

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

238 (II)

CRR-819-2022 (O&M)

Date of decision: 22.05.2023

Puneet Malik @ Kappy

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Arjunveer Sharma, Advocate
for the petitioner

Mr. M.S. Nagra, AAG Punjab

AMAN CHAUDHARY. J.

1. Challenge in this revision petition is to an order dated 15.03.2022 passed by the Judge Special Court, Ludhiana, whereby the application filed by the petitioner under Section 167 (2) Cr.P.C. was dismissed.
2. Learned counsel for the petitioner has 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 21.10.2022:

“Challenge in this revision petition is to an order dated 15.03.2022 passed by the Judge Special Court, Ludhiana, whereby the application filed by the petitioner under Section 167 (2) Cr.P.C. was dismissed.

Learned Senior counsel has contended that an application was filed by the petitioner under Section 167(2) Cr.P.C. on 14.03.2022 on the 181st day from the date of remand, whereafter on the same very day the final report under Section 173 Cr.P.C. was presented. It is his further submission that the factum of the said report having been filed subsequent

to the aforesaid application of the petitioner, is a fact admitted between the parties, as is mentioned in para 3 of the impugned order, as also in para 3 of the preliminary submissions of the reply to the present petition filed by the State. He submits that the dismissal of the application of the petitioner is by wrongly computing the 180th day, reference in this regard is made to para 3 of the impugned order dated 15.3.2022, which reads thus:

“3. But in this case the challan was presented on 14.3.2021 though subsequent to the bail application but the question arises for consideration is that the period of 180 days has to be counted from date of arrest or date of remand? And whether the period of 180 days has already elapsed from the relevant date. In judgment Gautam P. Navlakha Vs. National Investigation Agency, Criminal Appeal Stamp No.1707 of 202 decided on 8.2.2021 it was observed that The Hon’ble Apex Court in the case of Chganti Satyanarayan and others (supra) held that the period of 90 days will commence only from the date of remand and not from any anterior date inspite of the fact that the accused may have been taken into custody earlier by a police officer and deprived of his liberty. So as per the settled law that the period of 180 days has to be counted from the date of remand and not from the date of arrest. Here in the present case, the applicant was arrested on 14.9.2021 and the accused was remanded to police custody on 15.9.2021 and the challan was presented on 14.3.2022 i.e. on 180th day as admittedly the accused was remanded to police custody on 15.9.2021. So while calculating the total period of 180 days from the date of remand, it is found that the Investigating Agency has presented the challan on 180th day after the date of remanding the applicant to custody. Consequently, the bail application is dismissed being premature. Papers be attached with main file.”

Learned Senior counsel submits that the issue involved in the present case has been referred to the Larger Bench vide order dated 23.2.2021, passed by Hon'ble the Supreme Court of India in **Criminal Appeal Nos.701- 702 of 2020** titled as **Enforcement Directorate, Government of India vs. Kapil Wadhawan and another**. A specific reference in this regard is made to paras 8 and 9 thereof.

He further relies on order dated 2.9.2022, passed by this Court in CRR 986-2021 titled as **Sanjay vs. State of Haryana**, allowing the application for grant of default bail under Section 167(2) Cr.P.C. by relying on the order dated 23.2.2022 passed by Hon’ble the Supreme Court of India in the case of **Kapil Wadhawan and another** (supra) and orders dated 06.09.2022 in CRR-998-2022, titled as **Baljit Singh @ Bina vs. State of**

Punjab and dated 18.11.2021 in CRR-1363-2021 titled as **Lovish Dhiman @ Gaurav vs. State of Punjab**, granting interim bail to the petitioners, subject to the decision of Hon'ble the Supreme Court of India.

With regard to order dated 28.4.2022 passed in this case, the learned Senior counsel submits that the non-filing of the final report on 180th day, on account of it being a Sunday, the right vests in favour of the accused for default bail, as Section 10 of the General Clauses Act would not be applicable, as has been held in **Ajit Singh Vs. State of Punjab**, 1994 (2) RCR (Criminal) 279 (P&H), **Powell Nawawa Ogechi Vs. State**, 1987 (1) RCR (Criminal) 35 (DH), **Alamkhan Umarkhan Jatmalek Jenjari Tal Vs. State of Gujarat**, Special Criminal Application (Default Bail) No.5243 of 2014 (Guj), **SK. Raju @ Raju Vs. State of Odisha**, CRLMC No.1 of 2020 (Orissa), CRMP-465 of 2021, **Vinay Dubey and another Vs. State of Chhattisgarh** (Chh) and **K.Muthuirul vs. The Inspector of Police**, CrI.OP (D) No.18273 of 2021 (Mad).

He further stresses that as per settled law the right under Section 167 (2) Cr.PC is indefeasible.

Learned State counsel on the other hand makes a reference to para 3 of the preliminary submissions of his reply to state that since the petitioner was arrested on 14.09.2021 and produced before the Court on 15.09.2021 and the final report was presented on 14.03.2021, the period from 15.09.2021 i.e. when cognizance was taken by the Court till 14.03.2021 comes to 180 days. Thus the final report was presented on 180 th day, it is thus his submission that the order passed by the Judge Special Court dismissing the application is valid and requires no interference.

Submissions of learned counsel for the parties have been heard.

It is apposite to refer to the order dated 23.2.2021, passed by Hon'ble the Supreme Court of India in **Criminal Appeal Nos.701-702 of 2020 titled as Enforcement Directorate, Government of India vs. Kapil Wadhawan and another**, which reads thus:-

3. The core issue that arises for consideration is whether while computing the period of 90 days or 60 days as contemplated in Section 167 (2)(a)(ii) of the CrPC, the day of remand is to be included or excluded, for considering a claim for default bail.

