded to modify the conditions of default bail, as became imposed by the learned Chief Judicial Magistrate, Ludhiana, upon the petitioner, in as much as making a direction qua the accused, being admitted to bail, on his furnishing personal bail bonds to the tune of Rs.40 lakhs each with two sureties in the like amount (one local), and also on his furnishing bank guarantee/FDR of Rs.20 lakhs.

“1. Accused shall furnish a bank guarantee/FDR for an amount of Rs. 60 lakh to be forfeited to the State in case of violation of any of the terms and conditions imposed vide this order.

2. Accused shall come present on each and every date of hearing for appearance in the Court and for trial of the case.

3. Accused shall not leave the jurisdiction of this Country without permission of the Court. He shall surrender his passport in the court if he possessess the same and in case he do not hold any passport his undertaking in form of an

affidavit that he will not get any passport issued in his name without permission of the Court.

4. *Accused shall not commit any offence of like nature or any other offence punishable under law.*

5. *Accused shall not try to influence the witnesses of the prosecution of tamper with the evidence.*

6. *Accused shall not change his appearance during the course of trial.*

7. *Accused shall not change his address without prior intimation to this Court.*

8. *Accused shall not induce, threat or promise any witness to refrain him/her from deposing in the case during the investigation or trial. Accused shall make available himself before I.O./Authority holding investigation to assist the investigating machinery as and when called upon to appear before the authority concerned till final investigation or as and when directed by the Court and accused will cooperate with the investigation even during his release on bail."*

3. However, the counsel for the petitioner is still aggrieved, and, has chosen to thereagainst prefer the instant petition before this Court, to make an effort for further modifying and mitigating, the rigour of the afore imposed conditions, by the Additional Sessions Judge, Ludhiana, upon the petitioner.

4. Mr. Saurabh Goel, Advocate putting in appearance for the respondent, has vigorously contended before this Court, that the relief claimed in the petition, for further mitigating the above impugned purported rigorous conditions, as, imposed upon the petitioner, by the learned Additional Sessions Judge, Ludhiana, cannot be granted, as the apposite conditions are neither oppressive nor harsh. He further relied upon a

judgment of Hon'ble Apex Court delivered in case titled “**Uday Mohanlal Acharya vs. State of Maharashtra**” 2001,(2) RCR (Criminal) 452, rendered upon criminal Appeal No.394 of 2001 with underlinings therein, that in case there is failure on the part of the accused concerned, to after availing default bail, to comply with the conditions as become imposed upon him, thereupon his claim from this Court, to mitigate the rigour of the above made conditions upon him, by the learned Additional Sessions Judge, Ludhiana, cannot be accorded to him, rather the right as ensues to the petitioner, is of his applying for regular bail, before the Court concerned. He obviously argues for dismissal of the petition. The aforemade submission is founded upon references occurring in paragraph 12 of verdict (supra), relevant portion thereof is extracted herein below :-

“XXXX.....Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can be only in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody upto a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of challan by the Investigating Agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution. There is no provision in the Criminal Procedure Code authorising detention of an accused in custody after the expiry of the period indicated in the proviso to sub-section (2) of Section 167 excepting the contingency indicated in Explanation I, namely, if the accused does not furnish the bail.

It is in this sense it can be stated that if after expiry of the period, an application for being released on bail is filed, and the accused offers to furnish the bail, and thereby avails of his indefeasible right and then an order of bail is passed on certain terms and conditions but the accused fails to furnish the bail, and at that point of time a challan is filed then possibly it can be said that the right of the accused stood extinguished. But so long as the accused files an application and indicates in the application to offer bail on being released by appropriate orders of the Court then the right of the accused on being released on bail cannot be frustrated on the oft chance of Magistrate not being available and the matter not being moved, or that the Magistrate erroneously refuses to pass an order and the matter is moved to the higher forum and a challan is filed in interregnum. This is the only way how a balance can be struck between the so-called indefeasible right of the accused on failure on the part of the prosecution to file challan within the specified period and the interest of the society, at large, in lawfully preventing an accused for being released on bail on account of inaction on the part of the prosecuting agency. On the aforesaid premises, we would record our conclusions as follows :-

- 1. Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days in the whole.*
- 2. Under the proviso to aforesaid sub-section (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not*

less than 10 years, and 60 days where the investigation relates to any other offence.

3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the Investigating Agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnish the bail, as directed by the Magistrate.

4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have accrued in his favour on account of default on the part of the Investigating Agency in completion of the investigation within the specified period, the Magistrate/Court must dispose of it forthwith, on being satisfied that in fact the accused has been custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the Investigating Agency. Such prompt action on the part of the Magistrate/Court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the Investigating Agency in completing the investigation within the period stipulated.

