

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1846-2024 (O&M)
Reserved on 20.09.2024
Pronounced on 27.09.2024

Prince Singh @ Doddi

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Vishal Sharma (Vasudeva), Advocate for the petitioner

Mr. Jaspal Singh Guru, AAG Punjab

Sandeep Moudgil, J.

(1). This revision petition under Section 401 CrPC has been filed by the petitioner seeking to set aside the impugned order dated 11.07.2024 passed by Special Court, Pathankot vide which an application under Section 167(2) CrPC for grant of default bail to the petitioner has been dismissed.

(2). While rejecting the petitioner's claim for default bail, the trial court observed that it was a case of injury covered under Para-II of Section 307 IPC which is punishable with imprisonment for life and in that case, the period to seek default bail would be 90 days and since the petitioner was admittedly arrested on 15.04.2024 and the application under Section 167(2) CrPC was moved on 11.07.2024, the petitioner thus falls short of the statutory period of 90 days and as such, the application is not maintainable.

(3). Learned counsel for the petitioner submits that pursuant to passing of the impugned order dated 11.07.2024, on the very next day i.e. 12.07.2024, the prosecution presented challan for offences under Sections 307/324/326/379-B/411/148/149 IPC and Section 3&4 of SC&ST Act with a further mentioning

that further investigation under Section 173(8) CrPC is still pending and thereafter, vide supplementary challan dated 18.07.2024 which was ordered to be presented before the trial court on 25.07.2024 (Annexure P4), the offences under Section 307/148/149 IPC and Sections 3&4 of the SC&ST Act has been deleted and resultantly, the trial court vide order dated 29.07.2024 transferred the case to the Illaqa Magistrate.

(4). It is argued that the case of the petitioner is covered under para-I of Section 307 CrPC where the maximum punishment prescribed is 10 years and the period of default bail has been provided to be of 60 days inasmuch as the complainant never produced any medical report nor there is any injury of such sort which has been medically opined to be falling in the category of 'dangerous to life'. He asserts that the challan was approved by the SSP, Pathankot on 08.07.2024 but the police of Police Station Mamoon Cantt. Intentionally delayed the submission of supplementary challan which was ultimately presented before the trial court on 29.07.2024 and for this lapse on the part of the prosecution, the petitioner cannot be penalized.

(5). Heard learned counsel for the petitioner.

(6). The FIR was lodged against the petitioner and other co-accused on 12.02.2024 and the petitioner was arrested on 15.04.2024. The application under Section 167(2) CrPC was filed 11.07.2024 and by that time, the petitioner completed 87 days of incarceration. Admittedly, the prosecution did not file challan on the date of passing of the impugned order dated 11.07.2024 meaning thereby that the provisions incorporated in the FIR i.e. Section 307 Part-II IPC was very much alive and there was no occasion valid ground before the trial court to contradict the stand of the prosecution that since it was a case

of five injuries have been inflicted upon Aditya whereby his thumb has been chopped off and as such, the case of the petitioner is covered under Section 307 Part-II IPC wherein the maximum punishment prescribed is life imprisonment and in that case, if the challan is not presented within 90 days, the petitioner was entitled to default bail.

(7). In the present case, the petitioner harps around the fact that the penal provisions attracting under Section 307 IPC have since been deleted and therefore, since the challan was not presented within 60 days as on the date of filing the application under Section 167(2) CrPC, therefore, he is entitled to default bail deserves to be rejected. What's crucial for determination of whether the petitioner is entitled to default bail or not is the date when the petitioner approached the trial court under Section 167(2) and not the subsequent filing of the challan/supplementary challan before the trial court or for that matter, the instant petition before this Court. *Inter alia*, Section 307 IPC has been deleted by the police vide supplementary report dated 18.07.2024 (Annexure P3) which was presented before the trial court on 29.07.2024.

(8). The order impugned before this Court does not *ipso facto* reveal filing of any such supplementary challan or the deletion of Section 307 IPC from the FIR and as such, there was no occasion for this Court to deal with such facts or events which would have taken up after the passing of the impugned order and therefore, the aftermath effect of deletion of Section 307 IPC would also therefore, not make the petitioner entitle for default bail inasmuch as the moment challan/supplementary challan is filed, Section 167(2) CrPC cease its applicability on the petitioner to seek default bail. The indefeasible right accruing to the petitioner in such a situation is enforceable

only prior to the filing of the challan/supplementary challan and once the challan is filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan under CrPC or BNSS and not governed under Section 167. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because section 167 CrPC ceases to apply. This view of mine finds support from **Sanjay Dutt v. State through CBI Bombay, (1994) 5 SCC 410.**

(9). In **Sanjay Dutt's** (supra), the question before the Apex Court was, whether the above said right is available to the accused, even after filing of the final report, of course, after the expiry of the limitation period. The Constitution Bench of the Supreme Court settled the issue by holding as under:-

“We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of [Section 20\(4\) \(bb\)](#) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the [Code of Criminal Procedure](#). If that right had accrued to the accused but it remained unenforced till

the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filled because Section 167 Cr. P.C. ceases to apply.”

(10). The test to determine whether a person is entitled for bail under Section 167(2) of Cr.P.C. is not the date of taking cognizance but the date of filing charge sheet. In other words, the right of statutory bail ceases to exist the moment a charge sheet is filed within the prescribed period of sixty or ninety days.

(11). In this case, the petitioner was booked for commission of offence punishable under Part-II of Section 307 IPC which existed as on the date of passing of the impugned order and by that time, the petitioner had completed 87 days of custody. Even the contention of the petitioner that his case is covered under Part-I of Section 307 IPC and was entitled to default bail on expiry of 60 days due to non-filing of challan, did not find favour with the trial court. In such circumstances, there can be no exception to the view taken by the trial court to hold that the injury caused by the petitioner is covered under Part-II of Section 307 IPC which is punishable with imprisonment for life and as such, the petitioner is not entitled to default bail, as claimed, on expiry of period of 60 days for presentation of challan. And moreover, the right of default bail ceases to exist the moment challan/report is filed within the prescribed period of sixty or ninety days.

(12). Dismissed.

27.09.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No