

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-1128-2022

Date of decision : May 12, 2023

ROBINJEET SINGH ALIAS MOTA

....APPELLANT

VERSUS

STATE OF HARYANA

....RESPONDENT

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

Present : Mr. Pratham Sethi, Advocate for the appellant

Mr. P.P. Chahar, Sr. DAG, Haryana

SURESHWAR THAKUR,J.

FACTUAL BACKGROUND

1. The complainant Aman Kumar, DSP, Special Task Force, Unit Ambala (Haryana) had received source information, that Shamsher son of Pargat Singh, resident of Chola Sahib, District Taran Taran, Punjab is involved in terrorist activities, and some time back, he had been noticed to come on highway, from Ambala towards Delhi, thus, with his accomplices to create terror, and had placed an explosive device in the area by using Endeavour car No. PJC-0088. On finding this complaint to be believable, he proceeded to along with his team, nab Shamsher son of Pargat Singh resident of Chola Sahib, District Tarn Taran, Punjab. On interrogation, the above person disclosed, that in June, 2022,

Shamsher in connivance with his accomplices Arsh Bhatt, Robinjeet Singh alias Mota and Nachhattar, resident of Raichal District Tam, Taran had placed one IED device in a tiffin box on the highway between Ambala and Kurukshetra. More-over, further investigations also revealed, that his handler Satbir alias Satta, had disclosed the actual location, of the IED. On an intimation being given to senior official, Smt. Promila, Incharge Bomb Disposal Team, it was found that on timer switch of that device, it was written 'OK H M 9-6'. However, the Incharge Bomb Disposal Team defused the explosive device.

2. In pursuance of the above action being drawn by the Investigating Officer concerned, on his receiving, the source information and after his making interrogation into the offence, a formal FIR No. 739 dated 4.8.2022, was lodged under Sections 13,18,20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter to refer in short, as UAPA) and Sections 4 and 5 of the Explosive Substance Act, at Police Station Sahabad, District Kurukshetra.

3. On 5.8.2022, Shamser was arrested, and, from his possession, a mobile phone and a SIM were taken into possession. On interrogation, he made a disclosure statement, that he runs a shop of tractor and battery repair, in the village and that in the year 2018, he met Arshdeep with whom, he remained connected on Whatsapp. Arshdeep had come when father of Shamsher, had died in the year 2020, and, who had stated that he is friend of Gangster Satbir alias Satta, who wanted to enlarge his organization, through

making bomb blasts in the region of Delhi. He further revealed, that in pursuance of the said common object, he along with Arshdeep and Robinjeet Singh alias Mota had met Nachhattar Singh under the bridge of Lalru (Punjab) and at that time, the said Nachhattar Singh was carrying the device. All revealed to the Investigating Officer concerned, that they accompanied Nachhattar Singh, at the relevant site and placed, the device at the place of its recovery. It was on 5.8.2022, that Robinjeet Singh alias Mota was arrested, and he then joined the investigations. During the course of his custodial interrogation, he got recovered the Ford Endeavour car, used in the crime. During his interrogation, he also disclosed that Nachhattar Singh, had got the mobile phone switched off, and, the entire chat relating to that data was deleted. On 6.8.2022, his police remand was taken from Illaqa Magistrate till 6.8.2022 and on 6.8.2022, he, along with Shamsheer was sent to judicial custody. Subsequently, other accused were arrested and joined investigation and were proceeded, in accordance with law.

4. The imminent fact which surges from the above factual background, is that, the present appellant was arrested on 5.8.2022. It appears from a reading of the records as available before this Court, that in terms of Section 167(2) Cr.P.C., initially the present appellant had filed an application, on 5.11.2022, before the SDJM, Shahabad. In the said application, he claimed the facility of being granted default bail, but on the ground that despite, the period prescribed under the law for the presentation of challan, thus

expiring, yet, purportedly, when no challan became preferred within the prescribed period of time nor when any affirmative order became rendered on the application for extension of time, for the institution of challan before the court concerned, thus, the appellant becoming entitled to the facility of default bail, as envisaged in Section 167(2) Cr.P.C.

5. However, be that as it may, on 7.11.2022, in the face of the Government of Haryana issuing a notification, on 13.12.2013, whereby Special Courts, thus, became constituted for trial of UAPA offences, thereby, the court of the SDJM concerned, where before whom, an application for default bail became initially preferred, thus became declared jurisdictionally incapacitated for exercising jurisdiction, upon, an offence constituted under the UAPA.

6. Therefore, though the SDJM concerned dispatched the case file along with remand papers besides also dispatched the application for default bail to the court of learned Sessions Judge, Kurukshetra. However, on 7.11.2022, the Investigating Officer concerned presented the challan before the Special Court. On the very same day, the file was transmitted by the SDJM to the Additional Sessions Judge, Kurukshetra. The case was adjourned for consideration on 9.11.2022. However, on 9.11.2022, the Presiding Officer of the Special Court was on casual leave. Therefore, on 10.11.2022, the learned ASJ remanded the bail application with the observation, that since the application filed under Section 167(2) Cr.P.C., thus became filed on 5.11.2022 before the

SDJM, but since he did not draw any decision thereon, resultantly, a direction was issued to the SDJM concerned to decide the application on merits. Consequently, on 10.11.2022, the learned SDJM concerned, while making a reference, to the notification (supra), as made by the Government of Haryana, whereby he became divest of jurisdiction to enter into trial of cases under the UAPA, thus, declared that the application as preferred under Section 167(2) Cr.P.C., is not amenable to be decided by him, and accordingly disposed off the application, but with liberty to the appellant to avail the remedy before the jurisdictionally competent court. It was on 11.11.2022, that a fresh application for default bail, became moved before the learned ASJ concerned. On 14.11.2022, a reply to the said default application was filed by the police, wherein it was mentioned that a challan under Section 173 Cr.P.C., became instituted on 7.11.2022 before the learned Special Court concerned. However, on 14.11.2022, the learned ASJ dismissed the application. The dismissal order made on the said application, thus, has led the accused to access this Court through his filing the instant appeal before this Court.

7. Before proceeding to make an adjudication, on, the instant appeal, it is deemed necessary, but to extract the relevant provisions, relating to the grant of default bail, to the present appellant. The said relevant 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;

CRA-D-1128-2022

(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.”

8. 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 the offences as 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.”

SUBMISSIONS OF THE COUNSEL FOR THE APPELLANT

9. The learned counsel for the appellant, has made much emphasis, upon paragraphs 36 and 37 of the verdict as made, by the Hon'ble Apex Court in case titled as **Bikramjit Singh vs State of Punjab (2020) 10 SCC 616**, paras whereof becomes 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.”

10. A circumspect reading of the expostulations of the law as set up in the aforesaid paragraphs, make(s) imminent displays, that if on expiry of period of 90 days, from the causing of arrest of the accused concerned, no charge sheet is filed by the Investigating Officer concerned, thus, before the jurisdictionally competent court nor when any able extensions of time for the relevant time are granted, thus, to the Investigating Officer concerned by the jurisdictionally competent court, imperatively before the ending of the prescribed period of 90 days, rather thereupon the accused concerned becoming entitled to claim default bail, from the jurisdictionally competent court.

11. Further-more, reading of the above extracted paragraphs also bring to the fore that on an application for grant of default bail, being preferred by the accused on expiry of a period of 90 days, before a charge sheet is filed, thereupon, the statutory right of default

bail as conferred upon the accused, thus, becomes complete. More-over, it has also expostulated therein, that on the said application being filed but before the expiry of period of 90 days, besides when then no valid extensions thus, become granted to the Investigating Officer, to complete the investigations, hence within the maximum statutorily prescribed period of 180 days, resultantly thereupon the accused becoming bestowed with the indefeasible statutory right to claim the default bail in terms of proviso to Section 167(2) Cr.P.C.

12. Having settled the above position of law, it is deemed imperative to apply the same to the facts at hand.

13. Applying the above expostulation of law, to the facts at hand, the relevant facts which emerge, are that, the accused became arrested on 5.8.2022. However, it appears that the accused, present appellant, had instituted an application in terms of the proviso to Section 167(2) Cr.P.C., but the said application was instituted before the SDJM, Shahabad. Though it appears that a period of 90 days had then elapsed, since his becoming arrested, upto his preferring the application of his being assigned the privilege of default bail, given the Investigating Officer concerned not taking to file a charge sheet within 90 days or at the end of 90 days from the date of arrest of the accused. However, since in terms of notification issued on 13.12.2013 by the Government of Haryana, the jurisdiction to enter upon a valid trial of UAPA offences became divested from the SDJM concerned, but rather became invested in the Designated Special

Court concerned. Therefore, but obviously the learned SDJM Shahabad proceeded to transfer on the same very date, the case along with remand papers to the court, which thus, through the notification (supra) rather became invested with the jurisdictional competence, to enter upon a valid trial of UAPA offences. Necessarily, the apposite application as became made before the SDJM, Shahabad became also, thus, transferred to the jurisdictionally competent court or the Designated Court, rather for making of the adjudication upon the apposite application of the present appellant.

14. Therefore, obviously since the SDJM concerned could not make a valid order, upon, the application moved by the accused claiming therein, the benefit of default bail, but on the ground that since 90 days, to be computed from the date of his arrest, in as much as, upto the application being filed on 5.11.2022, rather than expiring whereas then, thus, the investigations being not complete through the Investigating Officer filing the final report before the jurisdictionally competent court, as such, his becoming entitled to claim benefit of statutory default bail.

