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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1091-2023 (O&M)
DECIDED ON: 27.04.2023

KARTIK @ KAI @ KAYE

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Pushp Jain, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

CRM-18776-2023

Application is allowed as prayed for.

Annexures P-1 to P-3 are taken on record with just exceptions.

CRR-1091-2023

Learned counsel for the petitioner has assailed the order dated 13.02.2023, passed by Sub Divisional Judicial Magistrate, Sultanpur Lodhi, District Jalandhar, whereby the application for grant of default bail under Section 167(2) of Cr.P.C., has been declined.

Learned counsel for the petitioner asserted that in fact the petitioner was arrested on 13.11.2022 and was produced before the Illaqa Magistrate on 14.11.2022. Since the investigation was not completed and challan was not filed till 13.02.2023, an application for grant of default bail was moved before the Sub Divisional Judicial Magistrate, Sultanpur Lodhi.

Learned counsel for the petitioner has drawn attention of this Court to the impugned order, whereby the fact with regard to the expiry of 90 days period has not been correctly appreciated by the Court below, while dismissing the application for bail under Section 167(2) of Cr.P.C., as is evident from the report submitted by Naib Court namely Major Singh dated 13.02.2023 itself (Annexure P-2) clarifying the fact that till 10.00 A.M., the challan has not been filed till that date and the Investigating Officer was busy

in some other Court. Thereafter, the challan was filed in the Court during the day. It is however evident from an order dated 24.03.2023 (Annexure P-3), the said challan seems to be prima facie presented in a hasty manner, which was found to be incomplete by Sub-Divisional Judicial Magistrate, Sultanpur, Lodhi, as recorded in the order itself and the same was returned for making necessary corrections to the concerned Station House Officer.

Notice of motion.

On the asking of Court, Mr. Rajiv Verma, DAG, Punjab accepts notice on behalf of respondent-State, who made a candid submission that the challan was filed on 13.02.2023 in morning, which is well within the time as stipulated in the statute i.e., 90 days. As far as the contention made by learned State counsel, it is also again a mis-calculation of days, as the period of 90 days stands expired on 12.02.2023 itself. Therefore, this argument is of no help to the State.

This Court is fully convinced with the assertions made by counsel for the petitioner, particularly in the light of the fact that though, the challan was filed on 13.02.2023, but still there was a delay of one day in filing the challan. Section 167(2) of Cr.P.C., reads as under:-

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence

punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

Therefore, further perusal of the order dated 24.03.2023, leaves no doubt to the mind of this Court that in fact no challan has been filed till date, as the same was incomplete and has been returned to make necessary corrections. It is a case, wherein the investigation is complete, but the challan has not been presented to the Court technically and legally.

In the light of the above, petition is accepted and the petitioner is directed to be released on bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

(SANDEEP MOUDGIL)
JUDGE

27.04.2023
Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>