

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

1. CRA-D No.415 of 2021
Date of decision: April 26, 2022
Gursewak Singh
.....Appellant
Versus

State of Punjab
.....Respondent

2. CRA-D No.454 of 2021
Date of decision: April 26, 2022
Gursewak Singh
.....Appellant
Versus

State of Punjab
.....Respondent

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Rajiv Malhotra, Advocate
and Mr. Tarun Kumar Sharma, Advocate
for the appellant.

Ms. Monika Jalota, Deputy Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J.

By this order, we propose to decide two criminal appeals which have been preferred by the appellant, whose application for grant of regular bail under the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAP Act') read with other provisions of the Indian Penal Code, Arms Act and the Prisons Act have been dismissed by the Special Court, where he had pressed his right for grant of bail under Section 167 (2) of the Code of Criminal Procedure (hereinafter referred to as 'the Cr.P.C.').

2. Counsel for the parties have, with mutual consent, addressed their arguments in CRA-D No.415 of 2021 which is being taken into consideration for the purpose of and with regard to the factual assertions.

3. Learned counsel for the appellant has submitted that FIR No.4 dated

the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC'), Section 25 of the Arms Act, Sections 15, 16, 17, 18 and 18-B of UAP Act and Sections 6, 7, 8 of Arms Act (Amended Act 2019) was registered against the appellant upon a secret information received by the Deputy Superintendent of Police, Organized Crime Control Unit, Punjab Police, Amritsar, to the effect that Sikandar Singh son of Inderpal Singh, resident of Village Tharu, District Tarn Taran along with his gang members namely Amritpal Singh, Gursewak Singh and Manoj Thakur @ Kaka Pehalwan are involved and wanted in several murders, robberies, extortion and attempt to murder. They are having relations with the enemy countries and they are planning for the release of gang members Gangadeep Singh @ Juj, Pradeep Singh from the custody of Amritsar police by attacking the police official inside the precincts of Police Station, State Special Operation Cell, Amritsar with their arms and ammunitions.

Appellant was arrested in this case on 05.07.2020 on the basis of the statement of his co-accused Amritpal Singh, who, during interrogation, had along with other co-accused, disclosed that some other accomplice have committed a robbery of 30 kgs gold at Ludhiana from IIFL Private Limited on 17.02.2020, for which FIR No.51 dated 17.02.2021 under Sections 392, 342, 148 and 149 of the IPC and Section 25 of the Arms Act at Police Station Division No.6, Ludhiana, stands already registered. During investigation, offences under Sections 411, 467, 468, 472 and 473 of the IPC and Section 16 of UAP Act and Section 52-A of the Prisons Act, 1894, has been added. Police report/challan under Section 173 Cr.P.C. was filed before the Judicial Magistrate 1st Class, Amritsar, on 11.09.2020 and the same was committed to the Sessions Court, Amritsar, on

01.03.2021.

4. Counsel for the appellant contends that the appellant is not a party to any terrorist organization and has no direct or indirect link with any terrorist organization. Sections 15, 16, 17, 18 and 18-B of UAP Act have also been added without any evidence and without obtaining prerequisite permission from the concerned authority. No specific role has been attributed to the appellant and no recovery is to be made from the appellant. He is not required in any kind of investigation or custodial interrogation as he is in custody since 05.07.2020. On this basis, counsel states that he deserves to be released on bail.

5. Counsel for the appellant has basically asserted that Section 167 (2) of the Cr.P.C. entitles an accused right of bail in default of non-submission of the challan/charge-sheet for the offence mentioned in the FIR within the statutory period of 90 days unless extended on an application by the prosecution for a further period of 90 days as approved by the competent Court but in any case, once 180 days also are exhausted without filing of the challan/charge-sheet, an indefeasible fundamental right of release on bail accrues to an accused. His contention is that as per the provisions of Section 2 (1) (d) of the UAP Act as well as the National Investigation Agency Act, 2008 (hereinafter referred to as 'NIA Act'), a Court is a designated Special Court to try offences under these Acts. Once the challan/charge-sheet has not been submitted to the Special Court, the same is not a challan in the eyes of law and on expiry of the period of 90 days, the appellant would be entitled to the benefit of Section 167 (2) of Cr.P.C. i.e. default bail.