15. Be that as it may, since no decision became recorded on the apposite application rather by the SDJM concerned. Therefore, the Special Judge concerned, after remanding the said application for default bail to the SDJM, he also made direction to the SDJM concerned, thus, to make an order thereon, he also as stated (supra), no order became recorded thereons. The SDJM concerned

on 10.11.2022, but obviously in view of the notification (supra) whereby, he became barred to exercise jurisdiction in respect of UAPA offences, thus, made a declining order on the application for default bail, as became moved before him by the accused.

16. The above declining order, thus, led the accused to on 11.11.2022, move a fresh application for default bail, but before the jurisdictionally competent court. But, since on 7.11.2022, the very day, on which an order was made by the SDJM concerned, he transferred the case to the learned Special Judge concerned, thus, rather the Investigating Officer concerned, hence instituted, the challan, before the learned Special Judge concerned. More-over, with the institution of a challan on 7.11.2022 by the Investigating Officer concerned, before the Special Judge concerned, also occurring, on the Special Judge concerned, receiving on the very same day, the entire case file along with the said application, from the SDJM concerned. Moreover, in other words, the impact of import of the above, is that, when the case was received by the Special Judge concerned, from the court of the SDJM concerned, but on the above premise, rather than the challan becoming instituted by the Investigating Officer concerned, before the Special Judge. Though, subsequently, on 11.11.2022, a fresh application for default bail became filed, before the Special Judge concerned, but yet after a dismissal order being made by the SDJM concerned, on the apposite application remaining, given the said application, on remand of the application to him, undecided by him, after his

transferring the case, to the Special Court concerned. The decision on the said application but was that the said application, thus, not maintainable before him, as he became divested of jurisdictional competence to make a valid order thereon.

17. Though, as above stated, the claim for default bail becomes invested in the accused, in case within the period of 90 days or at the end of 90 days, he moves the above application, but yet with a condition that then the investigations are not complete or in other words, within the period of 90 days or at the end of 90 days, neither the investigations being complete nor the charge sheet being filed. Moreover also, no valid extensions of time being granted for the relevant purposes to the Investigating Court concerned. Resultantly, in the above events, the accused would become entitled to default bail.

18. For the reasons to be assigned hereinafter, though it appears, that since, from the date of arrest of the accused, the period of 90 days, had elapsed, rather on the date when he moved the application for default bail on 5.11.2022. More-over though investigations within the above period, did not become completed, through the Investigating Officer, thus, filing a report under Section 173 Cr.P.C. nor also when then the requisite extensions of time became not granted to the Investigating Officer concerned.

19. Be that as it may, and nonetheless for the reasons to be assigned hereinafter, the dismissal order as made, on the requisite application by the learned Special Judge concerned, rather is merit

worthy. The basic premise for forming above inference, becomes stemmed from the factum, that the application for default bail was moved, before the jurisdictionally incompetent court, thus, required its being dismissed as aptly done by the learned SDJM concerned. Though, subsequently a fresh application became moved by the appellant before the Special Judge concerned, but it became moved on 11.11.2022, yet prior to that date, as readily available from the reply, to the bail application, thus, the Investigating Officer concerned had on 7.11.2022, rather filed a report under Section 173 Cr.P.C., before the jurisdictionally competent court or before the Special Judge concerned. It is but the institution of a final report by the Investigating Officer concerned rather prior to the institution of a fresh application by the accused, before the Special Judge concerned, that makes this Court to conclude, that the dismissal order, as made by the learned Special Judge concerned, on the appellant's application, was a valid order, as it is covered within the ambit of the above extracted paragraph as carried in **Bikramjit Singh** case (supra), the reason being that it become spelt therein, that the said application is required to be instituted before a charge sheet is filed before the jurisdictionally competent court. However, when the said charge sheet in respect of the UAPA offences, became, thus, filed prior to the filing of fresh application for default bail in as much as, the same becoming filed on 11.11.2022, and, the charge sheet becoming filed prior thereto on 7.11.2022.

Resultantly, as mandated in **Bikramjit Singh's** case (supra), thus in

the above event, a dismissal order was to be made on the accused's bail application, as aptly done by the Special Judge concerned.

20. This Court in forming the above view, also draws strength from a judgment made by the Hon'ble Apex Court, in case titled as **Sanjay Dutt vs State through C.B.I., reported in (1994) 5 Supreme Court Cases 410**, wherein, in respect of the above inference, sub para (2) (b) of para 53, is carried therein, para whereof becomes extracted hereinafter:-

“53(2)(b) The "indefeasible right" of the accused to be released on bail in accordance-with Section 20 (4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage.”

dismissed. The impugned order as passed by the learned Additional Sessions Judge, Kurukshetra, is hereby upheld.

22. Records be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 12, 2023
'dalbir'

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>