

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : May 12, 2023

1. CRA-D-794-2022

PARVEEN SINGH

....APPELLANT

VERSUS

STATE OF PUNJAB

....RESPONDENT

2. CRA-D-1115-2022

SUKHWINDER SINGH @ SUKHA AND OTHERSAPPELLANTS

VERSUS

STATE OF PUNJAB

....RESPONDENT

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. M.S.Rana, Advocate for the appellants
in both the appeals

Mr. J.S.Mehndiratta, Addl. AG Punjab

SURESHWAR THAKUR, J.

1. Since both these appeals arise out of a common FIR, therefore, they are being taken together and disposed off accordingly, irrespective of the fact that their claims for default bail, became dismissed, through different orders being passed, on different dates, by the learned Special Judge concerned.

2. The facts relating the present appeals, are carried in the FIR Annexure A/1, which is appended with the instant appeals. The relevant FIR was registered at Police Station Sidhwan Bet and bears

number 0181. The same was lodged on 1.11.2021 under Sections 212, 216 IPC, and under Sections 18 and 19 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter to refer in short, as UAPA) besides under Sections 3 and 4 of the Explosive Substance Act. The present appellants are named as accused therein. The narration as carried therein, is that, the Incharge Officer, Sidhwan Bet along with ASI Gursewak Singh No. 642, ASI Satnam Singh No. 711, ASI Jagdev Singh No. 417 and driver Constable Jaswinder Singh No. 994, when were on board a government vehicle Scorpio bearing No. PB-10-DA-0399 along with laptop, printer, torches etc., and, were present at Kishanpura chowk within the boundary of Sidhwan Bet, that they then met a secret informer. The said police informer gave information that on 15.9.2021, a bomb blast had happened, on a motorcycle in Jalalabad, District Fazilka, and that in relation to the said event, an FIR No. 205 dated 16.9.2021 became registered carrying therein offences constituted Under Sections 3, 4 of Explosive Substance Act, 1908, added later-on Sections 13,15,17,18,18-B, 20 of the UAPA Act and Sections 21, 29 of the NDPS Act, 1985. In the said case accused Ranjit Singh @ Gora son of Jaswant Singh, resident of Jhugge of Nihangs, District Ferozepur was nominated, and that he is yet to be arrested, but who out of fear of getting arrested has taken arms, ammunition and ingredients relating to blast with him to Jagraon, Police Station Sidhwan Bet, Village Khursaidpur Bet area. The said person has taken the above ammunitions and arms with those accomplices and

related persons i.e. Jaswant Singh son of Jeewan Singh, resident of Jhugge of Nihangs, District Ferozepur, Tirlok Singh son of Jeet Singh, resident of Khurshedpura, Police Station Sidhwan Bet, District Ludhiana and Balwant Singh son of Mahinder Singh, resident of Walipur Khurd, District Ludhiana and other unknown individuals, besides has taken refuge from them, and, remaining in hiding. It is further revealed in the FIR, that all these individuals can disturb the unity and peace of the country, by committing a big occurrence, and that as of now, if the house of Tirlok Singh is raided, then Ranjit Singh, Jaswant Singh, Balwant Singh and Tirlok Singh can be apprehended. In pursuance to the lodging of the FIR, accused Parveen Singh, Sukhwinder Singh @ Sukha, Ranjit Singh @ Gora, Manjit Singh @ Mana, Jaswant Singh @ Shinda Baba, Balwant Singh @ Bant, were arrested respectively on 22.3.2022, 12.11.2021, 4.11.2021, 11.11.2021, 1.11.2021 and 1.11.2021. On an application moved before the JMJC by the Investigating Agency, seeking extension of time for completing the investigation, thus, resulted in the said application being allowed on 20.6.2022, in respect of accused Parveen Singh, and it being allowed on 31.1.2022 in respect of the remaining accused.

3. The application for default bail in terms of Section 167(2) Cr.P.C., became filed by accused Parveen Singh on 20.8.2022, and on behalf of remaining accused, the same was filed on 2.9.2022. However, the said applications were dismissed, through the impugned orders as became drawn on 26.8.2022 in respect of

accused Parveen Singh, and, on 5.9.2022 in respect of other accused.