5. If the accused is unable to furnish bail, as directed by the Magistrate, then the conjoint reading of Explanation I and proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in paragraph (a) will not be unauthorised, and, therefore, if during that period the investigation is complete and charge-sheet is filed then the so-called indefeasible right of the accused would

stand extinguished. 6. The expression 'if not already availed of' used by this Court in Sanjay Dutt's case (supra) must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in paragraph (a) of proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same."

5. Initially the vigour of the aforemade argument is to be tested. The aforemade argument would become well rested hence upon, the verdict (supra), only when the Apex Court in judgment (supra), had proceeded to also dwell upon the imperative foundational fact, inasmuch as qua the conditions concerned, becoming also therein rather since their imposition(s), constantly contended by the accused concerned, to be harsh and exploitative, hence rendering futile, the indulgence of default bail, as contemplated in Sub Section (2) of Section 167 of Cr.P.C., and, as becomes accorded to him. However, a deepest reading of the factual matrix carried therein, does not reveal, that the Hon'ble Apex Court became ever seized with the imperative factual matrix rather alike the one as is prevailing in the instant case, inasmuch as, the accused concerned, after being granted indulgence of default bail, by the learned Chief Judicial Magistrate, Ludhiana, his making an appeal thereagainst, on the ground of exploitative, and, oppressive bail conditions, being imposed upon him, and, obviously

causing the ill mishap of ultimately his personal liberty becoming curtailed, and, fettered. Therefore, in the absence of the afore factual narration occurring in the judgment (supra), which rather exists in the instant case, inasmuch as there, is a constant agitation on the part of the petitioner, to cast challenge(s), upon the purported oppressive default bail conditions becoming untenably imposed upon him, by the learned Additional Sessions Judge concerned. Consequently, the afore made argument becomes not well rested, upon, verdict (supra) nor can be construed to be legally meritworthy.

6. Be that as it may, it was imperative also for the petitioner, to disclose tangible evidence in display, that he is not possessed of adequate financial resources, and that hence he is disabled, to comply with the modified default bail conditions, as became imposed upon him, by the learned Additional Sessions Judge concerned, as a pre-condition for his availing the benefit of default bail. Prima facie lack of financial empowerment, would also become the relevant factor, in concluding that the conditions imposed are exploitative, oppressive and harsh, and, completely negate the effect, if any, of the indulgence of default bail, as becomes granted to the petitioner.

7. In the above context, the learned counsel appearing for the petitioner on instructions meted to him by the latter, has made a very candid submission, that the impugned modified conditions, as imposed upon the bail petitioner, are oppressive, harsh, and, exploitative, and would ultimately negate the indulgence of default bail, as becomes accorded to him, as he submits that the bail petitioner, is not possessed of financial empowerments in commensuration to the modified impugned bail

conditions, as become imposed upon him, by the learned Additional Sessions Judge, Ludhiana. Believing the aforemade statement at the bar, by the learned counsel for the petitioner, on instructions given to him by the latter, this Court concludes, that if the above impugned modified conditions, imposed upon the bail petitioner, as a pre condition of his availing the indulgence of default bail, are hence for the above reason(s), hence harsh, oppressive and exploitative. Therefore, this Court concludes, that the ill sequel thereof would be, that the personal liberty of the bail petitioner would become completely curtailed, merely on account of his inability to fulfil the harsh, oppressive, and, exploitative bail conditions. Consequently, this Court deems it fit to modify the conditions of default bail.

8. Furthermore during the course of arguments being addressed in this petition, this Court had put to the learned counsel for the petitioner, as to, what reasonable condition can become imposed upon the petitioner, as a pre condition, for his becoming completely benefited from the indulgence of default bail as became accorded to him. The learned counsel for the petitioner, on instructions meted to him by the latter, made a statement at the bar, that the petitioner is ready and willing to furnish personal as well as three surety bonds (of whom two sureties, should be local) comprised in a sum of Rs.10 lakhs each to the satisfaction of the learned trial Magistrate concerned. The above are both reasonable, and, just, and, would make fully efficacious the default bail granted to the petitioner. Obviously hence the other condition(s) as became imposed through the impugned order as made by the learned Additional Sessions Judge, Ludhiana, upon, the petitioner

inasmuch as, his also furnishing FDR/bank guarantee comprising therein a sum of Rs.40 lakhs is quashed, and, set aside.

- 9. Disposed of.
- 10. Pending miscellaneous application(s), if any, stand(s) disposed of.

February 11, 2022
Vijay Asija/gurpreet

(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes