

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRA-D-14-2023 (O & M)

Reserved on: 30.11.2023

Pronounced on: 05.12.2023

NATIONAL INVESTIGATION AGENCY

.....Petitioner

Versus

GURWINDER SINGH @ BABA

....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
 HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. S.S.Sandhu, Advocate
 for the appellant.

Mr. Navkiran Singh, Advocate
 for the respondent.

SURESHWAR THAKUR, J.

1. The National Investigation Agency becomes aggrieved from an order made on 05.12.2022, by the learned Special Judge, NIA, Punjab, SAS Nagar, Mohali, whereby in terms of the provisions as carried in Section 167 (2) of the Cr.P.C. read with Section 43 D under the Unlawful Activities (Prevention) Act, (hereinafter for short called as the 'UAPA Act'), the learned Special Judge concerned, proceeded to enlarge the respondent herein, on default bail.

2. The reason which becomes assigned by the learned Special Judge concerned, to assign the benefit of the above provisions, to the

respondent herein, ensued from the factum, that the respondent herein, became arrested on 25.08.2022, and, given the filing of a charge sheet against him, thus on 16.12.2021, but during the phase of his absconding, thereupon despite 90 days lapsing from the date of his arrest (supra), neither any regular charge-sheet nor any supplementary charge-sheet becoming filed against him. Resultantly, it was concluded that thereby the respondent concerned herein became entitled to claim the benefit of default bail as envisaged under Section 167 (2) of the Cr.P.C.

3. Furthermore, since the investigating agency, had filed a third supplementary challan against him on 16.12.2021, showing him, as an absconder, whereafters' also the investigating agency was making further investigation(s) against him, yet when such further investigation(s) remained incomplete. Resultantly, it was concluded that since 90 days elapsed since his becoming arrested and the said further investigation(s) rather remained incomplete. Therefore, also the benefit of the default bail became granted to the respondent herein.

4. The legal conundrum, which is to be answered, by this Court, appertains to whether in the face of an absconding accused, as the respondent herein was, especially when the charge-sheet became filed during the phase his absconding, thus naming him to also commit an offence under the 'UAPA Act'. Consequently, whether the date of filing of the said charge-sheet against the absconding respondent, is to be taken to be the relevant period, thus for computing whether therefrom the period of 90 days is to be reckoned, but irrespective of the accused becoming arrested on 25.08.2022, besides further

investigations being underway, and, not becoming concluded within 90

days from his arrest.

5. Further, it has also to be determined, whether the filing of supplementary challan, besides the lack of completion of further investigation(s) into the petition FIR, did tantamount to there being, no necessity of the present respondent-accused being remanded, beyond the permissible period of 90 days in judicial custody, rather his in terms of the provisions of Sub Section (2) of Section 167 Cr.P.C., becoming entitled to be as such released on default bail. The provisions (supra) are extracted hereinafter.

"(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;

6. The answer to the above legal conundrum, is straightway provided, by a judgment made by the Hon'ble Apex Court rendered in case titled as '**Dinesh Dalmia Vs. C.B.I.**, reported in **2007(4) R.C.R. (Criminal) 282**. The relevant expostulations as made therein which, do provide, an answer against the private respondent, are carried in paragraphs No.7, 9, 22, 28 and 29 thereof, paras whereof, are extracted hereinafter.

7. Appellant, on expiry of 60 days from the date of his arrest, filed an application for statutory bail purported to be in terms of the proviso appended to Sub-section (2) of Section 167 of the Code on the premise that no further charge sheet in respect of the investigation under Sub-section (8) of Section 173 of the Code has been filed. When the said application was pending consideration, the CBI sought for his remand in judicial custody under Sub-section (2) of Section 309 thereof.

The said application for statutory bail was rejected by the learned Magistrate opining:

"Because, in this case, the petitioner was arrested on the basis of Non-bailable warrant issued by this court, after taking cognizance of the offences in charge sheet. Further, the respondent side has clearly stated that before further investigation commenced on 14.2.2006, the petitioner was remanded to police custody, hence he was in the custody of the court since his arrest on 12.2.2006. Therefore, after expiry of the police custody, the petitioner should be remanded to judicial custody u/s 309(2) Cr. P.C. and not u/s 167(2) Cr.P.C. However, in this case, by mistake, provision of law under which the petitioner was remanded to judicial custody was mentioned as Section 167(2) Cr.P.C. in the

remand report. In fact for remanding an accused in custody against whom charge sheet has already been filed and an application for remand is not required. Hence this court is inclined to state that the petitioner was remanded to police custody u/s 167(2)Cr.P.C. and thereafter was remanded to judicial custody u/s 309Cr.P.C."

The learned Magistrate further took note of the fact that two other cases have been registered against him by the Calcutta Police.

9. The CBI moved the High Court thereagainst. Its application was registered as Crl. R.C. No. 1173 of 2006. The decision of the learned Sessions Judge was over-turned by the High Court by reason of the impugned judgment stating:

"Because of this interpretation the learned Magistrate is empowered to give "Police custody". Once police custody is completed the accused reverts back to judicial custody of post cognizance stage. Even if further investigation continues as far as such accused are concerned scope of section 167 comes to an end. "Subject to fulfillment of the requirement and the limitation of Section 167" only refers to the investigation during "police custody" especially when an accused is in remand under Section 167. When further investigation keeping him in police custody during post cognizance stage is completed, the remand of an accused is only governed under Section 309 Cr.P.C. Under such circumstances, invoking of proviso to section 167 and demand for a benevolent provision is inapplicable to such accused.

