

2025:PHHC:129524



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

109

**CRR No. 2279 of 2025 (O&M)
Date of decision: 17.09.2025**

Iqbal Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pratham Sethi, Advocate,
Mr. Kanishk Swaroop, Advocate,
Mr. Sidhant Kapoor, Advocate and
Mr. R. P. Saini, Advocate
for the petitioner.

Mr. Roshandeep Singh, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant revision petition has been filed by the petitioner challenging the order dated 20.08.2025, passed by the Court of learned Judicial Magistrate First Class, Ludhiana in case arising out of FIR No. 10 dated 27.01.2025, registered under Sections 406, 420 and 120-B of IPC at Police Station Dakha, District Ludhiana (Rural), whereby an application filed by the petitioner under Section 187 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*), seeking default bail, had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR has been registered against the petitioner and co-accused Manjit Singh on the basis of a complaint lodged by respondent No. 2/complainant alleging that the petitioner along with co-accused had caused wrongful loss to the tune of Rs.1.10 crore to him. After registration

2025:PHHC:129524



of the FIR, investigation proceedings had been initiated. The petitioner had been arrested in this case on 19.06.2025. On 20.08.2025, he moved an application for grant of default bail under Section 187 of BNSS (*which is pari materia with Section 167(2) of the Code of Criminal Procedure [for short the Code]*). The said application has been dismissed by the learned jurisdictional Magistrate by observing that challan had been presented before filing of the said application for grant of default bail by the petitioner.

3. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law and is liable to be set aside since he has been booked for commission of offences punishable under Sections 420 and 406 read with Section 120-B of IPC. These offences are triable by the Magistrate and the maximum punishment for commission of substantive offence under Section 406 of IPC is 03 years, whereas for commission of offence under Section 420 of IPC, the punishment is for a term which may extend to 07 years to the maximum. It is submitted that as per the provisions of Section 187 of BNSS, if investigation is not completed within a period of 60 days in such like offences and challan is not presented within this period, then the person accused of such offences is entitled to be released on bail as an indefeasible right is created in his favour. It is submitted that the period of 60 days in this case had in fact expired on 19.08.2025 and a right had been created in favour of the petitioner on that day itself. However, he had moved application on 20.08.2025. Once a right was so created, then even if challan was presented before moving the application by him on 61st day, his right was not lost and he was entitled to be released on bail. It is argued that while passing the impugned order, the learned Magistrate did not take these facts into consideration and did not

2025:PHHC:129524



consider the well settled proposition of law. It is, therefore, urged that the impugned order is liable to be set aside. To fortify his argument, learned counsel for the petitioner has relied upon the authorities cited as ***Abhishek vs. State of NCT of Delhi, 2022 (3) JCC 1984*** and ***Gurmeet Singh vs. State of Punjab 2025 (3) Law Herald 2069***.

4. *Per contra*, learned State counsel has submitted that there is not illegality or infirmity in the order passed by the learned Magistrate and the same does not deserve any interference. It is submitted that since challan had been submitted in this case before moving application for grant of bail by the petitioner, therefore, the right created in favour of the petitioner was lost and did not survive. It is, accordingly, urged that the petition is liable to be dismissed. To buttress his argument, learned State counsel has relied upon the authorities cited as ***Uday Mohan Acharya vs. State of Maharashtra, 2001 (2) RCR (Criminal) 452***, ***Rakesh Kumar Paul vs. State of Assam, 2017 (3) RCR (Criminal) 996***, ***Sadhwi Pragyna Singh Thakur vs. State of Maharashtra, 2011 (1) SCC 445***, ***Hitendra Thakur vs. State of Maharashtra, 1994 (4) RCR (Criminal) 156 (SC)*** and ***Suresh Kumar Bhikamchand Jain vs. State of Maharashtra and another, 2013 (3) SCC 77***.

