

CRR-98-2022 (O&M)

2023:PHHC:077484

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

CRR-98-2022 (O&M)

Date of decision : 22.05.2023

Baljit Singh @ Bina

.....Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Vipin Mahajan, Advocate for the petitioner

Mr.MS Nagra, AAG, Punjab

AMAN CHAUDHARY, J.

1. This is a revision filed against the order dated 16.11.2021, passed by Ld. Special Judge, Gurdaspur, vide which application filed by the petitioner to release him on default bail as per provisions of Section 167(2) Cr.P.C. for non-completion of investigation by the investigating agency and non presentation of challan within the stipulated period has been dismissed.

2. Learned counsel for the petitioners have apprised this Court of the issue that was pending before Hon'ble The Supreme Court to have been decided in their favour, as the day of remand has been held not to be excluded.

3. Learned State counsel is unable to controvert the aforesaid fact.

4. Heard.

5. This Court had passed the following order on 06.09.2022:

“This is a revision filed against the order dated 16.11.2021, passed by Ld. Special Judge, Gurdaspur, vide which application filed by the petitioner to release him on default bail as per provisions of Section 167(2)

Cr.P.C. for noncompletion of investigation by the investigating agency and non presentation of challan within the stipulated period has been dismissed.

On 14.01.2022, the contention of the learned counsel of the petitioner was noticed and the following order was passed:-

“Learned counsel for the petitioner submits that petitioner was arrested on 18th May, 2021, he was produced before the Magistrate on 19th May, 2021, therefore, the date is to be considered as 19th May, 2021. It is contended that 180 days were completed on 14.11.2021 and no application for extension of time was moved till 14.11.2021.

Mr. Sandeep Kumar, DAG, Punjab appearing on advance seeks time to have instructions.

List on 25th February, 2022.”

On 05.07.2022, following order was passed:- “Learned State counsel seeks time to address arguments on the issue that if 180th day is Sunday, whether the challan can be presented on the following day in other words, whether General Clauses Act would be applicable? Adjourned to 6th September, 2022.” In compliance to the aforesaid order, the learned counsel for the petitioner has taken this Court through a judgment of the Hon’ble Supreme Court of India in the case of “**Chaganti Satyanarayana and others Versus State of A.P. (SC) 1987(1) R.C.R. (Criminal) 40**”, to submit that the General Clauses Act would not be applicable for calculating the days in case the 180th day fell on a Sunday and the relevant para of the same is as under:-

“28. In these decisions, even though a contrary view has been taken we find the conclusions are not based on the reasoning taken by us. In Rajoo alias Raj Kishore Singh's case (No. 10) it has been held that the words used in the proviso are "a total period not exceeding 60 days" and not "within 60 days" and hence the Legislature has intended to provide a clear 60 days for purposes of investigation. In Raj Kumar's case (No. 11) it has been held that the day of arrest is not to be included for calculating the total period but there is no discussion. In Batna Ram's case (No. 12) it has been laid down that Section 57 should be given full effect to and as such a Magistrate is entitled to grant police custody for a total period of 15 days without taking into consideration the period of custody from the time of arrest till the time of production before a Magistrate. In Jagdish's case (No. 13) it has been held that the date of arrest is to be excluded in computing the total period of detention by application of Section 9 of the General Clauses Act and by bearing in mind Section 12 of the Limitation Act. In Sureya

Reddy's case (No. 14) the view taken is that Section 10 of the General Clauses Act would be attracted for interpreting the proviso if the last day happens to be a Sunday or holiday and even otherwise the principle enunciated therein should be invoked on considerations of justice and expediency. In that case the 90th day from the date of arrest happened to be a Sunday and hence the Court was of the view that Section 10 of the General Clauses Act would be attracted.

29. Some of the decisions cited on either side have been rendered prior to the amendment of proviso (a) by Act 45 of 1978 and some have been rendered after the amendment. Mr. Ram Reddy sought to make a distinction of the earlier decisions by contending that they ceased to have relevance because of the amendment to proviso (a) making it an independent paragraph all by itself. Since we have held that in whichever way proviso (a) is construed i.e. with reference to Section 167(2) or without reference to it the periods of 90 days and 60 days prescribed by the Legislature can be reckoned only from the date of remand the distinction sought to be made between the decisions rendered prior to Amendment Act 45 of 1978 and subsequent to it does not have much of significance.

30. As the terms of proviso (a) with reference to the total periods of detention can be interpreted on the plain language of the proviso itself we do not think it is necessary to invoke the provisions of the General Clauses Act or seek guidance from the Limitation Act to construe the terms of the proviso.”