SUBMISSIONS OF THE COUNSEL FOR THE APPELLANTS

4. Learned counsel for the appellants submits, that though the present appellants were admittedly arrested respectively, on 22.3.2022, on 22.3.2022, on 12.11.2021, on 4.11.2021, on 11.11.2021, on 1.11.2021 and on 1.11.2021, but since there was an imperative legal requirement cast, upon the Investigating Officer concerned, to ensure that he prefers, the charge sheet and on or before completion of 90 days, thus, from his causing the respective arrests of the present appellants. Therefore, he submits that since within, the said period rather the investigations were not completed nor when any valid extension became granted to the Investigating Officer concerned, to complete the investigations, within the statutorily prescribed maximum period of 180 days. Resultantly, he submits, that the statutory leverage as conferred, upon, the accused, through the proviso engrafted in Section 167(2) Cr.P.C., thus, is to be assigned to the accused appellants. In sequel, he argues that the impugned order(s) require interference, and, that the accused appellants be ordered to be enlarged on regular bail. The relevant statutory provisions are carried in Section 167(2) Cr.P.C., provisions whereof become extracted hereinafter:-

Section 167(2) in The Code Of Criminal Procedure, 1973

(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) ¹ 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;]

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period

specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;].

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.”

5. More-over, the modified provisions relating to the period thus, within which, the investigations are to be completed, by the Investigating officer concerned, in respect of offences embodied under the relevant Sections of the UAPA, besides relating to the relevant extensions of time being tenably granted by the jurisdictionally competent court, thus, also require their extraction. The said modified provisions relating to (supra) are carried in Section 43(D) of the UAPA, provisions whereof become extracted hereinafter:-

“43D. Modified application of certain provisions of the Code.--(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),--

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:--

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that--

(a) the reference in sub-section (1) thereof

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government.";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to 'the State Government' shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.”

6. Before applying the mandate of the above extracted provisions it is but imperative, that the dates of arrest of each of the accused, thus, are required to be borne in mind. In that regard visibly Parveen Singh became arrested on 22.3.2022, Sukhwinder Singh @ Sukha became arrested on 12.11.2021, Ranjit Singh @ Gora became arrested on 4.11.2021, Manjit Singh @ Mana became arrested on 11.11.2021, Jaswant Singh @ Shinda Baba became arrested on 1.11.2021 and Balwant Singh @ Bant became arrested

on 1.11.2021.

7. For brevity, the date(s) of arrests of each of the accused as also the dates whereby extensions of time became granted to the Investigating Officer concerned by the court concerned, thus, to complete the investigations, besides the preferments of the apposite applications, under Section 167(2) Cr.P.C., are extracted hereinafter in a tabular form:-

<i>Sr. No.</i>	<i>Name of the appellant/accused</i>	<i>Date of Arrest</i>	<i>Date of Extension</i>	<i>Date of Application u/s 167(2) Cr.PC</i>	<i>Date of impugned order</i>	<i>Date of challan</i>
1.	Parveen Singh	22.03.2022	20.6.2022	20.8.2022	26.8.2022	31.8.2022
2.	Sukhwinder Singh @ Sukha	12.11.2021	31.1.2022	2.9.2022	5.9.2022	29.4.2022
3.	Ranjit Singh @ Gora	4.11.2021	31.1.2022	2.9.2022	5.9.2022	29.4.2022
4.	Manjit Singh @ Mana	11.11.2021	31.1.2022	2.9.2022	5.9.2022	29.4.2022
5.	Jaswant Singh @ Shinda Baba	1.11.2021	31.1.2022	14.2.2022 (JMIC) 2.9.2022	14.2.2022 (by JMIC) 5.9.2022	29.4.2022
6.	Balwant Singh @ Bant	1.11.2021	31.1.2022	2.9.2022	5.9.2022	29.4.2022

8. Though the Investigating Officer concerned, was required to in terms of the judgment rendered in case of **Bikramjit Singh vs State of Punjab (2020) 10 SCC 616** to complete the investigations initially within 90 days to be computed from the date of causing arrest of the accused, and, on his failure to do so rather on completion of 90 days, the asked for valid extensions from the jurisdictionally competent court, thus, became accorded to him. However, for the reasons to be assigned hereinafter, the mandate (supra) as carried in verdict (supra) has not been complied with. The relevant paragraphs 36 and 37 as carried in verdict (supra), make therein,

the hereinafter extracted expostulations of law. The paragraphs (supra) are extracted hereinafter:-

“36. A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted.

