



CRR-2467-2024

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**226 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-2467-2024

Date of Decision: 20.05.2025

Amit Kumar

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Yashpal Thakur, Advocate, for the petitioner.

Mr. J.S. Arora, DAG, Punjab.

Rajesh Bhardwaj, J. (ORAL)

1. Present revision petition has been filed by the petitioner against the order dated 13.11.2024 passed by learned Additional Sessions Judge, Fatehgarh Sahib, vide which the application filed by the petitioner under Section 187(3) BNSS (earlier Section 167(2) Cr.P.C.) for the grant of default bail in a case FIR No.55 dated 12.05.2024 registered under Sections 22-C of NDPS Act, at Police Station Sirhind, was declined.

2. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the above-said FIR and was arrested on 12.05.2024. He submits that the petitioner was produced before the Illaqa Magistrate on 13.05.2024 and since then, he is in custody for a period of more than 180 days, but the charge-sheet was not presented within this period, which gave him indefeasible right of being released on default bail under Section 187(3) of BNSS. He submits that the petitioner moved an application on 09.11.2024 before learned Duty Magistrate under Section 36-A of NDPS Act and Section 187(3) of BNSS for the grant of default bail, as there were holidays on 09.11.2024 and 10.11.2024 and only the Duty Magistrate was dealing with the urgent matters. However, the Duty



Magistrate instead of sending the said bail application to the Court of competent jurisdiction on the next working day i.e. 11.11.2024, passed a wrong order by returning the same by observing that counsel for the petitioner failed to show that such application can be filed before the Duty Magistrate. He has further submitted that as per the law laid down in **2017(3) RCC (Criminal) 996**, oral submission was sufficient and it was not necessary to file bail application under Section 187(3) BNSS (earlier Section 167(2) Cr.P.C.) and it was the duty of the concerned Court to inform the accused about the expiry of mandatory period, but learned Duty Magistrate wrongly returned the bail application filed by the petitioner on 09.11.2024 granting him liberty to file the same before the concerned Court. He submits that thereafter, the challan was received in the Court on 11.11.2024, on which date the application for the grant of default bail was also filed before learned Additional Sessions Judge, Fatehgarh Sahib, who sought report from the Ahlmad and the Ahlmad reported that challan in the present case was filed before the Duty Magistrate on 10.11.2024 at 10:30 a.m. and the same was received in the Court of learned Additional Sessions Judge on 11.11.2024 at 10:00 a.m. and ultimately hold the petitioner to be not entitled for the concession of default bail and dismissed the application vide order dated 13.11.2024. He, thus, submits that both the orders i.e. 09.11.2024 and 13.11.2024 are erroneous and have been passed by the Courts below without appreciating the real facts and as such the same are liable to be set aside.

3. Learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that the petitioner moved the application before the Duty Magistrate, who had no jurisdiction to entertain



the same and as such, was rightly returned to the petitioner with liberty to file it before the Court of competent jurisdiction. He has submitted that when the application was presented before the Additional Sessions Judge, Fatehgarh Sahib, challan was already presented on 10.11.2024 and as such, the order passed by learned Additional Sessions Judge, suffers from no illegality or irregularity and thus, the present revision petition is liable to be dismissed.

4. Heard. Admittedly, the present FIR was registered on 12.05.2024 and the petitioner was also arrested on the same day and the challan was presented before learned Magistrate on 10.11.2024 when 180 days had already been completed. For resolving the controversy involved in the present case, appreciation of Section 187(3) of BNSS and Section 36-A of the NDPS Act, is essential, which reads as under:-

“Section 187(3)- The Magistrate may authorise the detention of the accused person, 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 sub-section for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;

(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 XXXV for the purposes of that Chapter.”

**“36A. Offences triable by Special Courts:-**

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(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on 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 one hundred and eighty days.

5. From the bare reading of the above-said Sections, it is clear that after completion of mandatory period required for completion of investigation and presentation of challan before the competent Court i.e. within 180 days, indefeasible right accrues to the accused to be released on default bail. In the present case, the petitioner filed an application before learned Duty Magistrate on 09.11.2024, as being holiday only the Duty Magistrate was available to deal with the urgent matters and he/she was supposed to entertain the application being urgent one, but learned Duty Magistrate wrongly got it withdrawn and granted liberty to the petitioner to file the same before the Court of competent jurisdiction vide order dated 09.11.2024. It is also clear that the challan was presented on 10.11.2024 i.e. very next day of filing the application for the grant of default bail by the petitioner. Thus, right accrued to the petitioner on 09.11.2024 to be released



on default bail, cannot be denied to him on the ground that the Duty Magistrate found it to be having no jurisdiction to entertain the application. It is not denied by the State that there were holidays on 09.11.2024 and 10.11.2024 and only the Court of Duty Magistrate was functioning and no regular Court was in operation and the petitioner having no other way to seek his relief rightly moved his application before the Court of learned Duty Magistrate and the indefeasible right accrues to the petitioner cannot be frustrated on the ground that challan was presented on the next day. Similarly, the Court of Additional Sessions Judge, treated the date of application moved by the petitioner for the grant of default bail as 11.11.2024 instead of 09.11.2024 when he approached the Court of learned Duty Magistrate for the grant of default bail. Thus, the orders passed by both the Courts below suffer from illegality and irregularity and are liable to be set aside.

6. Hon'ble Supreme Court in **Uday Mohanlal Acharya vs. State of Maharashtra, 2001(2) RCR (Criminal) 452** while relying upon several judgments recorded its conclusion as under:-

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“1. Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days in the whole.

2. Under the proviso to aforesaid sub-section (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not



less than 10 years, and 60 days where the investigation relates to any other offence.

3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the Investigating Agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnish the bail, as directed by the Magistrate.

4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have accrued in his favour on account of default on the part of the Investigating Agency in completion of the investigation within the specified period, the Magistrate/Court must dispose of it forthwith, on being satisfied that in fact the accused has been custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the Investigating Agency. Such prompt action on the part of the Magistrate/Court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the Investigating Agency in completing the investigation within the period stipulated.

5. If the accused is unable to furnish bail, as directed by the Magistrate, then the conjoint reading of Explanation I and proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in paragraph (a) will not be unauthorised, and, therefore, if during that period the investigation is complete and charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.

6. The expression 'if not already availed of' used by this Court in Sanjay Dutt's case (*supra*) must be understood to mean when the accused files an application and is prepared to offer bail on



being directed. In other words, on expiry of the period specified in paragraph (a) of proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.”

7. Similarly in **Enforcement Directorate Government of India vs. Kapil Wadhawan and another etc., 2023(2) RCR (Criminal) 474,**

Hon;ble Supreme Court held as under:-

“50. Since there exists vacuum in the application and details of section 167 CrPC, 1973 we have opted for an interpretation which advances the cause of personal liberty. The accused herein were remanded on 14.05.2020 and as such, the chargesheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on 13.07.2020 which was the 61st day of their custody. Therefore, the right to default bail accrued to the accused persons on 13.07.2020 at 12:00 AM, midnight, onwards. On that very day, the accused filed their default bail applications at 8:53 AM. The ED filed the chargesheet, later in the day, at 11:15 AM. Thus, the default bail Applications were filed well before the chargesheet. In Ravindran(supra) and Bikramjit (supra), which followed the Constitution Bench in Sanjay Dutt(supra) it was rightly held that if the accused persons avail their indefeasible right to default bail before the chargesheet/final report is filed, then such right would not stand frustrated or extinguished by any such subsequent filing. We therefore declare that the stipulated 60/90 day remand period under section 167 CrPC, 1973 ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the



remand period, as we notice will extend beyond the permitted 60/90 days' period resulting in unauthorized detention beyond the period envisaged under section 167 CrPC, 1973. In cases where the chargesheet/final report is filed on or after the 61st/91st day, the accused in our considered opinion would be entitled to default bail. **In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused."**

8. In view of above discussions, it is held that the challan was not presented within the mandatory period of 180 days by the prosecution and the petitioner moved the application before the Duty Magistrate on 09.11.2024 on the very next day for the grant of default bail, but learned Duty Magistrate wrongly returned the same and denied him the indefeasible right, which the statute has granted to every accused in whose case the investigation is not completed within the mandatory period. Similarly, the order passed by learned Additional Sessions Judge, Fatehgarh Sahib who treated the date of application as 11.11.2024 instead of 09.11.2024 when the petitioner already approached the Court of Duty Magistrate, is not sustainable.

9. Thus, the present petition is allowed and the orders dated 09.11.2024 and 13.11.2024 are set aside and the petitioner is held to be entitled for default bail subject to his furnishing bail/surety bonds to the satisfaction of learned trial Court/Duty Magistrate, if not required in any other case.

(RAJESH BHARDWAJ)
JUDGE

20.05.2025

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Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No