

2025:PHHC:146750



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

309

CRM-M-39694-2025 (O&M)
Date of decision: 31.10.2025

Abdul Khan ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Ms. Kamlesh, Advocate
for the petitioner.

Mr. Durgesh Garg, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) making prayer for setting aside the order dated 09.07.2025, passed by the Court of learned Additional Sessions Judge, Malerkotla in case arising out of FIR No. 24 dated 27.03.2024, registered under Sections 15, 25 and 29 of the NDPS Act, 1985 at Police Station Amargarh, Malerkotla, whereby the prayer of the petitioner for his release on default bail had been declined.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the petitioner has been booked for commission of aforementioned offences on the allegations that on 27.03.2024, 92 kgs. of poppy husk was recovered from a truck, which was driven and occupied by co-accused Baljinder Singh and Buta Khan and was owned by the present petitioner. He was nominated as an accused on the basis of the disclosure statements of the co-accused and was arrested on 09.01.2025.

2025:PHHC:146750



for presentation of challan expired on 08.07.2025. Since no challan was presented against him after expiry of the same, therefore, he had moved an application for grant of default bail, which was allowed vide order dated 09.07.2025 and he was ordered to be released, subject to his furnishing bonds to the satisfaction of the learned trial Court. It is further submitted that on the same day, the learned trial Court passed another order, thereby declining the release of the petitioner by observing that challan had been received.

4. It is further argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as while passing the same, the learned trial Court did not take into consideration the well settled proposition of law that once the right to avail default bail had accrued in favour of an accused, the same could not be defeated, even if the chargesheet was filed subsequently or its submission was delayed. It is, therefore, argued that the petition deserves to be allowed and the petitioner deserves to be released on default bail. To buttress her argument, learned counsel for the petitioner has placed reliance upon the authorities cited as ***M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence : 2021 (2) SCC 485*** and ***Mohammad Javed Ali vs. State of U.T., Chandigarh, CRM-M-50125-2023, decided on 11.10.2023.***

5. Status report has been filed by the respondent-State. It is argued by learned State counsel that there is no illegality or infirmity in the impugned order as the petitioner had failed to furnish bonds despite passing of bail order giving sufficient time to him by the learned Special Court. He/his counsel had not even shown promptness to furnish bonds on 09.07.2025 and had asked for grant of some more time. It is, therefore, urged that there is no merit in the

2025:PHHC:146750



petition and the same is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable length and have also gone through the record.

7. It is not disputed that as per the provisions of Section 187 of BNSS, challan in this case was required to be filed within a period of 180 days and if the investigating agency failed to do so, then a right was certainly created in favour of the petitioner to seek release on bail. It is also not in dispute that by the time when the petitioner moved application for grant of default bail, challan had not been presented and it was filed by the police only after passing of order for grant of default bail but before furnishing bonds by the petitioner. The well settled proposition of law is that an indefeasible right is created in favour of an accused if challan is not presented within the stipulated time, however, the right so created is enforceable only prior to filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of.

8. In *M. Ravindran*'s case (supra), the Hon'ble Supreme Court had discussed the statutory right of grant of default bail and concluded that once the accused files an application for bail under the proviso to Section 167(2) of Cr.P.C., he is deemed to have availed or enforced his right to be released on default bail accruing after expiry of stipulated time for investigation and the right of default bail continues to remain when an application for default bail has been filed. It was further observed that notwithstanding the order of default bail, which is passed by a Court, by virtue of explanation I to Section 167(2) of Cr.P.C. (*which is pari materia with Section 187(3) of BNSS, 2023*), the actual release of the accused from custody is contingent of the directions passed by the

2025:PHHC:146750



competent Court granting bail and if the accused fails to furnish bonds and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, then his continued detention in custody is valid. With regard to the nature of the conditions, the Hon'ble Apex Court had made the following observations:

“However, the expression ‘the accused does furnish bail’ in Section 167(2) and Explanation I thereto cannot be interpreted to mean that if the accused, in spite of being ready and willing, could not furnish bail on account of pendency of the bail application before the Magistrate, or because the challenge to the rejection of his bail application was pending before a higher forum, his continued detention in custody is authorized. If such an interpretation is accepted, the application of the proviso to Section 167(2) would be narrowly confined only to those cases where the Magistrate is able to instantaneously decide the bail application as soon as it is preferred before the Court, which may sometimes not be logical possible given the pendency of docket across Courts or for other reasons. Moreover, the application for bail has to be decided only after notice to the public prosecutor. Such a strict interpretation of the proviso would defeat the rights of the accused. Hence, his right to be released on bail cannot be defeated merely because the prosecution files their chargesheet prior to furnishing bail and fulfills the conditions of bail of furnishing bail etc. so long as he furnishes the bail within the time stipulated by the Court.”

9. It would also be apt to refer to the judgment in the case of ***Rakesh Kumar Paul vs. State of Assam, (2017) 15 SCC 67***, wherein Hon'ble Apex Court reiterated the constitutional ethos of personal liberty as facet of Article 21 of the Constitution and held as under:

“In our opinion, in matters of personal liberty, we cannot and

2025:PHHC:146750



should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for 'default bail' or an oral application for 'default bail' is of no consequence. The court concerned must deal with such an application by considering the statutory requirements namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge sheet or challan has been filed and whether the accused is prepared to and does furnish bail. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court."

10. Reference can also be made to ***Sumit Mehta vs. State (NCT of Delhi, (2013) 15 Supreme Court Cases 570***, wherein it was observed that the law presumes an accused to be innocent till his guilt is proved and as presumably innocent person, he is entitled for all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution of India and the expression 'any condition' used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstances and effective in the pragmatic sense and should not defeat the order of grant of bail. In ***Ramesh Kumar vs. State of NCT of Delhi, (2023) 7 Supreme Court Cases 461***, it was observed that the conditions to be imposed must not be onerous or unreasonable or excessive. On applying the above discussed proposition of law

2025:PHHC:146750



to the present case, it may be stated that in this case, the order for grant of bail was passed after 02:00 PM and the petitioner was directed to furnish bonds by 04:00 PM. He himself being in custody, the sureties were obviously to be arranged by his family members, who could not arrange the same within such a short time span. In the considered opinion of this Court, the condition imposed by the learned trial Court was totally onerous and unreasonable one on the face of it. It was not that the petitioner was not ready to furnish the bonds. As such, striking a balance between the right of the petitioner to be released on default bail and that of the prosecution, in the given facts of the present case, this Court is persuaded to hold that the time sought by the petitioner to comply with the condition imposed to be released on bail cannot be held to be unreasonable and does not qualify the reasonableness under Article 21 of the Constitution. Hence, on a conspectus of the material on record and in view of the well settled proposition of law, this Court finds that the petitioner deserves to be released on default bail, subject to his complying with the conditions to be imposed upon him by the learned Court. Consequently, the petition is allowed. The impugned order, passed by the learned trial Court, is set aside. The condition imposed by the learned trial Court by which the petitioner was directed to furnish surety by 04:00 PM on the same day is also set aside and the petitioner is ordered to be released on default bail forthwith in this case, subject to his furnishing personal/surety bonds to the satisfaction of the learned trial Court.

31.10.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No