

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 4547 OF 2024
(ARISING FROM SLP (CRL.) NO. 3083 OF 2024)

THE STATE OF PUNJAB . . . APPELLANT(S)

Versus

SUKHWINDER SINGH @ SUKHA & . . . RESPONDENT(S)
ORS.

O R D E R

1. Leave granted.
2. The present appeal arises out of the impugned order dated 12.05.2023 in CRA-D-1115-2022 passed by the High Court of Punjab & Haryana granting default bail to the accused-respondents subject to certain conditions.
3. Brief facts of the instant matter are that a bomb blast had occurred on a motorcycle in Jalalabad (Fazlika) on 15.09.2021, in pursuance of which FIR No. 205 dated 16.09.2021 was lodged under Sections 3, 4 of the Explosive Substances Act, 1908, Sections 13, 15, 17, 18, 18-B, 20 of the Unlawful Activities (Prevention) Act, 1967¹ and Sections 21, 29, 61-85 of the Narcotics Drugs and Psychotropic Substances Act, 1985².
4. On 01.11.2021, while the SHO with other officials were present at Kisanpura Chowk, they were informed by a police informer that the accused persons in said offence can be apprehended if the house of one Tarlok Singh is raided. On this account, FIR No. 181 dated 01.11.2021 was lodged under sections 212 and 216 of

¹ UAPA hereinafter

² NDPS Act hereinafter

Indian Penal Code, 1860³ and Sections 18 and 19 of UAPA. In pursuance to the lodging of the said FIR, accused persons were arrested on respective dates - Jaswant Singh @ Shinda Baba and Balwant Singh @ Bant on 01.11.2021, Ranjit Singh @ Gora on 04.11.2021, Manjit Singh @ Mana on 11.11.2021, Sukhwinder Singh @ Sukha on 12.11.2021 and Parveen Singh on 22.03.2022.

5. Thereafter, on 14.02.2022, Respondent No. 4, i.e. Jaswant Singh @ Shinda Baba preferred a default bail application under Section 167(2) of the Code of Criminal Procedure, 1973⁴ before the concerned Magistrate which was rejected on the same day on the ground that the Investigating Agency has already been granted an extension of 180 days to file the chargesheet vide order dated 31.01.2022. No appeal was preferred against the order dated 14.02.2022.
6. Subsequently, the chargesheet was filed against all the Respondents herein on 29.04.2022. The case was committed to the Sessions Judge, Ludhiana on 08.07.2022. It is only on 02.09.2022 that all the present Respondents filed a common application seeking default bail under Section 167(2) of CrPC read with Section 43-D of UAPA before the Additional Sessions Judge, Ludhiana. The said application was dismissed by the Additional Sessions Judge vide order dated 05.09.2022 based on the reasoning that challan has already been presented on 29.04.2022, much before filing of the application under section 167(2) of CrPC for default bail.

³ IPC hereinafter

⁴ CrPC hereinafter

7. The Respondents preferred an appeal before the High Court against order dated 05.09.2022 which was allowed by the High Court. The High Court's rationale while granting default bail was that in the instant case, since the matter pertained to offences under UAPA, only the Designated Special Court alone had valid jurisdiction to assign extensions of time to the concerned Investigating Officer⁵ to complete investigation and to file a report under Section 173(2) CrPC. However, since in the instant matter, the order dated 31.01.2022 granting extension of time was passed by Judicial Magistrate First Class, Jagraon⁶ which was judicially incompetent to do so and hence, the accused persons were in the face of no valid extensions of time being granted to the IO and were entitled to receive the benefit of default bail. Aggrieved by the said relief being granted, the Appellant-State of Punjab has preferred this appeal.
8. Before going into the merits of the case, we would like to reproduce the relevant provisions from CrPC and UAPA respectively-

"167 CrPC. Procedure when investigation cannot be completed in twenty-four hours.-

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may

⁵ IO hereinafter

⁶ JMFC hereinafter

order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

[(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, 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 paragraph 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 not less than ten years;

(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 XXXIII for the purposes of that Chapter;]

[(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;]

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

[Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.]

[Explanation II.—If any question arises whether an accused person was produced before

the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.]

[Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.]”

