



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

CRM-M-63437-2024
Reserved on 14.01.2025
Date of decision: 21.01.2025

Davinder Singh @ Motu @ Kaka

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. C.S. Rana, Advocate for the petitioner.

Mr. J.S. Dhaliwal, AAG, Punjab.

KARAMJIT SINGH, J.

1. Admittedly, petitioner was granted default bail in a criminal case having FIR No.111 dated 09.07.2024 under Sections 103 (1), 331(4), 305-A, B/3(5) of BNS, 2023, Police Station Sidhwan Bet, District Ludhiana by the Court of Illaqa Magistrate, Jagraon vide order dated 14.10.2024 Annexure P-2. Thereafter, on 22.10.2024, the petitioner through his counsel moved an application (Annexure P-5) to accept the bail bonds and surety bonds presented on behalf of the petitioner on the basis of order Annexure P-2 dated 14.10.2024. Earlier to that, after the passing of order Annexure P-2, on the same very day, police presented challan in the Court concerned, as is clear from order Annexure P-3. However, the Court of Illaqa Magistrate refused to accept bail/surety bonds furnished by the petitioner and passed impugned order dated 22.10.2024 (Annexure P-6) and rejected the application Annexure P-5 with following observations:-



“So far as the factual position is concerned that is not disputed. It is not disputed that the bail application was accepted vide order dated 14.10.2024. It is also not disputed that surety bonds were not furnished till today and challan in this case has already been presented on 14.10.2024. Therefore, applying the ratio of case law Uday Mohan Lal Acharya (supra) and Amandeep Singh @ Aman (Supra), I am of the considered view that the application moved by applicant for permitting him to furnish the bail/surety bonds on behalf of accused Davinder Singh @ Motu @ Kaka is not liable to be allowed and as such, same stands dismissed.”

2. Being aggrieved, the petitioner has filed the present petition.
3. The counsel for the petitioner while placing reliance upon the majority view of Hon’ble Supreme Court in ***Uday Mohan Lal Acharya Vs. State of Maharashtra (2001) 5 SCC 453*** and subsequent judgment of the Hon’ble Supreme Court in ***M. Ravindran Vs. The Intelligence Officer, Director of Revenue Intelligence 2021 (2) SCC 485*** and decision of the co-ordinate Bench of this Court in CRM-M-2235-2020 ***Avtar Singh @ Babbu Vs. State of Punjab***, decided on 16.07.2020, has submitted that impugned order dated 22.10.2024 Annexure P-6 is not sustainable and deserves to be set aside.
4. The Hon’ble Supreme Court in ***M. Ravindran’s case*** (supra) concluded as follows:-

18. Therefore, in conclusion:

18.1 Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have ‘availed of’ or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under [Section 167\(2\)](#), CrPC read with [Section 36A \(4\)](#), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.

18.2 The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail



application is pending before a higher Court.

18.3 However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the [CrPC](#).

18.4 Notwithstanding the order of default bail passed by the Court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent Court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid.”

5. In the instant case, the petitioner was granted default bail vide order dated 14.10.2024 (Annexure P-2), as the final report of investigation under Section 173 Cr.P.C was not submitted against the petitioner within the statutory period of 90 days. From the perusal of Annexure P-2, it is clear that while granting default bail, the Court concerned has not given any time limit within which the petitioner was to furnish bail/surety bonds in light of order Annexure P-2.

6. The counsel for the petitioner has pointed out that the judgment of Apex Court in ***Uday Mohan Acharya's case (supra)***, in which it has been held that indefeasible right of an accused to his statutory bail stood extinguished on his failure to furnish the bail bonds only reflects the dissenting view, while the majority view was still in favour of the accused and therefore, the accused therein was permitted to be released on statutory bail by the Apex Court.

7. Admittedly, in the present case, the State has not challenged order Annexure P-2 passed by the Court concerned whereby the petitioner was granted default bail under Section 187 (2) BNSS, 2023.

8. During arguments, the State counsel in all fairness has not



disputed that the case of the petitioner is squarely covered by the majority view in *Uday Mohan Acharya's case (supra)*, which was reiterated in *M. Ravindran's case (supra)*.

9. In light of the above coupled with the settled position of law as detailed above, the petitioner's failure to furnish bail bonds after having been granted concession of default bail, due to non submission of challan within a statutory period, where no time limit had been prescribed for furnishing such bail bonds, would not have the effect of extinguishing his indefeasible right to default bail.

10. Consequently, the present petition is allowed and impugned order dated 22.10.2024 (Annexure P-6) is set aside and the petitioner is permitted to be released on default bail by virtue of the original order dated 14.10.2024 (Annexure P-2) passed by the Court of Illaqa Magistrate, Jagraon, subject to furnishing of the bail bonds to the satisfaction of the Court concerned.

21.01.2025

Yogesh

**(KARAMJIT SINGH)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**