

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

CRA-D No.160 2022

Date of Decision.05.07.2023

Amritpal Singh @ Amrit and another

...Appellants

Vs

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

HON'BLE MR. JUSTICE SANJIV BERRY

Present: Mr. M.S. Rana, Advocate
for the appellants.

Mr. R.S. Pandher, DAG, Punjab.

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JAISHREE THAKUR J. (ORAL)

1. The instant appeal has been filed by the appellants herein under Section 21 of the National Investigation Act, 2008 challenging the order dated 02.02.2022 passed by the Additional Sessions Judge, Amritsar whereby their application for grant of default bail under Section 167 (2) of the Criminal Procedure Code, 1973 read with Section 43 (D) of the Unlawful Activities (Prevention) Act (hereinafter referred to as UAPA Act) in FIR No.187 dated 16.08.2021 registered under Section 25, 27 of the Arms Act (Sections 3, 4 and 5 of the Explosive Substances Act and 13, 16, 18 and 20 of the UAPA Act added later on) registered at Police Station Gharinda, Amritsar, Punjab has been dismissed.

2. Learned counsel appearing for the appellants would submit that the appellants are entitled for default bail under Section 167 (2) Cr.P.C. on the ground that though the prosecution has submitted the report under Section 173 Cr.P.C., the same *sans* sanctions under Sections 45 of UAPA Act, Section 39 of

the Arms Act and Section 7 of Explosive Substances Act. Sanctions under Section 39 of the Arms Act and under Section 7 of the Explosive Substances Act have been obtained on 06.10.2022 and supplementary challan with respect to offences under UAPA Act after getting sanction from the Home Department has been submitted on 16.11.2022 i.e. after filing of the appeal before this Court and therefore, the trial Court ought to have allowed default bail to the appellants. In support of his argument, he relies upon the judgment passed by the Hon'ble Supreme Court in ***Fakhrey Alam Vs. State of Uttar Pradesh 2021 (2) SCJ 584*** wherein the Hon'ble Supreme Court had granted default bail to the accused under Section 167 Cr.P.C. in a case where the charge-sheet had been submitted after 211 days i.e. after the stipulated period of 180 days. Reliance has also been placed upon the judgment passed by the Hon'ble Supreme Court in ***M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence (2021) 2 SCC 485*** to contend that once accused files application for bail under Section 167 (2) Cr.P.C., he is deemed to have enforced his right to be released on default bail and the said right cannot be defeated merely because the prosecution files charge sheet prior to furnishing of bail. It is also argued that default bail under first proviso of Section 167 (2) 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 and therefore, the appellants are entitled for default bail.

3. Per contra, learned counsel appearing for the respondent-State would submit that filing of charge-sheet is sufficient compliance of Section 167 Cr.P.C. and the accused cannot claim any indefeasible right of being released on default bail under Section 167 (2) Cr.P.C. on the ground that cognizance not taken before expiry of statutory time period to file charge-sheet. In support of his argument, he relies upon the judgment passed by the Hon'ble Supreme Court in ***Judgebir***

Singh @ Jasbir Singh Samra @ Jasbir & others Vs. National Investigation Agency 2023 (3) RCR (Criminal) 334.

4. We have heard learned counsel for the parties and have perused the paper book as well as the case laws cited with their assistance.

5. The argument raised by the counsel appearing for the appellants that the report submitted under Section 173 (2) of Cr.P.C. was bereft of sanctions, which were mandated to be obtained under Sections 45 of UAPA Act, Section 39 of the Arms Act and Section 7 of Explosive Substances Act is not sustainable, in view of the judgment passed by the Hon'ble Supreme Court in ***Judgebir Singh's case*** (supra) wherein the Hon'ble Supreme Court has held as under:-

“63. Thus, we answer Issue No.1 holding that filing of chargesheet is sufficient compliance with the provisions of Section 167 of CrPC, 1973 and that an accused cannot claim any indefeasible right of being released on statutory/default bail under Section 167(2) of the CrPC, 1973 on the ground that cognizance has not been taken before the expiry of the statutory time period to file the chargesheet. We once again, reiterate what this Court said in Suresh Kumar Bhikamchand Jain (supra) that grant of sanction is nowhere contemplated under Section 167 of the CrPC, 1973.”

6. In view of the law laid down by the Hon'ble Supreme Court, charge-sheet filed under Section 173 Cr.P.C. without valid sanctions cannot be said to be an incomplete charge-sheet or no charge sheet in the eyes of law to give an indefeasible right to the accused to be released on statutory/default bail under Section 167 (2) Cr.P.C. Therefore, we do not find any error in the order dated 02.02.2022 passed by the Additional Sessions Judge, Amritsar declining default

bail to the appellants under Section 167 (2) Cr.P.C. Consequently, the instant appeal stands dismissed. Misc. application, if any, also stands disposed of.

(JAISHREE THAKUR)
JUDGE

(SANJIV BERRY)
JUDGE

July 05, 2023
Pankaj*

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