

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 9 of 2022 (O&M)
Date of decision: 12th April, 2023

Mohsin Ansari @ Mayank & another

... Petitioners

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sanjeev Kumar, Advocate for the petitioner.
Mr. Amit Rana, Sr. Deputy Advocate General, Punjab
for the respondent/State.

MANJARI NEHRU KAUL, J.

The petitioners are impugning order dated 15.12.2021 passed by learned Special Judge, SAS Nagar (Mohali) vide which the application filed by the petitioners under Section 167(2) Cr.P.C. was dismissed.

Learned counsel for the petitioners inter alia contends that an application was moved by the petitioners before the learned Special Court for extending the concession of default bail under Section 167(2) on 11.10.2021, which however, was withdrawn on account of a statement made by the learned Public Prosecutor that report under Section 173(2) Cr.P.C. i.e. challan, already stood presented before the Duty Magistrate on 09.10.2021. However, on receipt of a copy of the

said report, the petitioners discovered that an incomplete challan had been presented, as even after expiry of 180 days, requisite sanction under Section 39 of the Arms Act had not been obtained. Learned counsel has vehemently argued that it is a settled principle of law that in a case where a person is accused of multiple offences, the investigating agency cannot be permitted to conduct piece meal investigation so as to circumvent the right of an accused by initially presenting challan qua some offences and subsequently filing a supplementary chargesheet qua the remaining offences in order to evade the time period stipulated for completion of investigation under Section 167(2) Cr.P.C.

He further submits that in the instant case, even though the investigation qua offence under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 was complete, the investigation with respect to an offence under Section 25 of the Arms Act would be deemed to be incomplete, for want of the mandatory sanction for prosecution of the accused. Learned counsel asserts that since the stipulated period of 60 days, prescribed for completion of investigation of offences punishable upto ten years under Section 167(2) Cr.P.C., had expired and as already submitted, the investigation was incomplete, the indefeasible right of the accused had accrued for grant of default bail under Section 167(2) Cr.P.C. In support, learned counsel has placed reliance upon **‘Chitra Ramakrishna etc. vs. CBI’ 2022 SCC Online**

Del 3124 and ‘Fakhrey Alam vs. State of Uttar Pradesh’ (2021 SC)
Online SC 532.

Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, vehemently contends that when the application for grant of default bail was moved by the petitioners on 13.12.2021, trial had already commenced as it was a matter of record that the charges stood framed much prior thereto. Therefore, once the stage of investigation was over, the petitioners would have no right to be released on default bail.

He has further submitted that investigation could not be said to be incomplete merely because the requisite sanction for prosecution under the Arms Act had not been obtained. The investigation qua the substantive offence under the NDPS Act stood completed within the stipulated time period, therefore, there was no question of the prosecution trying to evade the time limit for completion of investigation under Section 167(2) Cr.P.C. Learned counsel in support, relied on **‘Suresh Kumar Bhikamchand Jain vs. State of Maharashtra’ 2013 CrI. L.J. 1625.**

While rebutting the submissions made by the learned State counsel, learned counsel for the petitioners contends that the petitioners had availed of their right to default bail prior to the framing of charges by moving an appropriate application in the said regard. While referring to the CIS report of the System Officer, which is taken on

record, subject to all just exceptions, learned counsel submits that the application for default bail was filed at 10:27 a.m. on 13.12.2021; it was argued on the same morning and thereafter, the charges were framed, subsequent to the arguments on the petitioners' application.

I have heard learned counsel for the parties and perused the relevant material on record.

Before proceeding further, it would be pertinent to discuss the relevant provisions for the remand of an accused at the stage of investigation as provided under Section 167 Cr.P.C. and during enquiry and trial under Section 309 of the Cr.P.C.

Section 167 Cr.P.C. reads as follows:

“167. Procedure when investigation cannot be completed in twenty four hours.- (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(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 detention of the accused person, otherwise than in 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 section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, 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 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.”

Section 309 Cr.P.C. is reproduced as under:

“309. Power to postpone or adjourn proceedings:-

(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in

attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable and may by a warrant remand the accused if in custody:

The aforementioned provisions relate to two different stages i.e. pre-cognizance and post-cognizance. During the stage of investigation, which is a pre-cognizance stage, the accused is under the custody of a Magistrate, before whom he was initially produced. Such Magistrate has the power to remand the accused to police custody and judicial custody for the maximum period, as provided under Section 167(2) Cr.P.C. and the first proviso thereto or until the cognizance is taken by a Court of competent jurisdiction to try the offence, whichever is earlier.

The Magistrate would have no power to remand a person under Section 167(2) Cr.P.C., beyond the maximum period prescribed therein. In case, the investigation of the case has not been completed by the investigating agency, the indefeasible right to be released on bail would accrue and the Magistrate in such an eventuality will have to

release the accused on default bail. However, on the other hand, once cognizance is taken, the Court trying such an offence can remand the accused only under Section 309(2) Cr.P.C., which applies to post cognizance stage, and not under Section 167(2) Cr.P.C.

The Hon'ble Supreme Court in '**Mithabhai Pashabhai Patel vs. State of Gujarat**' (2009) 6 SCC 332, has held as under:

“17. The power of remand in terms of the aforementioned provision is to be exercised when investigation is not complete. Once the charge-sheet is filed and cognizance of the offence is taken, the court cannot exercise its power under sub-section (2) of Section 167 of the Code. Its power of remand can then be exercised in terms of sub-section (2) of Section 309 which reads as under:

‘309. Power to postpone or adjourn proceedings. – (1)

(2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable and may by a warrant remand the accused if in custody.’ ”

Further, the Hon'ble Apex Court, in '**Pradeep Ram vs. State of Jharkhand**' (2019) 17 SCC 326, has observed as under:

“64.3 When cognizance has been taken and the accused was in custody at the time of taking cognizance or

when inquiry or trial was being held in respect of him, he can be remanded to judicial custody only under Section 309(2) Cr.P.C.”

Adverting to the case in hand, in order to ascertain whether the petitioners are entitled to default bail or not, the stage at which they had sought their right to default bail, would be of relevant consideration.

It is a matter of record that on 09.11.2021, the case had been fixed for supplying copies of challan as well as for consideration on charge for the next date i.e. 23.11.2021. On 23.11.2021, the case was fixed for arguments on charge, and thereafter, it was adjourned to 13.12.2021. Therefore, it is clear that cognizance of the offences in question had already been taken by the learned Special Court prior to 13.12.2021. Admittedly, the application for grant of default bail was filed by the petitioner on 13.12.2021 and no other application for default bail filed by the petitioners was pending prior thereto. Even if the submissions made by the learned counsel for the petitioners that application for default bail had been filed and argued prior to the framing of charges on 13.12.2021, is accepted, it would still not come to their rescue as the petitioners had not availed of their right of default bail prior to the taking of cognizance by the Special Court. Therefore, since at the post cognizance stage the remand is under Section 309 Cr.P.C., the provision of Section 167 Cr.P.C. would have no

application and the right of default bail as provided under 1st proviso to Section 167(2) Cr.P.C. would not be available to the petitioners.

As a sequel to the above, case laws relied upon by the petitioners would not come to their rescue as the remand in the case in hand is under Section 309 Cr.P.C. and not under Section 167(2) Cr.P.C. This Court does not find any merit in the instant revision petition and accordingly, the same stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

April 12, 2023
rps

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