His further contention is that in any case, a charge-sheet which

has been submitted before the Judicial Magistrate 1st Class on 11.09.2020 being without appropriate sanction from the competent authority as mandated under the statute i.e. UAP Act, the said charge-sheet has no value in the eyes of law. He contends that as per the provisions of the UAP Act, prior approval from the competent authority for investigation of an offence is mandatory and as per the provisions of Section 45 of the UAP Act, the Courts cannot take cognizance of certain offences under the said Act without the previous sanction of the competent Government. For the said purposes, counsel has referred to Section 45 of the above referred to Act. Explaining the reason with regard to the prescription of the time period in Section 45 of the UAP Act, the purpose is to cut short the time of unnecessary and unwarranted custody of the accused. In case the said period is not adhered to, the accused would be granted the benefit of the said provisions. On this basis, he asserts that the specified period for submission of the challan and that too with the prior sanction of the competent authority is sacrosanct.

6. Referring to Section 6 of the NIA Act, he contends that the scheduled offences are to be dealt with by the Special Court as provided under Section 2 (1) (h). Special Court, as defined, means a Special Court constituted under Section 11 or as the case may be under Section 22. All offences contained in the schedule have to be investigated by the National Investigating Agency only which is specifically designated agency for this purpose under the Act. Referring to Section 13 of the NIA Act, his contention is that the Special Court within whose local jurisdiction, the offence is committed, is the competent Court which has jurisdiction to try the scheduled offence. His submission is that as per Section 18 of the NIA

Act, previous sanction of the Central Government is necessary for prosecution of the offences. On this basis, he contends that on submission of challan/charge-sheet under Section 173 Cr.P.C. before the competent Court and that too without the sanction of the competent Government i.e. the Central Government, such report as submitted is no report in the eyes of law entitling the appellant the benefit of the provisions of mandatory bail as provided under Section 167 (2) Cr.P.C. He on this basis contends that the appellant is entitled to the benefit of the provisions of Section 167 (2) Cr.P.C. i.e. mandatory default bail and the impugned order dated 29.07.2021 as passed by the Special Court, Amritsar, on the basis that the challan has been presented despite the fact that the appellant had already put forth his claim for the grant of default bail under Section 167 (2) Cr.P.C., cannot sustain and deserves to be set aside. Counsel for the appellant has placed reliance upon the judgment of the Supreme Court in ***Bikramjit Singh Versus The State of Punjab 2020 (4) R.C.R. (CrL) 713, Division Bench judgment of this Court in Satish Kumar Versus State of Punjab and another 2021 (3) R.C.R. (CrL) 115 (DB).***

7. On the other hand, learned counsel for the State of Punjab has submitted that as far as the judgments on which reliance has been placed by the counsel for the appellant, there can be no quarrel with the proposition of law as has been laid down therein but she contends that the benefit of those judgment cannot be claimed by the appellant. Her contention is that the benefit of Section 167 (2) Cr.P.C. would be available to a person, who asserts such right as has accrued to such person prior to submission of the challan before the competent Court. Once the challan has been presented to the competent Court and the said Court has taken cognizance thereof

(in this case, the Special Court) and if, it is thereafter that an application under Section 167 (2) Cr.P.C. has been preferred, no such claim of default bail is admissible. She has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Naser Bin Abu Bakar Yafai Versus State of Maharashtra and Anr. Criminal Appeal No.1165 of 2021, decided on 20.10.2021***, in which Bikramjit's case (supra) has also been dealt with. Her submission is that even if all the contentions, as have been raised by the counsel for the appellant, are accepted, then also the right which had accrued to the appellant having not been exercised in time i.e. prior to the submission of the challan/charge-sheet under Section 173 Cr.P.C. with the sanction of the competent Government, the said claim cannot be granted on moving such an application at a belated stage.

8. Referring to the facts of this case, it has been contended that FIR No.4 was registered on 15.03.2020. Thereafter the investigation progressed and persons were arrested and recoveries also effected, which included arms and ammunition, wireless sets (walkie-talkie), Indian and foreign currency, gold and expensive cars etc. On 20.04.2020, recovered arms and ammunition were sent to the Director, Forensic Science Laboratory, S.A.S. Nagar, Punjab, which concluded in its report dated 02.07.2020 that the firearms are in working condition and some are manufactured nationally while others are of international make. On 06.06.2020, an application was filed before the Additional District and Sessions Judge (Special Judge), Amritsar, for extension of 90 days more for investigation under Section 43 (D) of the UAP Act and to submit charge-sheet under Section 173 Cr.P.C., which was sanctioned by the said Court on 15.06.2020.

