

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

CRM-M-5993-2023

Date of Decision: 27.02.2023

Tej Parkash Singh

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Bhanu Partap Singh, Advocate for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

Prayer in this petition is for grant of regular bail under Section 439 Cr.P.C.; and also default bail under Section 167(2) Cr.P.C. & Section 43-D of Unlawful Activities (Prevention) Act, 1967 [in short 'UAP Act'] in a case arising out of FIR No.972 dated 23.12.2020 registered at Police Station Sadar, Karnal under Sections 10 & 13 of UAP Act, Section 25 of Arms Act & Section 120-B of the Indian Penal Code.

2. Petitioner was arrested in above case on 23.12.2020. Report under Section 173(2) Cr.P.C. was filed to prosecute the petitioner and co-accused on 02.03.2021. However, said investigation report was filed without sanction required under Section 45 of the UAP Act, 1967. Charges were framed by the Trial Court on 03.10.2022 and trial has commenced but sanction requisite under Section 45 of the Act is still awaited, as per the status report filed by the respondent – State.

3. Contention of the petitioner is that no Court can take cognizance of any offence under Chapter III of the UAP Act without

previous sanction of the Central Government. Chapter III also includes Section 10 & 13 of the Act, under which petitioner is sought to be prosecuted and since the sanction has not been obtained till date despite lapse of more than 180 days, so he has become entitled to default bail under Section 167(2) Cr.P.C. read with Section 43-D of UAP Act. Learned counsel has relied on ***Fakhrey Alam Vs. State of Uttar Pradesh in Criminal Appeal No.319 of 2021 (arising out of SLP (crl.) No.6181 of 2020)*** passed by Hon'ble Supreme Court on 15.03.2021.

4. Learned State counsel opposes the plea for default bail considering the nature of allegations but conceded that sanction has not been granted under Section 45 of the UAP Act till date. Learned State counsel referred to ***Durganand Thakur Vs. State of Haryana, CRM-M-25900-2021*** passed by co-ordinate Bench of this High Court on 17.09.2021.

5. Having considered submissions of both the sides and having perused the record, I find that petition deserves to succeed.

6. In ***Fakhrey Alam's*** case (*supra*), petitioner had been arrested on 08.03.2017. Final report under Section 173(2) Cr.P.C. was filed on 04.09.2017 without the sanction under Section 45 of UAP Act. Supplementary challan under Section 173(8) Cr.P.C. was filed on 05.10.2017 after obtaining sanction. Thus, the said supplementary challan had been filed beyond 180 days from the date of arrest of the petitioner. It was in the background of these facts that Hon'ble Supreme Court considered as to whether the petitioner was entitled to default bail. Hon'ble Supreme Court held as under:

“If we look at the scenario in the present case in that conspectus, the

charge sheet under the provisions of law as originally filed on 04.09.2017 were required to be filed within 90 days but was actually filed within 180 days. This was on the premise of the charge under Section 18 of the UAP Act. However, no charge sheet was filed even within 180 days under the UAP Act, but post filing of the application for default bail, it was filed after 211 days. Thus, undoubtedly the period of 180 days to file the charge sheet qua UAP Act had elapsed. We do not think that the State can take advantage of the fact that in one case there is one charge sheet and supplementary charge sheets are used to extend the time period in this manner by seeking to file the supplementary charge sheet qua the offences under the UAP Act even beyond the period specified under [Section 167](#) of the Cr.P.C beyond which default bail will be admissible, i.e, the period of 180 days. That period having expired and the charge sheet not having been filed qua those offences (albeit a supplementary charge sheet), we are of the view the appellant would be entitled to default bail in the aforesaid facts and circumstances.

*We need only emphasize what is already observed in **Bikramjit Singh case (supra)** that default bail under first proviso of [Section 167\(2\)](#) of the Cr.P.C. is a fundamental right and not merely a statutory right as it is, a procedure established by law under [Article 21](#) of the Constitution. Thus a fundamental right is granted to an accused person to be released on bail once the conditions of the first proviso to [Section 167\(2\)](#) of the Cr.P.C. are fulfilled.*

In fact in the majority judgment of this Court it has been held that an oral application for grant of default bail would suffice [See. [Rakesh Kumar Paul vs. State of Assam](#)]. The consequences of the UAP Act are drastic in punishment and in that context, it has been held not to be a mere statutory right but part of the procedure established by law under [Article 21](#) of the Constitution of India.

We are thus of the view that the impugned order(s) are liable to be set aside. The appellant is entitled to default bail under [Section 167\(2\)](#) of the Cr.P.C. in the given facts of the case on the terms and conditions to the satisfaction of the trial Court.”

7. The facts of the present case are even on better footing

comparing to Fakhrey Alam's case. In the *Fakhrey Alam's case (supra)* before Hon'ble Supreme Court, supplementary challan after obtaining sanction had been filed beyond 180 days. In the present case, though the petitioner was arrested on 23.12.2020 i.e. more than two years back but sanction is still awaited. As per the reply filed by the respondent-State, a letter was sent to Additional Chief Secretary, Government of Haryana but sanction is still awaited and as soon as the same is received, supplementary challan shall be filed. Thus, sanction having not been obtained till date, petitioner has become entitled to default bail under Section 167(2) Cr.P.C.

8. Similar view in the same factual position was taken by a co-ordinate Bench of this High Court in *CRM-M-2245-2022 titled as Jaspreet Singh Alias Noopi Versus State of Punjab decided on 09.05.2022*.

9. As far as *Durganand Thakur Versus State of Haryana (supra)* cited by Learned State counsel is concerned, the allegations involved therein were not under UAP Act. The facts of that case are quite distinguishable and so, this authority is not applicable to this case.

10. Consequent to the aforesaid discussion, the present petition is hereby allowed. Petitioner is ordered to be released from judicial custody on his furnishing personal bonds and surety bonds in the sum of ₹2,00,000/- each before Learned Trial Court concerned and also subject to the conditions that he shall surrender his passport before the trial court; shall not tamper with the prosecution evidence; will not make any attempt to influence any prosecution witnesses and shall continue to appear before the Trial Court concerned, as and when directed unless his personal appearance is

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specifically exempted on any particular date. Trial court will be at liberty to impose other reasonable conditions and may also get the documents to be furnished with the bonds verified, before accepting the bonds.

Disposed of.

February 27, 2023

Neetika Tuteja

**(DEEPAK GUPTA)
JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No