

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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2023:PHHC:151272

1. CRR No.2623 of 2022 (O&M)
Date of decision: November 28th, 2023

Sahib Singh alias SabbiPetitioner
Versus

State of PunjabRespondent

2. CRR No.2624 of 2022 (O&M)

Suraj Bhatia alias SurajPetitioner
Versus

State of PunjabRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Saurav Kanojia, Advocate
for the petitioners.

Mr. Digvijay Nagpal, Assistant Advocate General, Punjab.

MANJARI NEHRU KAUL, J.

This order shall dispose of the above-mentioned petitions as the petitioners are impugning the same order i.e. order dated 24.11.2022 passed by learned Judge, Special Court, Ludhiana, whereby an application filed by prosecution for cancellation of bail granted to the petitioner under Section 167 (2) Cr.P.C. has been partly allowed.

2. Learned counsel for the petitioners, *inter alia*, submits that the Court below had erroneously rejected the bail bonds furnished by the petitioners and instead allowed the application filed by the State for cancelling the default bail, which had been granted to them by the learned Special Court on 15.11.2022.

3. It has been further submitted by the learned counsel for the petitioners that they had been granted default bail on 15.11.2022 by learned Judge, Special Court, Ludhiana, but since the Court time was over, the petitioners could not furnish the requisite bail bonds. However, immediately thereafter on 16.11.2022, when the petitioners were ready to furnish the bail bonds, the trial Court erred in observing that since the bail bonds had not been furnished by the petitioner within reasonable period of time, the applications for cancellation of their default bail filed by the State deserved to be allowed. In support, learned counsel for the petitioners has drawn the attention of this Court to (Annexure P-3). It has been vehemently argued that the application filed by the State for cancellation of their default bail could not have been accepted as firstly the petitioners had not violated any terms or conditions imposed by the learned Court while granting them the concession of default bail. Further, the trial Court had not even stipulated or specified any time period within which the petitioners had been directed to furnish their bail bonds.

4. Learned counsel for the petitioners has further submitted that the application filed by the State seeking cancellation of default bail was also erroneously allowed on the ground that challan had been presented on 15.11.2022 by the prosecution. Learned counsel has submitted that it had been held time and again in a catena of judgments that once an application for default bail had been moved on expiry of the statutory period to file challan, and the accused had been granted default bail, challan, if any, presented thereafter could not be a ground to either decline the concession of default bail to the petitioner or even

cancel the default bail already granted. Learned counsel has submitted that on the date when the petitioners became entitled for grant of default bail, i.e. on expiry of 180 days, it was a matter of record that the challan had not even been presented, which was categorically noticed by the trial Court in its order dated 15.11.2022 also. Thus, mere presentation of challan by the prosecution, after an order had been passed extending the concession of default bail to the petitioners, could not be a ground to deprive them of their right under Section 167 (2) of the Cr.P.C. In support, learned counsel for the petitioners has placed reliance upon judgment of Hon'ble Supreme Court rendered in *M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence (2021) 2 SCC 485*.

5. *Per contra*, learned counsel for the State, on instructions, while opposing the prayer made by the counsel opposite, has submitted that the investigation in the case in hand is complete and now the challan stands presented before the trial Court and as such, the right of the petitioners under Section 167 (2) of the Cr.P.C. would not survive. Learned counsel has submitted that even otherwise, the petitioners were required to furnish bail bonds forthwith after being extended the concession of default bail, which admittedly they failed to do.

6. On a pointed query put to the learned State counsel, however, he has not been able to dispute that when the application under Section 167 (2) of the Cr.P.C. was filed by the petitioners and allowed by the trial Court, challan had indeed not been presented by the prosecution.

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

8. The law is fairly settled in this regard that the right of the accused under Section 167 (2) of the Cr.P.C would not stand extinguished upon the subsequent presentation of challan by the prosecution. The only issue worth consideration of this Court is whether the challan had been presented by the prosecution prior to the accused availing their right of default bail or not. In the present case, there is no dispute, rather it is a matter of record that when the petitioner moved an application under Section 167 (2) of the Cr.P.C. seeking default bail, challan had not been presented by the prosecution. Furthermore, once the petitioners had been granted the concession of default bail under Section 167 (2) of the Cr.P.C., merely because the challan had been presented prior to their furnishing bail bonds, their right to be released on default bail would not stand defeated. In this regard, it would be apposite to refer to the observations made by the Hon'ble Supreme Court in *M. Ravindran' case (supra)*, which read as under:-

“13.1 However, the expression ‘the accused does furnish bail’ in Section 167(2) and Explanation I thereto cannot be interpreted to mean that if the accused, in spite of being ready and willing, could not furnish bail on account of the pendency of the bail application before the Magistrate, or because the challenge to the rejection of his bail application was pending before a higher forum, his continued detention in custody is authorized. If such an interpretation is accepted, the application of the Proviso to Section 167(2) would be narrowly confined only to those cases where the Magistrate is able to instantaneously decide the bail application as soon as it is preferred

before the Court, which may sometimes not be logistically possible given the pendency of the docket across courts or for other reasons. Moreover, the application for bail has to be decided only after notice to the public prosecutor. Such a strict interpretation of the Proviso would defeat the rights of the accused. Hence his right to be released on bail cannot be defeated merely because the prosecution files the chargesheet prior to furnishing of bail and fulfil the conditions of bail of furnishing bonds, etc., so long as he furnishes the bail within the time stipulated by the Court.”

9. Adverting to the case in hand, a perusal of the orders dated 15.11.2022 vide which default bail was granted to the petitioners, it stands revealed that no specific time period had been provided to the petitioners by the trial Court for furnishing of their bail bonds. Mere furnishing of the bail bonds after the challan had been presented cannot be construed to be breach of the terms and conditions of the order granting the petitioners the concession of default bail under Section 167 (2) Cr.P.C.
10. As a sequel to the above, the present petitions are allowed. Impugned orders dated 24.11.2022 passed by learned Judge, Special Court, Ludhiana, are set aside.
11. The petitioners be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case
12. Copy of this order be placed on the file of connected case.

November 28th, 2023		(MANJARI NEHRU KAUL)
<i>Puneet</i>		JUDGE
Whether speaking/reasoned	:	Yes
Whether reportable	:	No