Learned counsel for the petitioner further relies upon the aforesaid judgment in the case to also contend that he was entitled to default bail as the first day of remand has to be also included while computing 180 days. In this regard, learned counsel contends that in his case, the petitioner was arrested on 18.05.2021, the date on which the FIR was registered and the petitioner was apprehended at the spot. Learned counsel further submits that he was produced before the Ld. Magistrate on 19.05.2021 on which he was taken to judicial remand. He was sent to judicial custody on 20.05.2021. According to the learned counsel for the petitioner, 180 days were completed on 14.11.2021, pursuant to which an application was preferred by the petitioner at 12.30 PM on 15.11.2021, seeking default bail, wherein notice was issued. It is also stated by the learned counsel for the petitioner that the Public Prosecutor as well as Investigating Officer filed the separate applications at 4.30 PM on 15.11.2021 for extension of time to complete the investigation. The application filed by the petitioner was dismissed by the Judge, Special Court, Gurdaspur,

on 16.11.2021 on the solitary premise that the first date of the remand is to be excluded while computing the period of 180 days and permitted to complete investigation and file the challan.

Learned counsel for the petitioner relies upon the aforesaid judgment to submit that the first day of the remand could not be excluded as has been held by the Hon'ble Apex Court. He, however, fairly states that in the subsequent judgments, in case of *Madhya Pradesh Vs. Rustam and others*, 1995(Supp) 3 SCC 221, *Ravi Prakash Singh Vs. State of Bihar*, (2015) 8 SCC 340 and *M. Ravindran Vs. Intelligence Officer, Director of Revenue Intelligence*, (2020) SCC OnLine SC 867, it was held by the Hon'ble Supreme Court of India that the date of remand was to be excluded for computing the permitted period of completion of investigation. It is further submitted by the learned counsel that the judgment relied upon by him was not brought to the notice of the Hon'ble Supreme Court of India while the aforesaid cases were considered.

Learned counsel for the petitioner refers to an order passed by the Hon'ble Supreme Court of India dated 23.02.2021 wherein both the divergent views have been noticed and the matter has been referred to Larger Bench, which is pending before the Hon'ble Supreme Court of India. The relevant para of the aforesaid order is as under:-

“8.Since the earlier position of law was not considered and the latest decision is of a 3 judges bench, it is necessary for a bench of appropriate strength to settle the law taking note of the earlier precedents. Unless the issue is appropriately determined, the courts across the country may take decision on the issue depending upon which judgment is brought to the Court's notice or on the Courts own understanding of law, covering default bail under Section 167(2) (a) II of Cr.P.C.”

Learned counsel for the petitioner has made reference to an order dated 18.11.2021 passed by a Co-ordinate Bench of this Court, which reads as under:-

“On request of learned counsel for the petitioner, list on 20.04.2022, to await the decision of the Hon'ble Supreme Court.

In the meantime, the petitioner is directed to be released on interim bail, subject to his furnishing bail/surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned.”

Learned counsel for the petitioner further refers to an order passed by a Co-ordinate Bench of this Court dated

02.09.2022 wherein this Court has allowed the default bail under Section 167(2) Cr.P.C. by relying upon the orders passed by this Court. The same is as under:-

“Two aspects are to be seen in the present case. Firstly, in case the date of 06.02.2021 is to be counted in the period of 180 days, then indefeasible right accrued in favour of the petitioner immediately on the expiry of 180 days ie. on 05.08.2021 and when he filed application on 05.08.2021 his rights were to be protected and he was entitled for the grant of default bail, even though on the next day the application for extension of time was allowed. The second aspect is that even when the extension of time was allowed and was extended only till 06.10.2021 but as per the learned counsel for the State till the aforesaid date ie. 06.10.2021 FSL Report was not filed and it was filed on 10.11.2021 and in this way, even by ignoring the earlier aspect the petitioner would be entitled for the grant of default bail in view of the second aspect and on 06.10.2021 also he was entitled for grant of default bail.”

Notice of motion.

At the asking of the Court, Mr. Kamalpreet Bawa, AAG, Punjab, accepts notice, who also submits that he had already appeared on 14.01.2022 on the advance notice having been received.

Learned State counsel is unable to dispute the factum of passing of the orders of this Court and submits that he is unable to find any order contrary to the aforesaid orders. He, however, submits that issue is pending before the Hon'ble Supreme Court of India.

In view of the order passed by the Co-ordinate Bench dated 18.11.2021, the petitioner is directed to be released on interim bail subject to the decision of the Hon'ble Supreme Court of India.

Adjourned to 30.11.2022.

In the meantime, the petitioner is directed to be released on interim bail, subject to his furnishing bail/surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned.”

6. The issue involved in the present case has since been settled by Hon'ble The Supreme Court in the case of **Enforcement Directorate, Government of India vs. Kapil Wadhawan and another**, Criminal Appeal Nos. 701-702 of 2020, decided on 27.03.2023. The relevant para of which reads thus:

“50. ...We therefore declare that the stipulated 60/90 day remand period under Section 167 CrPC ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period, as we notice will extend beyond the permitted 60 /90 days’ period resulting in unauthorized detention beyond the period envisaged under Section 167 CrPC. In cases where the chargesheet/final report is filed on or after the 61st/91st day, the accused in our considered opinion would be entitled to default bail. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused.”

7. In view of the above, the order dated 16.11.2021 is hereby set aside. Accordingly, the interim bail granted to the petitioner vide the order dated 06.09.2022 is made absolute subject to furnishing fresh bail/ surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate, concerned.

8. The present petition is disposed of.

22.05.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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