37. On the facts of the present case, the High Court was wholly incorrect in stating that once the challan was presented by the prosecution on 25.03.2019 as an application was filed by the Appellant on 26.03.2019, the Appellant is not entitled to default bail. First and foremost, the High Court has got the dates all wrong. The application that was made for default bail was made on or before 25.02.2019 and not 26.03.2019. The charge sheet was filed on 26.03.2019 and not 25.03.2019. The fact that this application was wrongly dismissed on 25.02.2019 would make no difference and ought to have been corrected in revision. The sole ground for dismissing the application was that the time of 90 days had already been extended by the learned

Sub-Divisional Judicial Magistrate, Ajnala by his order dated 13.02.2019. This Order was correctly set aside by the Special Court by its judgment dated 25.03.2019, holding that under the UAPA read with the NIA Act, the Special Court alone had jurisdiction to extend time to 180 days under the first proviso in Section 43-D(2)(b). The fact that the Appellant filed yet another application for default bail on 08.04.2019, would not mean that this application would wipe out the effect of the earlier application that had been wrongly decided. We must not forget that we are dealing with the personal liberty of an accused under a statute which imposes drastic punishments. The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled.”

9. Moreover in the subsequent paragraph 37 of the verdict (supra) it has been clearly expostulated, that only the Designated Special Court concerned, thus, alone has valid jurisdiction to assign extensions of time to the Investigating Officer concerned, to complete investigations and to file a report under Section 173 Cr.P.C., rather before the jurisdictionally competent court.

10. Therefore, it has to be determined, that whether from the uncontested date(s) of causings of arrest of each of the accused,

respectively on 22.3.2022, on 12.11.2021, on 4.11.2021, on 11.11.2021, on 1.11.2021 and on 1.11.2021, thus, within 90 days or at the end of 90 days thereof, rather the Investigating Officer concerned, taking to file a charge sheet under section 173 Cr.P.C, thus, in terms of paragraph 36 (supra) as occurs in verdict (supra). In the above scenario, thus the accused appellant herein would become disentitled to claim default bail, unless the Investigating Officer concerned, before the expiry of the said period of 90 days, and, or on the 90th day, rather had asked for the requisite extensions of time, and, such asked for requisite extensions of time, thus, becoming accorded only by the jurisdictionally competent court.

11. In the above regard, the requisite extensions of time as became granted to the Investigating Officer, rather became granted by the jurisdictionally incompetent court, in as much as, by the JMIC, Jagraon, who however uncontestedly, was not ably empowered to grant the requisite extensions of time, thus, for the relevant purposes, to the Investigating Officer concerned. Therefore, since in paragraph 37 (supra) as carried in verdict (supra) of the Hon'ble Apex Court, it becomes mandated, that in case extensions of time are granted, by the jurisdictionally incompetent court, thereby, such granted extensions of time, rather neither eroding nor curtailing the infeasible statutory right of the accused to claim default bail, thus, on expiry of 90 days from their respective arrests being caused. While applying the above ratio decidendi (supra), to the facts of the instant case, it becomes discernible from the table supra, that

despite from the date(s) of arrest of each of the accused, yet 90 days elapsing there from, yet no charge sheet becoming filed by the Investigating Officer concerned before the jurisdictionally competent court.

12. Be that as it may, nonetheless for overcoming the above lack of filing of charge sheet, thus, by the Investigating Officer concerned, the latter rather chose to seek extensions of time from the JMIC, Jagraon, who, however, for the reasons stated (supra), rather was completely jurisdictionally incompetent to grant the requisite extensions of time. In consequence, the accused appellants herein, obviously were in the face of no valid extensions of time being granted to the Investigating Officer concerned, thus, entitled to receive the benefit of default bail, whereas, the said claim became denied to them, through the impugned orders. Therefore, this Court is constrained to interfere with the impugned orders. Resultantly, the impugned orders as passed in each of the appellants' case, thus, by the learned Additional Sessions Judge concerned are, therefore, quashed and set aside, thereby, the accused-appellants are ordered to be released on bail, subject to each furnishing personal and surety bonds comprised in the sum of Rs 5 lacs each, and also subject to theirs surrendering their respective passports to the court concerned. Moreover, also subject to their making an undertaking, before the learned trial Judge concerned, that they shall neither influence or intimidate prosecution witnesses nor shall tamper with the prosecution evidence. In

addition also subject to theirs making an undertaking before the trial Judge concerned, that as and when they are required to be causing their respective personal appearances before the trial Judge concerned, they shall cause their respective personal appearance, unless they are validly exempted.

13. In view of the above, the appeals are allowed.

14. Records be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 12, 2023

'dalbir'

Whether speaking/reasoned ? Yes/No

Whether Reportable ? Yes/No