4. The moot question has been considered by this Court in various matters, but there is divergence of opinion on how the period available for completing the investigation is to be computed. Some judgements have favoured the exclusion of date of remand, while few

other cases have taken a contrary view.

5. The appellants rely inter alia on the line of reasoning in State of M.P. Vs. Rustom & Ors¹, Ravi Prakash Singh Vs. State of Bihar² and M. Ravindran Vs. Intelligence Officer, Director of Revenue Intelligence³ where it was held that the date of remand is to be excluded for computing the permitted period for completion of investigation.

(1 1995 (Supp) 3 SCC 221, 2 (2015) 8 SCC 340, 3 (2020) SCC OnLine SC 867)

6. On the other hand, the Respondents seek to rely inter alia on Chaganti Satyanarayan Vs. State of Andhra Pradesh⁴, CBI Vs. Anupam J Kulkarni⁵, State Vs. Mohd. Ashraft Bhat⁶, State of Maharashtra Vs. Bharati Chandmal Varma⁷, and Pragyna Singh Thakur Vs. State of Maharashtra⁸ to contend that the date of remand must be included for computing the available period for investigation for determining entitlement to default bail.

(4. (1986) 3 SCC 141, 5 (1992) 3 SCC 141, 6. (1996) 1 SCC 432, 8. (2011) 10 SCC 445)

7. Because of the conflicting view on the proposition of law for grant of default bail, a judicial conundrum has arisen which is required to be resolved for guidance of the Court. In Chaganti⁹, the Court examined the legislative intent for expeditious conclusion of investigation and the consequences of the failure of the prosecution to conclude investigation within the permitted period. However, the ratio in Chaganti¹⁰ and also in Mhd. Ashraft Bhat¹¹ was not brought to the notice of the 3 judges bench in M Ravindran¹² and the Court took a contrary view in declaring that the date of remand is to be excluded for computing the period of investigation, to facilitate the claim of default bail by an accused.

(9. Supra note 4, 10 Ibid, 11. Supra note 6, 12. Supra note 3)

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 the law, covering default bail under Section 167 (2)(a) II of CrPC.

9. In the above circumstances, we feel it appropriate to refer the above-mentioned issue to a larger Bench of this

Court for an authoritative pronouncement to quell this conflict of views as the same shall enable the Courts to apply the law uniformly.

10. Accordingly, we direct the Registry to place all the relevant documents before the Hon'ble Chief Justice for constituting a bench of at least 3 judges to resolve the conflict in law on the issue of grant of default bail.

11. In the meantime, as the respondents are praying for benefit of the High Court's bail order, which was stayed on 3.9.2020, this matter be placed before a bench of 3 judges on a near date, for consideration of the interim prayer for the respondents."

In the case of **Sanjay** (supra), this Court vide order dated 2.9.2022, has allowed the default bail under Section 167(2) Cr.P.C. relying on judgment of Hon'ble the Supreme Court of India in the case **Kapil Wadhawa and another** (supra), which reads thus:-

"Admittedly, the petitioner was produced for the first time before the Court on 06.02.2021. So far as the counting of the period of 180 days is concerned and as to whether the date on which the accused is produced for the first time before the Court is to be excluded or not, there had been conflicting judgments of the Hon'ble Supreme Court and now in Enforcement Directorate, Government of India Versus Kapil Wadhawan and another, Criminal Appeal No.701-702 of 2020, decided on 23.02.2021 by virtue of two Judges Bench order of the Hon'ble Supreme Court the matter has been referred to a larger Bench in view of the conflict of law as aforesaid.

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 i.e. 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 i.e. 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.

In view of the aforesaid position, the impugned order

dated 06.08.2021 passed by the learned Additional Sessions Judge, Hisar is hereby set aside. The petitioner is entitled to a Statutory right of default bail under Section 167(2) of the Code of Criminal Procedure. The petitioner shall be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.”

In the case of **Lovish Dhiman @ Gaurav** (supra), this Court vide order dated 18.11.2021 has granted interim bail, which reads thus:-

“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.”

In the case of **Baljit Singh @ Bina** (supra), this Court granted interim bail vide order dated 6.9.2022, which reads thus:-

“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.”

Learned State counsel is unable to controvert the fact that the issue as involved in the present case stands referred to the Larger Bench of Hon'ble the Supreme Court of India and also the orders passed by this Court, as referred to above.

Though, the dismissal of the application by the Judge Special Court was not on ground of 180th day, being a Sunday, however, still keeping in view the order dated 28.04.2022 passed by this Court, the judgments referred to in this regard on behalf of the petitioner, in the cases of **Ajit Singh, Powell Nawawa Ogechi, Alamkhan Umarkhan Jatmalek Jenjari Tal , SK. Raju @ Raju and Vinay Dubey and another (supra)**, are found to squarely cover the said issue.

Resultantly, in view of the observations made in the order dated 23.2.2021 passed by Hon'ble the Supreme Court of India in the case of **Kapil Wadhawan (supra)** and the orders passed by this Court in the afore-referred cases of **Lovish Dhiman @ Gaurav, Sanjay and Baljit Singh @ Bina**

(supra), the petitioner is, subject to the decision of Hon’ble the Supreme Court of India, ordered to be released on interim bail to the satisfaction of CJM/ Duty Magistrate concerned.
Adjourned to 30.11.2022.”

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 15.03.2022 is hereby set aside. Accordingly, the interim bail granted to the petitioner vide order dated 21.10.2022 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.

(AMAN CHAUDHARY)
JUDGE

May 22, 2023
M.Kamra/gsv

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