

Sr. No.282

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2944-2023 (O&M)
Date of decision: 01st May, 2024

RAHULPetitioner

versus

STATE OF HARYANA AND OTHERSRespondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Saurabh Sharma, Advocate
for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

Mr. Suresh Verma, Advocate
for respondent No.3.

HARPREET KAUR JEEWAN, J. (ORAL)

1. Prayer in the present criminal revision petition is for setting aside the order dated 20.11.2023, passed by the learned Additional Sessions Judge (Fast Track Court), Panipat, whereby an application filed by the petitioner for default bail in FIR No.262 dated 27.06.2023, under Sections 376(2)(n), 328, 354-C, 366, 506, 120-B, 509 IPC; Section 6, 12 of Protection of Children from Sexual Offences Act, 2012 and Section 67-A of the Information Technology Act, 2000, registered at Police Station Matlauda, District Panipat, has been dismissed.
2. Learned counsel for the petitioner *inter alia* contends that as per the FIR, the allegations levelled against the petitioner are only restricted to sending of objectionable videos of the alleged victim to her family members, which only attracts an offence under Section 67-A of the Information Technology Act, 2000. The petitioner was arrested on 18.09.2023. The offence under Section 67-A of the Information Technology Act, 2000, is punishable for maximum period of 05 years,

as such, the challan/final report under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) should have been presented within a period of 60 days of the arrest of the petitioner. However, the challan/final report under Section 173 of the Code was presented on 18.11.2023 i.e. beyond the period of 60 days of the arrest of the petitioner, as such, the petitioner is entitled for default bail, as per the provisions of Section 167(2) of the Code. It is further contended that even the Investigating Agency has submitted an application seeking judicial remand of the petitioner (Annexure P-2), whereby, it was alleged that the petitioner- accused Rahul has committed an offence under Section 12 of the Protection of Children from Sexual Offences Act, 2012 and Section 67-A of the Information Technology Act, 2000. Though, subsequently, the challan was filed mentioning all the sections i.e. Sections 376(2)(n), 328, 354-C, 366, 506, 120-B, 509 IPC; Section 6, 12 of Protection of Children from Sexual Offences Act, 2012 and Section 67-A of the Information Technology Act, 2000. However, the petitioner has not been granted the concession of default bail by the Court of learned Additional Sessions Judge, Panipat, while dismissing the application of the petitioner, as such, the said order is liable to be set aside. Learned counsel for the petitioner has also relied upon the decision of the Hon’ble Apex Court in the case of “**Rakesh Kumar Paul vs. State of Assam**”, passed in **SLP (Crl.) No.2009 of 2017**, decided on 16.08.2017,

3. Learned State counsel has filed status report dated 06.01.2024, by way of affidavit of Sh. Dharamvir Singh, HPS, Deputy Superintendent of Police, HQ, Panipat, on behalf of respondent-State of Haryana, along with documents i.e. statement of the victim recorded under Section 164 Cr.P.C. and disclosure statement of the petitioner (Annexure R-1 and R-2 respectively), which are taken

4. Learned State counsel has confirmed the factum of filing of the challan/final report under Section 173 of the Code on 18.11.2023. She further submits that there are total 11 accused in the present case, out of which, Sachin, Pankaj, Surender, Saurav, Renu, Rajni, Manju, Kuldeep and Joni are yet to be arrested. It is further contended that the petitioner was arrested on 18.09.2023 and challan was presented against the petitioner before the Court of Additional Sessions Judge, Panipat on 18.11.2023 under Section 6, 12 of the Protection of Children from Sexual Offences Act, 2012, Section 67-A of the Information Technology Act, 2000 and Sections 376(2)(n), 120-B, 328, 354-C, 366, 506, 509 IPC, 1860. It is further alleged that since grave offences are involved in the FIR, which are punishable for more than 10 years, as such, the time period for conducting the investigation is 90 days and the petitioner is not entitled for default bail.

5. Mr. Suresh Verma, Advocate has put in appearance on behalf of respondent No.3 (prosecutrix) and filed his power of attorney, which is taken on record. Learned counsel for respondent No.3 has also opposed the present petition on the grounds as referred by the learned State counsel.

6. I have considered the aforesaid contentions and perused the paper book.

7. The FIR was registered on 27.06.2023 under Sections 376(2)(n), 328, 354-C, 366, 506, 120-B, 509 IPC; Section 6, 12 of Protection of Children from Sexual Offences Act, 2012 and Section 67-A of the Information Technology Act, 2000, against 11 persons including the petitioner, with detailed allegations against the co-accused of the petitioner having hacked the personal ID of the daughter of respondent No.2/complainant, sending of the messages to the prosecutrix on Instagram, sexual abuse of the minor victim and sending nude videos of the child

call to the child victim and asked for her nude videos, which were subsequently circulated to the co-accused of the petitioner namely Pankaj and other accused persons. The detailed investigation was conducted. The petitioner was arrested on 18.09.2023 and challan/final report under Section 173 of the Code was filed beyond a period of 60 days of the arrest of the petitioner and within a period of 90 days of his arrest.