5. This Court has heard the submission made by both the sides.

6. It is not disputed that since the offence under Section 420 of IPC is punishable for maximum term of 07 years, therefore, if in such case, investigation is not completed within a period of 60 days as per the provision of Section 187 of BNSS, then a right is created in favour of the accused to seek release on bail. It is also not in dispute that the challan in this case had been presented only on 20.08.2025. The petitioner had been arrested on 19.06.2025.

2025:PHHC:129524



The period of 60 days expired on 18.08.2025. As such, in fact the challan had been filed on 62nd day and even application for grant of default bail had also been filed by the petitioner on the same day. The learned Magistrate has categorically mentioned in the order that the challan was presented before moving application for grant of bail by the petitioner. As such, the question that falls for consideration before this Court is as to whether the petitioner is entitled to grant of default bail due to the reason that challan was presented on completion of 60 days and to be precise on 62nd day?

7. The well settled proposition of law in this regard is that no doubt 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. In ***Hitendra Thakur***'s case (supra), it was observed by Hon'ble Supreme Court that 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. The custody of the accused after the challan has been filed, is not governed by Section 167 of the Code (*which is pari materia with Section 187 of BNSS*) but by different provisions of the Code (BNSS). If that right has been accrued to the accused but it remained unenforced till 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 of the Code ceases to apply. In ***Uday Mohan Acharya***'s case (supra), Hon'ble Supreme Court had observed that the right of an accused to be released on bail for default in submission of challan was a valuable and indefeasible right but by the time the Court is considering

2025:PHHC:129524



such right, if challan is filed, then question of grant of bail has to be considered only with reference to the merits of the case. It was further observed that if challan is filed before filing of application for bail expressing thereunder to furnish bonds, then there is no question of enforcing the right, howsoever, valuable or indefeasible it may be, because thereafter, the right under default clause cannot be exercised.

8. Further, in *Sanjay Dutt vs. State through CBI Bombay (II), 1994 (3) RCR (Criminal) 156 (SC)*, it was held by Hon'ble Supreme Court that if the right of seeking default bail has not been already availed of prior to filing of chargesheet, then the said right no longer remains enforceable after filing of chargesheet. Reliance can also be placed upon *Sadhwi Pragyna Thakur's* case (supra), wherein similar observations were made by the Hon'ble Supreme Court.

9. In *Abhishek's* case (supra), chargesheet was not filed during the prescribed time of 90 days, which came to an end on 18.04.2020. On 20.04.2020, an application under Section 167(2) of the Code was filed by the accused through email since due to outbreak of Covid-19 pandemic, there was nationwide lockdown and there was no physical hearing in the Courts. The chargesheet had also been filed on the same day i.e. 20.04.2020. Since default bail application had been filed before filing of the chargesheet, though through email, it was observed by the High Court of Delhi that in the peculiar facts, it could not be concluded that at the time of the petitioner's availing right to seek default bail, the chargesheet was already filed and he was ordered to be released on default bail.

10. In *Gurmeet Singh's* case (supra), the question for consideration before this Court was as to whether the pendency of regular bail petition before

2025:PHHC:129524



the High Court or Sessions Court undermined the statutory power of the Magistrate/Sessions Court to grant default bail. It was observed by this Court that even when a regular bail petition was pending before the High Court, the Sessions Court/Magistrate was competent to grant bail. Both these citations, which have been relied upon by the petitioner, are not applicable to the peculiar facts and circumstances of the present case. In view of the well settled proposition of law to the effect that even if the challan report has not been filed within the stipulated time and a right has been created in favour of the accused to seek default bail, but if the challan report is filed before filing of application for bail, the right so created in favour of an accused stands extinguished. Applying this proposition of law to the peculiar facts of the present case when challan had been filed by the prosecution before moving an application for default bail by the petitioner, this Court is inclined to hold that the learned Magistrate did not commit any illegality in declining the prayer made by the petitioner for grant of default bail. As such, no ground has been made out for interfering with the impugned order. Accordingly, the petition is dismissed.

17.09.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No