

CRM-M-18282-2021

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(216)

CRM-M-18282-2021

DATE OF DECISION:- 14.09.2023

JAGTAR SINGH @ HAWARA

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Bhanu Pratap Singh, Advocate for the petitioner.

Mr. Anup Singh, DAG, Punjab for the State-respondent.

SUVIR SEHGAL, J. (Oral)

1. By way of instant petition, petitioner has approached this Court seeking his release on default bail in FIR No.144 dated 15.06.2005, lodged under Section 3, 4 and 5 of Explosive Substances Act, 1908 and Section 25 of the Arms Act, 1959 at Police Station Sadar SAS Nagar, Mohali, Annexure P-1.

2. Counsel for the petitioner submits that petitioner was named as an accused in FIR, Annexure P-1, and as he was already in custody in Tihar Jail, Delhi, he was arrested on 05.11.2020 through video conference. Counsel urges that as the prosecution failed to conclude the investigation and present the challan within the period stipulated in Section 167 (2) (a) (i), Cr.P.C., petitioner filed an application seeking his release on statutory bail on 03.02.2021 at 12:40 P.M. but the Investigating Agency presented the challan five minutes later. Counsel submits that an indefeasible right

accrued to the petitioner for release on statutory bail, but his application has been illegally declined by the learned Judicial Magistrate vide order dated 03.02.2021, Annexure P-3, which has been upheld by the revisional court by order dated 08.02.2021, Annexure P-4. By placing reliance upon the judgment of the Supreme Court in *Enforcement Directorate, Government of India Versus Kapil Wadhawan and another 2021 SCC OnLine SC 3136*, counsel contends that both the impugned orders deserve to be set aside and the petitioner deserves to be released on bail.

3. Petition has been contested by the respondent-State by filing of short reply and a status report, which is taken on record, wherein it has been argued that the petitioner has a chequered past and is involved in twenty five criminal cases involving grave offences. It has been further submitted that some of the co-accused in FIR, Annexure P-1, have been convicted and the prosecution possesses unimpeachable material to establish that petitioner had supplied arms and explosives to them. Still further, it has been asserted that the investigation has been completed and challan has been presented within the specified period, therefore, the orders passed by the Courts below are justified.

4. I have heard counsel for the parties and considered the submissions made by them.

5. There is no dispute about the factual position. Arrest of the petitioner took place, though through the medium of video conferencing on 05.11.2020 due to outbreak of Covid-19. Application seeking compulsive bail was presented on 03.02.2021 at 12:40 P.M. and challan also has been presented on the same day though at 12:45 P.M., which according to the State is the 90th day, after excluding the date of arrest. The moot question that arises for consideration is whether the date of arrest of the petitioner is

to be included or excluded for computing the period of 90 days prescribed under Section 167 (2) (a) (i), Cr.P.C.. This question has been answered by the Hon’ble Supreme Court in *Chaganti Satyanarayana and others Versus State of Andhra Pradesh (1986) 3 SCC 141*, wherein it has been held as under:-

“25. Thus in any view of the matter i.e. construing proviso (a) either in conjunction with sub-section (2) of Section 167 or as an independent paragraph, we find that the total period of 90 days under clause (i) and the total period of 60 days under clause (ii) has to be calculated only from the date of remand and not from the date of arrest.”

6. The judgment in *Kapil Wadhawan’s* case (supra) relied upon by counsel for the petitioner will not help him as the issue involved was whether the date of remand is to be included for considering the claim for release on default bail. The view taken by the Supreme Court in *Chaganti’s* case (supra) has been approved by the three Judges Bench in *Kapil Wadhawan’s* case.

7. In view of the above settled legal position, there is no merit in the instant petition and it is hereby dismissed.

8. Nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case and the Trial Court shall proceed and conclude the trial on the basis of the evidence adduced before.

(SUVIR SEHGAL)
JUDGE

14.09.2023
Kamal

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No