

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-21583-2023

Reserved on: 05.09.2023

Pronounced on: 12.09.2023

Bharat Kumar

. . . . Petitioner

Vs.

State of Haryana

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Ms. Himani Anand, Advocate, for
Mr. Rakesh Nehra, Sr. Advocate, for the petitioner.

Mr. Vipul Sherwal, AAG, Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioner has prayed to set aside/modify order dated 22.03.2023 passed by Id. Additional Sessions Judge, Jhajjar, whereby petitioner has been granted interim bail till filing of challan & the FSL report on an application under Section 167(2) CrPC for grant of default bail, in a case arising out of FIR No.420 dated 06.09.2022 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [for short 'the NDPS Act'] registered at Police Station Bahadurgarh, Jhajjar. Further prayer is made to grant regular default bail to the petitioner.

2. As per prosecution allegations, 21.54 gms of MDMA (methylenedioxymethamphetamine), was recovered from the possession of petitioner-Bharat Kumar on 06.09.2022 by a police party on the basis of secret information. The same was taken into possession after completion of necessary statutory compliances. Petitioner was arrested on the same day.

As investigating agency failed to file the report under Section 173(2) CrPC within 90 days, extendable upto 180 days, the petitioner applied for default bail under Section 167(2) CrPC after spending 196 days in judicial custody.

3. Ld. ASJ, Jhajjar vide impugned order dated 22.03.2023, allowed the application to the extent that petitioner was admitted to interim bail till the FSL report was presented to the Court along with the challan.

4. (i) Aggrieved by the aforesaid order, this petition is filed. It is contended by ld. counsel that Section 167(2) CrPC does not envisage any interim bail till presentation of the challan and that in case the prosecution fails to file the final report/challan under Section 173 CrPC within the prescribed period, accused has a statutory right to be released from the custody.

(ii) Ld. counsel has referred to a decision of Hon'ble Supreme Court rendered in ***"M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence"*** (2021) 2 SCC 485, wherein it was held as under:

"11. Before we proceed to expand upon the parameters of the right to default bail under Section 167(2) as interpreted by various decisions of this Court, we find it pertinent to note the observations made by this Court in Uday Mohanlal Acharya on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows:—

"13...Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the

Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution.”

11.1 Article 21 of the Constitution of India provides that “no person shall be deprived of his life or personal liberty except according to procedure established by law”. It has been settled by a Constitution Bench of this Court in Maneka Gandhi v. Union of India, (1978) 1 SCC 248, that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2), CrPC and the safeguard of ‘default bail’ contained in the Proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law.”

(iii) Ld. counsel further referred to another decision of Hon’ble Supreme Court rendered in ***Uday Mohanlal Acharya Vs. State of Maharashtra, 2001 (2) RCR (Criminal) 452***, wherein it was held that if charge sheet is not filed within the period stipulated in Section 167(2) CrPC and the accused files bail application and offers to furnish bail, he is said to have availed the indefeasible right of being released on bail and this right shall not be defeated by subsequent presentation of the charge-sheet during pendency of the bail application.

(iv) With these submissions, prayer is made for modifying the impugned order of Id. ASJ, Jhajjar and to grant regular default bail to the petitioner.

5. Opposing the petition, Id. State counsel contends that after receiving the FSL report on 16.03.2023, confirming the detection of *methamphetamine* in the recovered substance, challan has already been prepared on 08.04.2023 and shall be filed soon in the Court. Ld. State counsel contends further that after filing of the challan, the default bail like any other regular bail, can be canceled. He has relied upon a decision of

Hon'ble Supreme Court rendered in *"The State through Central Bureau of Investigation Vs. T. Gangi Reddy @ Yerra Gangi Reddy"*, 2003(1) RCR (Criminal) 873.

6. I have considered submission of both the sides and have appraised the record.

7. There can be no doubt to the settled legal proposition that if the investigating agency fails to file the final report/challan/charge-sheet within the prescribed period, the accused gets an indefeasible right to grant of default bail under Section 167(2) CrPC. The said right cannot be defeated even if, subsequent to the moving of the application seeking default bail, the charge-sheet has been filed by the investigating agency. However, the question is as to till when the tenure of the said default bail will extend; or whether the said default bail cannot be canceled in any circumstances.

8. In the case of *The State through Central Bureau of Investigation (Supra)*, Hon'ble Supreme Court considered the same issue. The question posed for consideration before Hon'ble Supreme Court, as mentioned in para No.8 of the judgment, is as under:

"8. Having heard the learned counsel appearing for the respective parties, the short question, which is posed for the consideration of this Court is whether the bail granted under the proviso to subsection (2) of Section 167 Cr.P.C. for failure to complete the investigation within the period prescribed therein can be canceled after the presentation of a charge-sheet and if the said question is answered in affirmative, then, on what grounds and circumstances, the bail can be canceled?"

8. Hon'ble Supreme Court then observed: -

*“8.1 At the outset, it is required to be noted and it cannot be disputed that when an accused is released on default bail under proviso to sub- section (2) of Section 167 Cr.P.C., he is released on furnishing the bail bond by him on the failure of the investigating agency to complete the investigation and file the charge-sheet within the stipulated time mentioned therein. The proviso to sub- section (2) of Section 167 fixes the outer limit within which the investigation must be completed and if the same is not completed within the period prescribed therein, the accused has a right to be released on bail if he is prepared to and does furnish bail. Considering proviso to Section 167(2) Cr.P.C., it cannot be disputed that a person released on bail (default bail) is deemed to be released under provisions of Chapter XXXIII of the Cr.P.C., which includes Section 437 and 439 also. The object and purpose of proviso to Section 167(2) Cr.P.C. is to impress upon the need for expeditious investigation within the prescribed time limit and to prevent laxity in that behalf. The object is to inculcate a sense of its urgency and on default the Magistrate shall release the accused if he is ready and does furnish bail. **Thus, it cannot be said that order of release on bail under proviso to Section 167(2) Cr.P.C. is an order on merits. An accused is released on bail under proviso to Section 167(2) Cr.P.C. on the failure of the prosecuting agency. Therefore, the deeming fiction under Section 167(2) Cr.P.C. cannot be interpreted to the length of converting the order of bail not on merits as if passed on merits. Keeping in view the above, the issue involved in the present appeal is required to be considered.***

9. After considering catena of authorities, Hon’ble Supreme Court concluded as under: -

“10. From the above, the law, which emerges is that mere filing of the charge-sheet subsequent to a person is released on default bail under Section 167(2) Cr.P.C. cannot be a ground to cancel the bail of a person, who is released on default bail. However, on filing of the charge-sheet on conclusion of the investigation, if a strong case is made out and on merits, it is found that he has committed a non-bailable offence/crime, on the special

reasons/grounds and considering Section 437(5) and Section 439(2) Cr.P.C, over and above other grounds on which the bail to a person, who is released on bail can be canceled on merits.

11. Therefore, there is no absolute bar as observed and held by the High Court in the impugned judgment and order that once a person is released on default bail under Section 167(2) Cr.P.C., his bail cannot be canceled on merits and his bail can be canceled on other general grounds like tampering with the evidence/witnesses; not cooperating with the investigating agency and/or not cooperating with the concerned Trial Court etc.

12. As such, we are in complete agreement with the view taken by this Court in the aforesaid decisions. The submission on behalf of the respondent – original Accused No. 1 and the view taken by the High Court in the impugned judgment and order that once an accused is released on default bail under Section 167(2) Cr.P.C., his bail cannot be canceled on merits is accepted, in that case, it will be giving a premium to the lethargic and/or negligence, may be in a given case of deliberate attempt on the part of the investigating agency not to file the charge-sheet within the prescribed time period. In a given case, even if the accused has committed a very serious offence, may be under the NDPS or even committed murder(s), still however, he manages through a convenient investigating officer and he manages not to file the charge-sheet within the prescribed time limit mentioned under Section 167(2) Cr.P.C. and got released on default bail, it may lead to giving a premium to illegality and/or dishonesty. As observed herein above, such release of the accused on default bail is not on merits at all, and is on the eventuality occurring in proviso to sub-section (2) of Section 167. However, subsequently on curing the defects and filing the charge-sheet, though a strong case is made out that an accused has committed the very serious offence and non-bailable crime, the Court cannot cancel the bail and commit the person into custody and not to consider the gravity of the offence committed by the accused, the Courts will be loathe for such an interpretation, as that would frustrate the justice. The Courts have the power to cancel the bail and to examine the merits of the case in a case

where the accused is released on default bail and released not on merits earlier. Such an interpretation would be in furtherance to the administration of justice.

13. *Xxxxx*

The issue involved in the present appeal is answered in the affirmative and it is observed and held that in a case where an accused is released on default bail under Section 167(2) Cr.P.C., and thereafter on filing of the charge-sheet, a strong case is made out and on special reasons being made out from the charge-sheet that the accused has committed a non-bailable crime and considering the grounds set out in Sections 437(5) and Section 439(2), his bail can be canceled on merits and the Courts are not precluded from considering the application for cancellation of the bail on merits. However, mere filing of the charge-sheet is not enough, but as observed and held herein above, on the basis of the charge-sheet, a strong case is to be made out that the accused has committed non-bailable crime and he deserves to be in custody.”

10. It is clear from the legal position expounded by Hon’ble Supreme Court as above that though merely on filing of the charge-sheet, a default bail granted under Section 167(2) CrPC cannot be canceled, but if on the basis of the charge-sheet, a strong case is made out and on special reasons being made out from the charge-sheet that the accused has committed a non-bailable crime and considering the grounds set out in Section 437(5) and Section 439(2) CrPC, then his bail can be canceled on merits and that Courts are not precluded from considering the application for cancellation of bail on merits.

11. Having regard to the legal position as above, impugned order dated 22.03.2023 (Annexure P1) passed by Id. ASJ, Jhajjar, is modified to the extent that though the petitioner is admitted to default bail under Section 167(2) Cr.PC, but said bail can be canceled in case prosecution is able to

make out a strong case and show special reasons that accused has committed a non-bailable crime and by considering the grounds set out under Sections 437(5) and Section 439(2) Cr.PC. However, it is made clear that merely filing the FSL report along with the challan in itself will not be considered a reason for cancelling the default bail.

Present petition is disposed of accordingly.

12.09.2023
Vivek

(DEEPAK GUPTA)
JUDGE

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |