

2024:PHHC:031459-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1502-2023 (O&M)
Reserved on: 27.02.2024
Date of decision: 06.03.2024

INDERJIT SINGH @ INDERJIT SINGH BAJWA

...Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Mitul Singh Rana, Advocate
for the appellant.

Mr. Arun Gupta, DAG, Punjab.

SURESHWAR THAKUR, J.

CRM-50922-2023

1. The instant application has been filed for seeking condonation of delay of 5 days in filing the accompanying appeal.
2. Since no opposition is made to the apposite application, as such, the same is allowed, and, the delay of 5 days in filing the accompanying appeal is condoned.

CRA-D-1502-2023

1. Through the instant appeal, a challenge is made to Annexure A-2, whereby the learned trial Judge concerned, granted the espoused extension to the investigating officer concerned, to complete the investigations in respect of FIR No.103 dated 24.06.2023, in the said FIR offences constituted under Sections 452, 307, 34 of the IPC, and, Section 25 of the Arms Act, become embodied (and

2024:PHHC:031459-DB

Sections 16, 17, 18, 18-B and 20 of the Unlawful Activities (Prevention) Act, 1967 were added subsequently).

2. Admittedly, the investigations in respect of the offences (supra), were required to be initially completed within a period of 90 days, but the said initial period of 90 days for thereins, thus investigations being completed was extendable by the learned trial Judge concerned, but only upto a maximum period of 180 days. The relevant provisions as carried in Section 43-D of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as “the Act of 1967”) 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:

2024:PHHC:031459-DB

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. Since the relevant investigations did not become completed within the initially mandated period of 90 days, therefore the investigating officer concerned, instituted an application on 26.09.2023, before the learned trial Judge concerned, whereby he asked for, in terms of the provisions (supra), that an extension be granted rather for completing investigations beyond 90 days. On the said application, the impugned order dated 27.09.2023 (Annexure A-2) became passed. It is admitted that the accused Jashanpreet Singh @ Shera became arrested on 05.07.2023; accused Dalbir Singh became arrested on 11.07.2023, and, the present appellant became arrested on 14.07.2023.

4. As unfolded by Annexure A-3, the appellant preferred an application on 12.10.2023, in terms of Section 167(2) of the Cr.P.C., read with Section 43-D of the Act of 1967, claiming therebys the benefit of default bail. The impugned declining order became rendered thereon.

5. Be that as it may, prior to the said application becoming filed, as revealed by a copy of the apposite application, the investigating officer concerned, thus in terms of the proviso (supra), claimed extension of time, to complete the investigations beyond the initially stipulated period of 90 days. However, the order dated 27.09.2023, as became passed on the extension application has been challenged by the learned counsel for the appellant. The said challenge is rested on the ground that prior notice in the said application was required to be given to the present appellant, whereas, no such prior notice *qua*

2024:PHHC:031459-DB

the said application became given to the present appellant, thereby the declining order as made on his application, whereby he sought the benefit of default bail, thus becomes vitiated.

6. In sequel, he further submits that when in terms of verdict made by the Hon'ble Apex Court in case titled as "*Jigar V. State of Gujarat*", to which *Criminal Appeal No.1656 of 2022*, has been assigned, relevant paragraphs whereof become extracted hereinafter, and, with therein the Hon'ble Apex Court, thus expostulating *qua* the necessity of a prior notice being served upon the appellant rather on the apposite extension application, whereas, with no prior notice being granted to the present appellant. Therefore, he contends that the impugned order (Annexure A-2) as made on the requisite extension application is vitiated. As such, he prays that given the rendition of the impugned extension order, therebys the appellant is entitled to default bail in terms of Section 167(2) of the Cr.P.C., read with Section 43-D of the Act of 1967.

“xxx

30. The logical and legal consequence of the grant of extension of time is the deprivation of the indefeasible right available to the accused to claim a default bail. If we accept the argument that the failure of the prosecution to produce the accused before the Court and to inform him that the application of extension is being considered by the Court is a mere procedural irregularity, it will negate the proviso added by subsection (2) of Section 20 of the 2015 Act and that may amount to violation of rights conferred by Article 21 of the Constitution. The reason is the grant of the extension of time takes away the right of the accused to get default bail which is intrinsically connected with the fundamental rights guaranteed under Article 21 of the Constitution. The procedure contemplated by Article 21 of the Constitution which is required to be followed before the liberty of a person is taken away has to be a fair and reasonable procedure. In fact, procedural safeguards play an

2024:PHHC:031459-DB

important role in protecting the liberty guaranteed by Article 21. The failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him that the application made by the Public Prosecutor for the extension of time is being considered, is not a mere procedural irregularity. It is gross illegality that violates the rights of the accused under Article 21.

31. An attempt was made to argue that the failure to produce the accused will not cause any prejudice to him. As noted earlier, the grant of extension of time to complete the investigation takes away the indefeasible right of the accused to apply for default bail. It takes away the right of the accused to raise a limited objection to the prayer for the extension. The failure to produce the accused before the Court at the time of consideration of the application for extension of time will amount to a violation of the right guaranteed under Article 21 of the Constitution. Thus, prejudice is inherent and need not be established by the accused.

32. The learned Additional Solicitor General relied upon the decision of this Court in the case of Narender G. Goel. The issue involved in that case was not of extension of time for completion of the investigation. The issue generally discussed therein is about the right of hearing of the accused at the stage of the investigation. His reliance on the decision of this Court in the case of Surendra Pundlik Gadling will not help him at all. This was a case where the accused was not only produced before the Court but he was provided a copy of the application for extension of time. The grievance of the accused was that time of only one day was granted to contest the application. This contention was rejected.