On 05.07.2020, appellant-Gursewak Singh son of Bakshish Singh was taken in custody on production warrant and one revolver .32 bore along with ten live cartridges were recovered from him in this case. Two other criminal cases have also been registered against Gursewak Singh-appellant i.e. FIR No.51 dated 17.02.2020 under Sections 392, 342, 148, 149 IPC and Section 25 of the Arms Act at Police Station Division No.6, Ludhiana and FIR No.4 dated 12.03.2020 under Sections 379-B, 382, 399, 402 IPC, sub-clause 6, 7, 8 of Section 25, 27, 54, 59 of the Arms Act, Sections 15, 17, 18, 18-B of the UAP Act at Police Station SSOC, S.A.S. Nagar, Punjab. The investigation progressed in this case and it is during this process, it came to light, on the basis of the reports on analysis of the data which was collected by the Intelligence Headquarters, S.A.S. Nagar, Punjab, from the mobile phones recovered, which established relations with anti-national elements abroad of the accused, who were committing unlawful activities and obtaining finance and weapons along with other equipment in order to commit criminal activities through anti-national groups.

With the involvement of the accused in the commission of the bank robbery and the recoveries which were effected in pursuance thereto, the investigation degree of the crime had been increased as Section 25, sub-section 6, 7, 8 Arms (Amendment) Act, 2019 and Section 472, 473 IPC, Section 16 of UAP Act and Section 52-A of the Prisons Act were added. On 28.07.2020, sanction under Section 45 of the UAP Act was sent to the Additional Chief Secretary, Department of Home Affairs and Justice, Government of Punjab, Chandigarh, through the Director, Bureau of Investigation, Punjab, against the arrested persons i.e. Gagandeep Singh @

Gagan Judge, Amritpal Singh Bhullar, Manoj Thakur @ Kaka Pehalwan, Sikander Singh and Gursewak Singh (appellant).

After the completion of investigation to a considerable extent, charge-sheet under Section 173 Cr.P.C. was prepared and presented to the Court of Judicial Magistrate 1st Class (Illaqa Magistrate), Amritsar, on 11.09.2020, before the expiry of the extended period granted by the Special Judge, Amritsar, vide order dated 15.06.2020, which was accepted by the Court. The said case was committed on 15.03.2021 to the Sessions Court and thereafter before the Special Court of Additional Sessions Judge, Amritsar, for further proceedings and trial. It is before this Court that an application under Section 167 (2) Cr.P.C. has been preferred by the applicant on 19.07.2021. It needs to be mentioned here that sanction under the Arms Act was granted on 31.08.2020 by the Additional Chief Secretary, State of Punjab, the competent authority. It would not be out of way to mention here that sanction under Section 45 of the NIA Act received from the Central Government on 31.03.2021 which was received on 06.04.2021 and submitted before the Special Court along with supplementary charge-sheet on 20.04.2021.

9. On the basis of these factual assertions, counsel for the State submits that on the date of filing of the application under Section 167 (2) Cr.P.C., challan with sanction of the competent Government under both the UAP Act as well as the Arms Act was available on the records of the Special Court and, therefore, the benefit of Section 167 (2) Cr.P.C. could not be granted to the appellant and, therefore, prayer has been made for dismissal of the present appeals.

10. We have considered the submissions made by the counsel for

the parties and with their assistance, have gone through the pleadings, statutory provisions as also the judgments passed by the Hon'ble Supreme Court and this Court as cited by the counsel for the parties.

11. The judgments of the Hon'ble Supreme Court on which reliance has been placed by the counsel for the appellant are cases where the accused had exercised his right under Section 167 (2) Cr.P.C. prior to the submission of the challan before the competent authority/Court. The proposition, therefore, as laid down in those judgments cannot be disputed. The basic judgment on which the counsel for the appellant has placed reliance is that of Bikramjit Singh's case (supra), where the Hon'ble Supreme Court had referred to the various judgments which have been passed by the Hon'ble Supreme Court and thereafter proceeded to decide the said case on the basis of the facts and circumstances of the case. What has been concluded by the Hon'ble Supreme Court in the said judgment finds mention in para 28 thereof, which reads as follows:-

“28. XXXX XXXX XXXX
XXXX XXXX XXXX

A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must

be granted.”