8. As per the proviso to sub-Section 2 of Section 167 of the Code; where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than 10 years; the investigation is to be completed within a period of 90 days. Section 167(2) of the Code reads as under:-

“xxxxxxx

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no 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 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, - *[Substituted by Act 45 of 1978, Section 13, for paragraph (a) (w.e.f. 18-12-1978).]*

(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 of the accused in custody of the police under this Section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.] *[Substituted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (a) (i), for Cl. (b). Prior to its substitution, Cl (b) read as under:- [(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.

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9. The Hon’ble Apex Court in the case of **Rakesh Kumar Paul (supra)** has laid down the significance of the period of 60 days or 90 days in Para No.17 and 27 of the said judgment, which reads as under:-

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17. The significance of the period of 60 days or 90 days, as the case may be, is that if the investigation is not completed within that period then the accused (assuming he or she is in custody) is entitled to 'default bail' if no charge sheet or challan is filed on the 60th or 90th day, the accused applies for 'default bail' and is prepared to and does furnish bail for release. As can be seen from the narration of facts, no charge sheet or challan was filed against the petitioner on the 60th day but was filed before the conclusion of 90 days. Consequently, was the petitioner entitled to 'default bail' after 60 days?

According to the petitioner the answer is in the affirmative since he had not committed an offence punishable with imprisonment for not less than ten years, but according to the State he had committed an offence punishable with imprisonment for ten years.

27. *It is true that an offence punishable with a sentence of death or imprisonment for life or imprisonment for a term that may extend to 10 years is a serious offence entailing intensive and perhaps extensive investigation. It would therefore appear that given the seriousness of the offence, the extended period of 90 days should be available to the investigating officer in such cases. In other words, the period of investigation should be relatable to the gravity of the offence - understandably so. This could be contrasted with an offence where the maximum punishment under the IPC or any other penal statute is (say) 7 years, the offence being not serious or grave enough to warrant an extended period of 90 days of investigation. This is certainly a possible view and indeed the Cr.P.C. makes a distinction in the period of investigation for the purposes of 'default bail' depending on the gravity of the offence. Nevertheless, to avoid any uncertainty or ambiguity in interpretation, the law was enacted with two compartments. Offences punishable with imprisonment of not less than ten years have been kept in one compartment equating them with offences punishable with death or imprisonment for life. This category of offences undoubtedly calls for deeper investigation since the minimum punishment is pretty stiff. All other offences have been placed in a separate compartment, since they provide for a lesser minimum sentence, even though the maximum punishment could be more than ten years imprisonment. While such offences might also require deeper investigation (since the maximum is quite high) they have been kept in a different compartment because of the lower minimum imposed by the sentencing court, and thereby reducing the period of incarceration during investigations which must be concluded expeditiously. The cut-off, whether one likes it or not, is based on the wisdom of the Legislature and must be respected.*

xxxxxxx” (Emphasis Supplied)

10. The Hon’ble Apex Court in the case of **Rakesh Kumar Paul (supra)** has specifically observed that Section 167 of the Code clearly indicates that if the offence is punishable with death or life imprisonment or with a minimum sentence of 10 years, then Section 167(2)(a)(i) will apply and the accused can apply for

‘default bail’ only if the investigating agency does not file charge-sheet within 90 days. Para No.98 of the said judgment reads as under:-

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98. A bare reading of Section 167 of the Code clearly indicates that if the offence is punishable with death or life imprisonment or with a minimum sentence of 10 years, then Section 167(2)(a)(i) will apply and the accused can apply for ‘default bail’ only if the investigating agency does not file charge-sheet within 90 days. However, in all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of ‘default bail’ after 60 days in case charge-sheet is not filed.

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11. Keeping in view the facts and circumstances of the present case, the detailed investigation was conducted by the Investigating Agency in an FIR, which was registered under Sections 376(2)(n), 328, 354-C, 366, 506, 120-B, 509 IPC; Section 6, 12 of Protection of Children from Sexual Offences Act, 2012 and Section 67-A of the Information Technology Act, 2000, as such, the Additional Sessions Judge, Panipat, has rightly held that in the present case, the period of 90 days would apply and not 60 days, under proviso to sub-Section 2 of Section 167 of the Code. Merely on the ground that charges have been subsequently framed under Sections 376(2)(n), 328, 354-C, 366, 506, 120-B, 509 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012, will not attract the period of 60 days under Section 167(2) of the Code, since, as per the ratio of decision of the Hon’ble Apex Court in **Rakesh Kumar Paul (supra)**, the period of investigation should be relatable to the gravity of the offence. No illegality or impropriety is found in the order dated 20.11.2023,

passed by the learned Additional Sessions Judge, Fast Track Court, Panipat, as such, the present criminal revision petition stands dismissed.

12. Pending miscellaneous applications, if any, shall stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

01st May, 2024
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<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>