33. In the facts of the cases in hand, when the Special Court considered the reports submitted by the Public Prosecutor for grant of extension of time, the presence of the appellants was admittedly not procured before the Special Court either personally or through video conference. It is also an admitted position that information about the filing of such reports by the Public Prosecutor was not provided to the accused. It is mentioned in the impugned judgment that due to COVID-19, it was not permissible to physically produce

2024:PHHC:031459-DB

the accused before the Special Court. Moreover, the accused were in different prisons and, therefore, the production through video conference would have been very slow. Assuming that the process of production would have been slow, that is no excuse for not procuring the presence of the accused through video conference. Nothing is placed on record either before this Court or High Court to show that as per the Standard Operating Procedure applicable to the concerned Court in January 2021 when the impugned orders were passed granting the extension, it was not permissible to physically produce the accused before the Special Court. There is no material placed on record to show that technical reasons/difficulties prevented the prosecution from producing the accused before the Special Court through video conference. It is not possible to accept that in January 2021 in the Court at Rajkot in the State of Gujarat, there was any connectivity issue. In fact, admittedly, no such case was pleaded before the High Court in the pleadings of the respondents.

34. We must note here that the reports were submitted by the Public Prosecutor nearly a week before the expiry of the period of 90 days. In every case, period of seven days or more was available for completion of the period of ninety days. The orders were passed by the Special Court on the reports of the Public Prosecutor on the very day on which reports were submitted. There was no reason for such hurry. The Special Court could have always granted time of a couple of days to the prosecution to procure the presence of the accused either physically or through video conference. The accused may not be entitled to know the contents of the report but he is entitled to oppose the grant of extension of time on the grounds available to him in law. In the facts of the present case, the grant of extension of time without complying with the requirements laid down by the Constitution Bench has deprived the accused of their right to seek default bail. It has resulted in the failure of justice.”

7. The above made argument by the learned counsel for the appellant is laid on a very shaky foundation, inasmuch as, a perusal of the application for

2024:PHHC:031459-DB

extension reveals, that the said extension was asked not only against the present appellant but also against the co-accused Jashanpreet Singh @ Shera and Dalbir Singh. Moreover, a reading of the impugned order reveals, that notice thereof was served, upon the accused, and, that in pursuance to the said notice accused Jashanpreet Singh @ Shera and Dalbir Singh recorded their personal appearances before the learned trial Judge concerned. However, though thereins, there is no mention about the present appellant recording his personal appearance before the learned trial Judge concerned, but yet the said personal non appearance of the present appellant before the learned trial Judge concerned, unless, it became pleaded and also evidence become adduced, that despite the availability of video conferencing facility in the prison concerned, for thereby the present appellant recording his personal appearance before the learned trial Judge concerned, yet the present authorities concerned, rather making an omission to thus cause the appearance of the present appellant, through video conferencing, thereupon the non appearance of the present appellant on the relevant date, rather was inconsequential. However, the said fact has not been pleaded nor consequent thereto evidence became adduced.

8. The lack of pleading of fact (supra), in the application, cast under Section 167(2) Cr.P.C., read with Section 43-D of the Act of 1967, as became filed on 13.10.2023, by the present appellant along with other co-accused, who however have not contested the factum of their personally appearing before the learned trial Judge concerned, thereby there was no occasion for the respondent concerned, to raise any contest thereto, through a reply being made thereons or through adducing adequate rebuttal evidence thereto. Therefore, the omission of pleading of the said fact in the requisite application, thereby, the present appellant is estopped to claim that despite no technical snag occurring in the

2024:PHHC:031459-DB

video conferencing facility available in the prison, wherein, the present appellant was lodged, yet the prison authorities willfully avoided the causing of his personal appearance through video conferencing before the learned trial Judge concerned, on 27.09.2023, when the order was passed on the extension application.

9. Moreover, since it is stated in the impugned order, that notice of the relevant extension application was served, upon all the accused, inclusive of the present appellant who is also named therein, thereby the learned counsel for the appellant cannot contend, that no notice of the relevant application became served, upon the present appellant. Therefore, despite the appellant becoming served, it appears that even if assumingly the video conferencing facility was available in the jail concerned, yet he opted not to avail the said facility. Resultantly the learned counsel for the appellant cannot contend that no prior notice of the extension application became served upon the appellant.

10. Conspicuously also the order passed on the extension application was made on 27.09.2023, whereas, the application claiming default bail was made subsequently. Though, in the wake of the above application for extension being allowed earlier, and, it being thus challenge-able at the stage of its making, yet it remained unchallenged in quick sequel to its making, thereby rather with its being impliedly challenged only after a declining order being passed on the application for default bail, thus tantamounts to the appellant waiving and abandoning his challenge to the order passed on the extension application. Resultantly, the learned counsel for the appellant, cannot make the said argument, as, became anived upon the judgment passed in ***Jigar's case (supra)***.

11. In sequel, the learned counsel for the appellant, cannot contend that the present appellant became intentionally deprived of his making appearance

2024:PHHC:031459-DB

through video conferencing before the learned trial Judge concerned, when the latter proceeded to, on the relevant day make a hearing upon the extension application.

12. In aftermath, this Court finds no merit in the instant appeal, and, is constrained to dismiss the same. Hence, the instant petition is dismissed.

13. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

6.03.2024

Ithlesh

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No

(LALIT BATRA)
JUDGE