

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31697-2022
Reserved on: 22.07.2022
Date of Decision: 27.07.2022

NITESH

....PETITIONER

Versus

THE STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Abhimanyu Singh, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner is an accused in FIR No.156 of 07.03.2022, registered at Police Station Shivaji Colony, Rohtak, District Rohtak, therein offences constituted under Section 302 read with Section 34 of IPC, and, under Section 25 of Arms Act, are embodied.

2. During the phase of the judicial incarceration of the present petitioner, he moved an application cast under Section 167(2) of Cr.P.C., hence before the learned Committal Court, provisions whereof becomes extracted hereafter, and, therethroughs he claimed the indulgence of his being admitted to default bail.

“Section 167(2) in The Code of Criminal Procedure, 1973.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers

further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.]

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police”

3. The reason as set forth in the application (supra), became

embodied in the factum, that since he became arrested on 11.03.2022, and, became produced by the police officer before the learned Committal Court, on 12.03.2022. However since within the mandatorily enshrined period, in Section 167(2) of the Cr.P.C., hence for the institution of a report, inasmuch as, for the filing of a report under Section 173 of Cr.P.C., before the learned Committal Court, period whereof becomes comprised in a term of 90 days, rather the investigating officer concerned, not instituting a report under Section 173 of Cr.P.C., before the learned Committal Court concerned, as such, he claimed that he becomes entitled to the indulgence of default bail, becoming granted to him.

4. On the petitioner's application (supra), the learned Committal Court, declined relief to the present petitioner, and, therefore, he becomes pained, and, obviously strives for its reversal, through his instituting the instant petition before this Court.

5. Though, the learned Committal Court in making the impugned order, upon the petitioner's application (supra), had made dependence upon a verdict of the Hon'ble Apex Court in case titled as, '**Chaganti Satyanarayan and others Versus State of Andhra Pradesh' reported in 1986 SCR(2) 1128**, and, also upon a decision made by the Hon'ble Apex Court in case titled as '**CBI Versus Anupam J Kulkarni' reported in 1992 SCR(3) 158**. However, though the above made reliances thereons, through may be valid dependence thereons, but yet the learned counsel for the petitioner argues, that yet the impugned order is legally defective.

6. He rests his above submission, on the anvil of the petitioner becoming arrested on 11.03.2022, and, his becoming produced before the

learned Committal Court, by the police officer, on 12.03.2022, hence he submits that, since the commencement of investigations into the petition FIR, are to be construed to take place on the date of his arrest, and, with his becoming arrested on 11.03.2022, besides when rather within 90 days therefrom, the police officer was to, within the ambit of sub-Section 2 of Section 167 of Cr.P.C., cause the filing of a report under Section 173 of Cr.P.C., before the learned Committal Court, which however, he did not. Therefore, he contends that the impugned order, is yet vitiated, and, requires its becoming annulled.

7. Since the petitioner became arrested on 11.03.2022, and, became produced before the jurisdictionally empowered Magistrate, on 12.03.2022, and, when on that date the accused, was remanded to two days of police custody, and, thereafter, upon his being produced on 14.03.2022, the accused was thereafter sent to judicial custody. Therefore, since only upon production of the accused, before the jurisdictionally empowered Court, the latter became empowered to authorize, his detention in police or judicial, thereupon from 14.03.2022, and, upto the date of presentation of challan on 10.06.2022, only a period of 90 days has elapsed. In consequence since prior to 90 days, the challan was presented, and, where upto the learned Magistrate became empowered, to order for the judicial detention of the accused. Therefore, the jurisdictionally empowered Court, became enjoined to commit, the accused to face trial, before the learned Sessions Court concerned, in respect to the petition offences qua wherewith capital punishment or imprisonment for life is contemplated, and, whereafter the committed to Court or the learned Sessions Judge, became empowered, to

order for the further judicial detention of the petitioner.

8. In sequel even if the jurisdictional empowerment of the Committal Court rather ceased, on elapse of 90 days, since his making valid orders for the judicial detention of the petitioner, yet the jurisdiction of the committed to Court or the jurisdiction of the Sessions Court, yet remains alive, and, can never become eclipsed, hence for authorizing the further judicial detention(s) of the petitioner, during the pendency of the trial. The reason for making the above conclusion becomes rested, upon the factum that, the jurisdictional empowerment, as, vested in the learned Committal Court for validly authorizing the detention of the accused lasts only upto the period of 90 days, hence reckonable from the date of initial production before him, of the accused, but the above restricted authorization within, and, upto the above time spell, rather operates only qua the learned trial Judge concerned, or qua the learned Committal Court concerned, and, never operates qua the Committed to Court or the Court of learned Sessions Judge, as in respect of authorizations to make valid detentions beyond 90 days, but during the pendency of trial, conspicuously no explicit restrictions exist in any provision of the Cr.P.C. Therefore, the wants of above explicit provisions in the Cr.P.C., rather are inferable to, confer latitude to the learned committed to Court or the Court of the learned Sessions Judge concerned, to thereafter authorize for the judicial detention of an accused, yet even beyond the period of 90 days but only, during the pendency of trial, but yet the judicial incarceration of the accused during the phase of his trial, can yet become curtailed only through an affirmative order being made, upon an application cast, under Section 439 of the Cr.P.C. However, the

above valid authorized detention of the accused, by the Committal Court, is to be reckonable, only upon the production of the accused, before the learned jurisdictionally empowered Court, as at the end of the spell of 90 days, the Committal Court cannot make any order for the judicial detention of an accused. Contrarily in the instant case, the challan was presented within 90 days, and, thereafter, the accused was committed for facing trial, to the learned Sessions Court, which for reasons hereinabove, has jurisdiction to, during the pendency of the trial hence order for his further judicial detention(s).

9. In making the above conclusion, inasmuch as, the date of production of the accused before the learned Committal Court, hence being the date, and, wherefroms the relevant computations is to be made, this Court, derives vigor, from the factum, that clause (b) of the proviso to sub-Section 2 of Section 167, provisions whereof becomes extracted hereinabove, empower the learned Magistrate concerned, to authorize detentions in police or judicial custody “only upon production of the accused before him/her”, and, otherwise not. Importantly hence when the above judicial empowerment to order for detentions of the accused, is exercisable only, upon the production by the police of the accused, before the learned Magistrate concerned. Therefore, the date of arrest of the accused by the police, does not become, the relevant date for making the relevant computation, as then the accused is never produced before the jurisdictionally empowered Committal Court concerned, rather becomes produced, within 24 hours since his becoming arrested. Since the accused became produced before the learned Magistrate on 12.03.2022, and, when

the authorized spell of his custody, rather did not end on 10.06.2022, but ended on the subsequent date. Therefore, when the claim for default bail would be well constituted, when the challan is presented beyond 90 days, but since as above stated, the challan became presented within 90 days, and/or, on the 90th day, as commencing from the date of production of the accused before the jurisdictionally empowered Magistrate.

10. In consequence, there is no merit in the petition, and, the same is dismissed. The impugned order is upheld, and, maintained.

(SURESHWAR THAKUR)
JUDGE

27.07.2022

Ithlesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No