27. The object of enactment of such proviso in Section 167Cr. P.C. is to have control over a lethargic, delayed investigation, especially keeping a person in custody. It is a specific direction to the police to collect material without any delay. If sufficient incriminating materials are not collected against the accused with the crime alleged. It safeguards the interest of such accused person. If materials are collected and reported to the Magistrate within the period stipulated by filing charge sheet, then the scope of proviso to section 167 extinguishes and an accused can claim bail only on merit.

28. In the instant case most of the materials have been collected. The materials to connect the accused with the crime is already available. Final conclusion also was reached and charge sheet filed. However, custodial interrogation of the accused felt necessary. Such interrogation entrusting him in

police custody was done between 12.02.2006 and 27.02.2006 cognizance of the case was taken much earlier on 25.10.2005. Only for custodial interrogation he was entrusted under Section 167 to the CBI. Section 167Cr.P.C. can be invoked only for such purpose in a post cognizance case. Otherwise a remand must be made only under Section 309Cr.P.C. If a wrong provision is quoted for further remand under Section 167Cr.P.C. instead of 309 one cannot claim the benefit of a benevolent proviso to section 167. Proviso to section 167 is available only to safeguard an innocent person or a person against whom no materials collected in spite of detaining him for 60/90 days. In the instant case abundant materials have been already collected and final report filed. Two years after the cognizance he was apprehended. He was entrusted with police custody only for custodial interrogation. Further investigation may be pending to comply with other formalities. There may be delay to receive opinion from experts and such delay cannot be taken advantage of by invoking the proviso to section 167Cr.P.C."

22. *The power of a court to direct remand of an accused either in terms of Sub-section (2) of Section 167 of the Code or Sub-section (2) of Section 309 thereof will depend on the stages of the trial. Whereas Sub-section (2) of Section 167 of the Code would be attracted in a case where cognizance has not been taken, Sub-section (2) of Section 309 of the Code would be attracted only after cognizance has been taken.*

28. *It is a well-settled principle of interpretation of statute that it is to be read in its entirety. Construction of a statute should be made in a manner so as to give effect to all the provisions thereof. Remand of an accused is contemplated by the Parliament at two stages; pre-cognizance and post cognizance. Even in the same case depending upon the nature of charge sheet filed by the investigating officer in terms of Section 173 of the Code, a cognizance may be taken as against the person against whom an offence is said to have been made out and against whom no such offence has been made out even when investigation is pending. So long a charge sheet is not filed within the meaning of Sub-section (2) of Section 173 of the Code, investigation remains pending. It, however, does not preclude an investigating officer, as noticed hereinbefore, to carry on further investigation despite filing of a police report, in terms of Sub-section (8) of Section 173 of the Code.*

29. The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under Sub-section (2) of Section 173 and further investigation contemplated under Sub-section (8) thereof. Whereas only when a charge sheet is not filed and investigation is kept pending, benefit of proviso appended to Sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of Sub-section (8) of Section 173 of the Code.”

7. A reading of the above extracted paragraphs, do imminently reveal, that the filing of a charge-sheet, even against an absconding accused, does thereby tantamount to the investigation(s), in respect of the relevant FIR, thus becoming concluded, but it is also expostulated therein that thereby, the investigating officer concerned, is not precluded, to carry further investigation(s), thus in terms of Sub Section (8) of Section 173 of the Cr.P.C.

8. As a sequel to the above made conclusions, it became ultimately concluded in paragraph No. 29, of the verdict (supra), that only, when a charge-sheet is not filed, and the investigation(s), are pending, thereupon, only the benefit of the proviso appended, to Sub Section (2) of Section 167 Cr.P.C., thus would be available to an offender, but when a charge-sheet is filed rather the said right ceases.

9. Furthermore, it is also expostulated therein, that the said right, does not revive only because further investigation(s) remain pending, thus within the meaning of Sub Section (8) of Section 173 of the Cr.P.C.

10. The result of the above made expostulations, in verdict (supra) rendered by the Hon'ble Apex Court, insofar as they relate, to the facts of the instant case, are that since on 16.12.2021, a charge-

sheet became filed against the absconding accused, thus the availment of the statutory privilege of further investigation(s), by the investigating officer, did not enable the private respondent concerned, to claim the benefit of default bail, as contemplated in Section 167 (2) Cr.P.C., nor the learned trial Judge concerned, was thereby well enabled to grant, the said statutory benefit to the private respondent.

11. Furthermore, the date of the filing of the charge-sheet i.e. 16.12.2021, thus is the relevant date for computing, whether the private respondent, is entitled to become endowed with the benefit of default bail rather in terms of Section 167(2) Cr.P.C., irrespective of his remaining under absconsion.

12. Moreover, when he became arrested on 25.08.2022. Consequently, when the investigation(s) were closed on the filing of a charge-sheet against the absconding respondent. Therefore, from the said date, the period of 90 days is to be counted but irrespective of the accused being arrested subsequently, given his earlier to his becoming arrested, rather remaining under absconsion.

13. Moreover, the availment of any statutory privilege by the investigating officer concerned, thus to carry further investigation(s), did not confer, upon the private respondent, any privilege, that thereby the investigation(s), had not ceased nor could he claim a benefit, that thereby there was revival of the investigation(s).

14. In consequence, for all the reasons (supra), the respondent herein was not entitled to become conferred with the benefit of default bail nor also the learned trial Judge, became endowed with any jurisdictional competence, to release the present respondent, through

his making the impugned order.

Final Order by this Court

15. In aftermath, this Court finds merit in the appeal and the same is allowed. The impugned order dated 05.12.2022 is quashed and set aside.

16. The personal bonds furnished by the accused/respondent **Gurwinder Singh @ Baba** are hereby cancelled. The accused/respondent be arrested and be sent to judicial custody.

(SURESHWAR THAKUR)
JUDGE

05.12.2023

kavneet singh

(SUDEEPTI SHARMA)
JUDGE

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