

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-26312-2025 (O&M)

Date of Decision: 15.05.2025

Darshan Singh

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Kirat Pal Dhaliwal, Advocate for the petitioner

Sandeep Moudgil, J. (Oral)

(1). This petition under Section 483 (3) of BNSS has been filed by the petitioner seeking cancellation of default bail granted by JMIC, Dhuri to respondent No.3 vide order dated 11.11.2024 (Annexure P8) in FIR No.87 dated 12.06.2024 under Sections 420/120-B IPC and Section 13 of the Punjab Travel Professionals Act, 2024 registered at Police Station Sadar Dhuri, District Sangrur.

(2). Learned counsel for the petitioner-complainant submits that respondent No.2 had filed challan on 11.11.2024 (Annexure P6) and respondent No.3 also filed an application for grant of default bail on the same day i.e. on 11.11.2024 (Annexure P7). He contends that the trial court had no power to ignore the challan inasmuch as it is settled law that the right to default bail is enforceable only prior to the filing of the charge-sheet and since in the present case, the respondent No.3 did not avail his right and in the meantime, the challan has been filed, his right to seek statutory bail under Section 167(2) stands extinguished. Reliance has been placed on **Uday Mohanlal Acharya vs State Of Maharashtra, (2001) 5 SCC 453** wherein it

has been held that wherein the stage of proviso to Section 167(2) is over, as such right is extinguished the moment the challan is filed.

(3). It is argued that the respondent No.3 is a habitual offender with as many as 5 different FIRs already pending to his credit involving similar offence of cheating and duping the people and the present tactics has been successfully played by respondent No.3 just to avoid the compliance of the order dated 14.10.2024 passed in CRM-M-49942-2024 vide which, this Court granted anticipatory bail to the wife of the respondent No.3 on the condition to deposit the demand draft of Rs.5.90 lakhs in favour of the complainant and the said order has not been complied with by her till date even after unsuccessfully challenging the order dated 14.10.2024 before the Apex Court.

(4). Having heard learned counsel for the petitioner, it appears that the offences alleged against the petitioner in the present case are punishable under Sections 420/120-B of the IPC and Section 13 of the Punjab Travel Professionals Act, 2014, with a maximum punishment of 7 years. The accused was arrested on September 10, 2024, and produced before the court on September 11, 2024. The investigating agency was required to submit its challan within 60 days, which expired on November 9, 2024.

(5). In the present case, the challan was presented by the police on 11.11.2024 at 12.07 pm whereas the application for default bail was filed by respondent No.3, on the same day, but prior in time at 12.05 PM. It is well settled proposition of law that an accused is entitled to default bail if the application is filed in relation thereto, before the presentation of challan by the prosecution, even if the challan is presented soon after.

(6). Challan in the present case was admittedly filed later on before the adjudication of the default bail application, may be with a difference of two minutes later to that, but as a matter of fact, it cannot be a ground for cancellation of bail as admittedly, the application for default bail was filed by respondent No.3 two minutes before the presentation of challan by the police.

(7). The above interpretation has also been discussed by the Apex Court in Union of India through CBI vs/ Nirala Yadav @ Raja Ram Yadav @ Deepak (2014) 9 SCC 457 wherein it has been held that when the accused filed an application for default bail within permissible time, willing and prepared to furnish bail bonds and no charge-sheet has been filed till that time, then it will be held that the accused has availed his right. Now if after this a charge-sheet is filed then the right of the accused will not extinguish.

(8). Since the application for default bail was filed before the presentation of the challan, an indefeasible right to be released on default bail has accrued in favour of the respondent No.3 and as such, the trial court rightly granted default bail under Section 167(2) CrPC.

(9). Given these circumstances, there is no merit in the present petition and the same is accordingly dismissed.

(10). Ordered accordingly.

(11). Anything stated hereinabove, shall have no bearing on the merits of the case before the trial court.

15.05.2025

V. Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No