This judgment has been referred to in the subsequent judgment passed by the Hon'ble Supreme Court in Naser Bin Abu Bakar Yafai's case (supra), where reference was made to the judgment of a three Judge Bench in ***M. Ravindran Versus The Intelligence Officer, Directorate of Revenue Intelligence 2021 (2) SCC 485***, wherein while dealing with Section 167 (2) Cr.P.C., the Hon'ble Supreme Court had concluded as follows:-

“25. Therefore, in conclusion:

25.1. 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 36-A(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 investigating agency.

25.2. 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.

25.3. 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.

25.4. 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.”

12. These judgments have received approval of the Hon'ble Supreme Court and a perusal thereof would show that an accused is entitled to the benefit of Section 167 (2) Cr.P.C. provided he had applied for default bail and has exercised his right when it accrued to him. In case the accused fails to apply for release on default bail and subsequently a charge-sheet, additional complaint or a report seeking extension of time is submitted in Court, the right of default bail would be extinguished. This obviously mean that the report submitted under Section 173 Cr.P.C. to the competent Court having jurisdiction to try the said offence had proper approval from the competent Government/authority as mandated under the statutory provisions on the date when the application for grant of default bail has been submitted. In this situation, the right which might have been available to an accused earlier would stand extinguished the moment the challan is complete with required sanction(s).

13. In the present case the facts as have been narrated by the counsel for the State which are not in dispute are that although the challan

had been presented on 11.09.2020 along with the sanction under the Arms Act accorded on 31.08.2020 before the Judicial Magistrate 1st Class (Illaqa Magistrate), Amritsar, prior to the expiry of the extended period granted by the Special Court, Amritsar, vide order dated 15.06.2020, with the case ultimately committed on 15.03.2021, sanction for prosecution under UAP Act was granted by the Central Government on 31.03.2021, which was received on 06.04.2021. Supplementary charge-sheet of the sanction which was received under the UAP Act was submitted to the Special Court, Amritsar, on 20.04.2021. The claim, if any, under Section 167 (2) Cr.P.C. could have been submitted by the appellant prior to 20.04.2021. There is nothing on the record which would indicate that the appellant had earlier filed such an application.

14. As a matter of fact, appellant had earlier moved two bail applications but both on merits and not for release on default bail. The first one being filed on 29.04.2020 which was dismissed on 20.05.2020 and the second one on 16.02.2021, which was dismissed on 22.02.2021. Both these applications were bail applications on merits, which were considered and rejected by the Courts. CRM-M No.11615 of 2021 which was preferred by the appellant before this Court was dismissed by the learned Single Judge as withdrawn vide order dated 30.06.2021.

15. The first bail application exercising his right of default bail under Section 167 (2) Cr.P.C. was filed on 19.07.2021 by which time not only the challan/charge-sheet under Section 173 Cr.P.C. was pending before the competent Court i.e. the Special Court, Amritsar, but with proper sanction from the competent authority under the Arms Act as also the UAP Act. The right, therefore, under Section 167 (2) Cr.P.C. of the appellant did

not survive and, therefore, dismissal of the same by the Special Court, Amritsar, vide order dated 29.07.2021 cannot be faulted with.

16. It would be unfair on our part to have not referred to the judgment of the Division Bench of this Court in Satish Kumar's case (supra) on which reliance has been placed by the learned counsel for the appellant, suffice it to say that the said judgment was based upon the facts and circumstances of the said case, where the Court had come to a conclusion that the Court, where the charge-sheet/challan had been filed, was incomplete to try the case and once the right under Section 167 (2) Cr.P.C. had been exercised, the accused was entitled to the benefit of the said Section leading to his enlargement on bail, which in the present case is not the position on facts and, therefore, the benefit of the said judgment cannot be granted to the appellant herein.

17. In view of the above, we do not find any illegality in the order impugned by the appellant and dismiss both these appeals being devoid of merit.

(AUGUSTINE GEORGE MASIH)
JUDGE

April 26, 2022
Puneet

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes