

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-24735-2023  
DECIDED ON: 24.08.2023

SUKHDEEP KAUR  
.....PETITIONER  
  
VERSUS  
  
STATE OF PUNJAB  
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Harinder Pal Singh Ishar, Advocate  
for the petitioner.  
  
Mr. Rajiv Verma, DAG Punjab.  
  
Mr. Mohit Jaggi, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been preferred under Section 482 Cr.P.C., for setting aside the order dated 23.03.2023 (Annexure P-2) as well as order dated 10.04.2023 (Annexure P-3) passed by the JMIC as well as Additional Sessions Judge, SAS Nagar in FIR No.60 dated 16.08.2017, under Sections 406, 419, 420, 465, 467, 468, 471, 120-B of IPC, registered at Police Station Naya Gaon, District SAS Nagar Mohali, while rejecting the application under Section 167(2) Cr.P.C., on the premise that the date of taking the petitioner in custody is to be excluded while counting the 90 days period for completion of investigation.
2. The attention of this Court has been drawn to the order dated 10.04.2023 passed by the Additional Sessions Judge, SAS Nagar, who has considered the judgment of Apex Court rendered in *Enforcement Directorate, Government of India vs. Kapil Wadhwan and another*, Criminal Appeal No.701-702 of 2020 decided on 27.03.2023, wherein after considering all the previous

*“50. Since there exists vacuum in the application and details of section 167 CrPC, 1973 we have opted for an interpretation which advances the cause of personal liberty. The accused herein were remanded on 14.05.2020 and as such, the chargesheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on 13.07.2020 which was the 61st day of their custody. Therefore, the right to default bail accrued to the accused persons on 13.07.2020 at 12:00 AM, midnight, onwards. On that very day, the accused filed their default bail applications at 8:53 AM. The ED filed the chargesheet, later in the day, at 11:15 AM. Thus, the default bail Applications were filed well before the chargesheet. In Ravindran(supra) and Bikramjit (supra), which followed the Constitution Bench in Sanjay Dutt(supra) it was rightly held that if the accused persons avail their indefeasible right to default bail before the chargesheet/final report is filed, then such right would not stand frustrated or extinguished by any such subsequent filing. We therefore declare that the stipulated 60/90 day remand period under section 167 CrPC, 1973 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 Cr.PC, 1973. 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.*

*51. Following the above discussion and opinion, the impugned order of the High Court granting default bail to the respondents by applying the proviso (a) (ii) of section 167(2) Cr.PC, 1973 is found to be in order. Hence, we uphold the impugned judgment dated 20.08.2020 passed by the learned Single Judge of the Bombay High Court. Any other pending issues arising from these appeals are to be addressed by an appropriate Bench of this Court.”*

3. Learned counsel for the petitioner contends that the trial Court as well as the Revisional Court below has misread the proposition of law and on that premise dismissed the application observing that the judgment of the Apex Court is

23.03.2023, which is prior to the date i.e., 27.03.2023, the date on which the Apex Court has passed the judgment and thus the trial Court has passed the impugned order after considering the prevailing law on that day i.e., 23.03.2023 and any subsequent change in law through the aforesaid judgment of Apex Court cannot be taken into consideration.

4. This Court in the context of Section 167(2) would read the provisions of Cr.P.C., as well as the judgment rendered by the Apex Court in ***Enforcement Directorate, Government of India (Supra)***, wherein question of default bail is inextricably linked to personal liberty and Article 21 of the Constitution of India. The right to personal liberty is directly related to the inalienable right towards human dignity and personhood. The concept of dignity is central to our Constitutional law discourse. In fact, the Preamble itself, provides the guarantee of upholding the dignity of the individual and the scheme envisaged that all human rights including the right to personal liberty, are specifications of one special fundamental right- that is the right to have one's personal dignity respected.

5. In the light of discussions made hereinabove and the judgment of the Apex Court rendered in the case of ***Enforcement Directorate, Government of India (Supra)***, this petition is allowed and orders dated 23.03.2023 (Annexure P-2) as well as 10.04.2023 (Annexure P-3) passed by the JMIC as well as Additional Sessions Judge, SAS Nagar are set aside.

6. The petitioner is directed to released on default bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

(SANDEEP MOUDGIL)  
JUDGE

24.08.2023

Meenu

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