“43D UAPA. Modified application of certain provisions of the Code.—(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days” and “ninety days” respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:—

“Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with 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 ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of

any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government.";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

9. While the High Court was right in observing that in the instant case, the extension of time was granted by a jurisdictionally incompetent court and the order dated 31.01.2022 was, thus, invalid. However, when the question of stage at which default bail is being preferred under Section 167(2) of CrPC read with Section 43D of UAPA arises, a bare perusal of above provision makes it clear that the paramount ingredient is that such a bail application must have been preferred before a chargesheet is filed. The right to default bail accrues when the time of investigation or extended time is completed and yet no chargesheet has been filed and the said right sustains until the time that the chargesheet is filed in the concerned matter. The position of law has been clarified by the Courts of law time and again. Relevant paragraphs of some of these judgments, which have also been relied on by the Appellants are produced hereinafter:

(i) In Sanjay Dutt v. State through CBI, Bombay (II), (1994) 5 SCC 410 : 1994 SCC (Cri) 1433, it was held that -

"48. We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4)(bb) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or

remain enforceable on the challan being filed, if already not availed of. 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 after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the 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 CrPC ceases to apply. The Division Bench also indicated that if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in Section 20(4)(bb), both of them should be considered together. It is obvious that no bail can be given even in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer for extension of time, if such a prayer is made. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order. (See Naranjan Singh Nathawan v. State of Punjab [(1952) 1 SCC 118 : 1952 SCR 395 : AIR 1952 SC 106 : 1952 Cri LJ 656] ; Ram Narayan Singh v. State of Delhi [(1953) 1 SCC 389 : 1953 SCR 652 : AIR 1953 SC 277 : 1953 Cri LJ 1113] and A.K. Gopalan v. Government of India [(1966) 2 SCR 427 : AIR 1966 SC 816 : 1966 Cri LJ 602] .)"

(Emphasis is mine)

- (ii) CBI v. Kapil Wadhawan, (2024) 3 SCC 734 : 2024 SCC OnLine SC 66, it was held that -

"23. The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a charge-sheet is not filed and the investigation is kept pending against him. Once however, a charge-sheet is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a charge-sheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the charge-sheet, nonetheless for some reasons, if all the documents are not filed along with the charge-sheet, that reason by itself would not invalidate or vitiate the charge-sheet. It is also well settled that the court takes cognizance of the offence and not the offender. Once from the material produced along with the charge-sheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of charge-sheet would neither vitiate the charge-sheet, nor would it entitle the accused to claim right to get default bail on the ground that the charge-sheet was an incomplete charge-sheet or that the charge-sheet was not filed in terms of Section 173(2) CrPC."

- (iii) Judgment in case of Bikramjit Singh v. State of Punjab, (2020) 10 SCC 616, which has been relied on by the High Court in the impugned judgment, reiterates this settled position of law in the following terms -

"36. A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge-sheet is filed, the right

to default bail becomes complete. It is of no moment that the criminal court in question either does not dispose of such application before the charge-sheet is filed or disposes of such application wrongly before such charge-sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted."

10. In the instant matter, the chargesheet against the Respondents was presented before the Trial Court on 29.04.2022 and the application for grant of default bail was preferred only on 02.09.2022, i.e. after more than four months of filing of the said chargesheet. Respondent No. 4, who alone had filed an application for bail before the filing of chargesheet on 14.02.2022, had also preferred not to file any appeal against its dismissal. Therefore, looking at the timeline and the facts of the case, it is sufficiently clear that on the date of preferring application for default bail i.e. 02.09.2022, no such right sustained as the challan had already been filed. The benefit of default bail can only be conferred before a chargesheet is filed, which was not applicable in this case. Therefore, the High Court had wrongly granted such benefit to the accused-Respondents by blatantly ignoring the fact of presentation of chargesheet being much prior in time to the application for default bail.
11. Another order of this Court in Sadique & Ors. v. State of Madhya Pradesh in Criminal Appeal No. 963/2021 has been brought to our notice wherein this Court had granted the relief of default bail while observing that the Magistrate was not competent to grant extension of

time under Section 43D of UAPA and the extension granted was by CJM which was beyond its jurisdiction. However, it must be noted that in the said case, no chargesheet had been filed on the date of preferring such application for default bail and hence, the same was clearly distinguishable as facts were different than in the present case.

12. In light of the above discussion, the impugned order of the High Court granting default bail is set aside. Respondent Nos. 1 to 5, if not in custody already, would be again taken back in custody under the concerned FIR. However, they may apply for regular bail which shall be considered on its own merits in accordance with law by the concerned Court.

13. The appeal is, accordingly, allowed.

14. Pending application(s), if any, shall stand disposed of.

..... .J.
[VIKRAM NATH]

..... .J.
[PRASANNA B. VARALE]

NEW DELHI;
NOVEMBER 12, 2024.