

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

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CRR-1452-2023 (O&M)  
Date of decision: 24.08.2023

Charanjit Singh @ Nikka

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**  
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Present: Mr. Sandeep K. Yadav, Advocate for the petitioner.

Mr. HS Sullar, Sr. DAG, Punjab.  
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**AMAN CHAUDHARY, J.**

1. Challenge in the present case is against the order dated 12.05.2023, passed by the Ld. Judge, Special Court, Kapurthala, whereby application filed by the petitioner for grant of regular bail under Section 167(2) Cr.P.C was dismissed, in case FIR No.301 dated 03.11.2022 under Section 15 of the NDPS Act (Sections 29, 61 and 85 of the NDPS Act added later on), registered at Police Station Sultanpur Lodhi, District Kapurthala.
2. Learned counsel contends that though an application for extension by prosecution was filed prior on 28.04.2023, i.e. prior to 04.05.2023, on which 180 days were going to come to an end, on the ground that FSL was awaited. Notice in the said application was issued to the petitioner for 12.05.2023. The application seeking default bail was also filed on 04.05.2023, wherein also notice was issued for 12.05.2023, as both were to be heard together. In the meantime, since, the challan was presented, the application filed by the petitioner was dismissed as having

been rendered infructuous. He relies on **Hitender Vishnu Thakur vs. State of Maharashtra**, 1994(3) RCR (CrI.) 156, **M.Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence**, 2021(2) SCC 485, **Ranjit Singh @ Rana vs. State of Haryana**, CRR No.2087-2014, decided on 08.02.2017, **Raju Singh vs. State of Punjab** 2020(2) RCR (CrI.) 609, and **Baltej Singh @ Chiri vs. State of Haryana** 2019(4) RCR (Criminal) 744 to contend that even if the challan is presented, the right under Section 167(2) CrPC is not defeated and in case on the relevant date, the time is not extended, the accused is entitled to the benefit of the aforesaid provision. Challan stands presented on 09.05.2023, charges have not been framed as of now and in total there are 11 witnesses. Though the petitioner is involved in two more cases, however, in one case, he is on bail and in other, he has undergone the sentence.

3. Learned State counsel opposing the petition submits that commercial quantity of contraband is recovered from the petitioner. The application for seeking extension of time was filed well within time and the challan was presented before the application for extension and that filed by petitioner were listed. The Public Prosecutor in his report had given valid reasons, sufficient enough for seeking extension of time for completing investigation, which was non-receipt of the FSL report, necessary for it to bring home the guilt of the accused. He would therefore submit that the application of the petitioners under Section 167(2) CrPC had been rightly declined.

4. Heard.

5. Before proceeding further, it is apposite to make a reference to **Ranjit Singh @ Rana** (supra) wherein vide order dated 11.09.2014, the matter was referred to a Larger Bench, wherein amongst other issues, two questions as relevant to the present case were answered by the Division Bench of this Court vide order dated 08.11.2016, on the basis of which final order dated 08.02.2017 was passed. The same reads thus:

“i. Whether the petitioner has an indefeasible right to be released on bail on the expiry of period of 60 or 90 or 180 days as the case may be;

xx xx xx

iv. Whether the application moved by the prosecution can be extended as a matter of right or after seeing the reasons and circumstances of each case.

xx xx xx

Question no.(i), pertaining to an indefeasible right to an accused to be released on bail on the expiry of the period of 60/90/180 days, was answered as follows:-

“In the background of the above decisions laid down by the Hon'ble Supreme court, we hold that a statutory right accrued to the accused in terms of Section 167(2) of the Code read with Section 36A(4) of the Act becomes completely indefeasible so long as no extension of the period fixed thereunder was sought for and granted by the Court and no final report was laid down by the investigating agency.”

xx xx xx

The 4th question, on whether the application moved by the prosecution can be extended as a matter of right, or only after seeking the reasons and circumstances of the each case, was answered as follows:-

“Therefore, we hold that there is no automatic extension of the period of investigation on mere filing a report by the Public Prosecutor. It could be extended only after weighing the merit of the report disclosing the progress of investigation and the necessity to extend the period of detention.”

6. Hon'ble The Supreme Court in **M. Ravindran** (supra) had observed that, “Once the accused files an application for bail under the

Proviso to Section 167(2) he is deemed to have 'availed of' or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under section 167(2), CrPC, 1973 read with Section 36A (4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.” Further that, “The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.”. In **Rakesh Kumar Paul vs. State of Assam**, (2017) 15 SCC 67, Hon’ble The Supreme Court had observed and held that if the charge sheet is not filed and the right for ‘default bail’ has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext.

7. Coordinate Benches in the cases of **Baltej Singh @ Chiri** and **Raju Singh** (supra) have granted default bail to the accused, relying upon the judgment in **Rakesh Kumar Paul** (supra).

8. The trial Court vide order dated 12.05.2023 dismissed the application of the petitioner on the ground that the prosecution has sought extension of time prior to 04.05.2023 and the challan was presented on

09.05.2023, which is liable to be set aside, as on the relevant date i.e. 04.05.2023, no extension had been granted, whereas the petitioner had filed an application under Section 167(2) CrPC on that very date, when 180 days were completed.

9. Considering the facts and circumstances of the case in light of the law laid down in the afore-referred judicial pronouncement, the present petition deserves to be and is allowed.

10. The order dated 12.05.2023 passed by the trial Court, is set aside. The petitioner is ordered to be released on default bail, on his furnishing bail/heavy surety bonds to the satisfaction of trial Court/Duty Magistrate, concerned. The petitioner shall also abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/ intimidate the prosecution witnesses.
- (iii) The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
- (iv) The petitioner shall not commit an offence similar to the offence of which, he is an accused, or for commission of which he is suspected of.
- (v) The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
- (vi) The petitioner shall not in any manner misuse his liberty.
- (vii) The petitioner shall furnish his address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioner seeks to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the

reason for the same.

- (viii) The petitioner shall not leave the country without prior permission of the trial Court.
- (ix) The trial Court/Duty Magistrate may impose any other condition, as deemed appropriate while releasing the petitioner.

11. It is also made clear that in case of breach of any of the conditions aforesaid, the State shall be at liberty to seek cancellation of bail granted to the petitioner by this order.

12. In view of the above, this Court further clarifies that the observations made herein above are limited for the purpose of present proceedings and would not be construed as any opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

24.08.2023  
ashok

( AMAN CHAUDHARY )  
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No