

HIGH COURT OF PUNJAB AND HARYANA

Bench: Justice Jasgurpreet Singh Puri

Date of Decision: 11 October 2023

CRM-M-50125-2023(O&M)

Mohammad Javed Ali

....Petitioner(s)

Versus

State of U.T. Chandigarh

.....Respondent(s)

Sections, Acts, Rules, and Articles:

Section 167(2), 482 of the Code of Criminal Procedure (Cr.P.C)

Article 13, 21, 32 , 226 of the Constitution of India

Subject: Imposition of conditions on the grant of default bail under Section 167(2) of the Code of Criminal Procedure (Cr.P.C) and the constitutionality of such conditions, particularly when they are deemed unreasonable and onerous.

Headnotes:

Default Bail - Grant of default bail under Section 167(2) of the Code of Criminal Procedure - Petitioner filed a petition under Section 482 for setting aside an order resulting in miscarriage of justice - Facts involve an FIR registered for carjacking and subsequent arrest of the petitioner - Police did not present the challan within 60 days - Petitioner moved for default bail on the 61st day - Challan presented on the same day - Dispute over whether the period for default bail was 60 or 90 days - Learned JMIC granted default bail - Condition imposed to furnish bail bonds before 4.30 p.m. on the same day - Surety not accepted due to previous commitment in another case - Petitioner's right to default bail extinguished - Revision petition dismissed by the learned Additional Sessions Judge - petition under Section 482 to quash the order of the learned revisional Court. [Para 1-9]

Default Bail - Imposition of Unreasonable Conditions - Constitutionality of Conditions - The case pertains to the imposition of conditions on the grant of default bail under Section 167(2) of Cr.P.C. The primary issue is whether such conditions can be deemed impractical, unreasonable, and onerous. [Para 1-25]

Right to Personal Liberty - Fundamental Rights - The judgement underscores the significance of personal liberty, a fundamental right guaranteed under Article 21 of the Constitution of India, in the context of granting bail. [Para 25]

Reasonable Conditions - Judicial Discretion - The Court emphasizes that conditions imposed while granting default bail must be reasonable, practical, and in conformity with the principles of justice and personal liberty. Imposing unreasonable conditions that hinder an accused person's release are unacceptable. [Para 25]

Orientation Course for Judicial Officers - The judgement calls for the coordination between the Registrar General of the Court and the Director of the Judicial Academy, Chandigarh, to arrange an orientation course on Fundamental Rights, particularly focusing on the Constitution of India, for all judicial officers in the States of Punjab, Haryana, and UT, Chandigarh. This course aims to enhance their expertise in balancing the rights of accused persons with the principles of justice. [Para 29-30]

Referred Cases:

- Rakesh Kumar Paul Vs. State of Assam, (2017) 15 SCC 67
- Uday Mohan Lal Acharya Vs. State of Maharashtra, (2001) 5 Supreme Court Cases 453
- M Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence (2021) 2 Supreme Court Cases 485
- Guddan alias Roop Narayan Vs. State of Rajasthan, 2023 SCC Online 1242
- Sumit Mehta Vs. State (NCT of Delhi), (2013) 15 Supreme Court Cases 570
- Ramesh Kumar Vs. State of NCT of Delhi, (2023) 7 Supreme Court Cases 461
- Maneka Gandhi Vs. Union of India, 1978(1) SCC 248

Representing Advocates:

For the petitioner: Mr. Rahul Bansal, Advocate, Mr. Shubham Dogra, Advocate, for the petitioner.

For Respondent: Mr. Vivek Singla, APP, U.T, Chandigarh.

JASGURPREET SINGH PURI , J. (Oral)

1. The present is a petition filed under Section 482 of the Code of Criminal Procedure with a prayer for setting aside the impugned order Annexure P-1 dated 12.09.2023 passed by the learned Additional Sessions Judge, Chandigarh on the ground that it has resulted in miscarriage of justice.
2. The brief facts of the present case are as follows:

FIR No. 22 dated 10.05.2023 was registered on the basis of statement made by one Danish by stating that one person booked a taxi belonging to him for dropping at airport and when he crossed the airport light point and reached near the bus stop at Chandigarh, then there were two men standing who gestured to him to stop the car and when he stopped the car, then the aforesaid boys said that they have to go to bus stand at Sector 17,

Chandigarh and he will pay the expenses. He made both the persons sit in the car and when he reached at Section 17 bus stand chowk, his car was headed towards Sector 18/21 dividing road, then these boys told him to drop them at Sector 18, Chandigarh. Thereafter, he turned his car towards Sector 8/21 dividing road and after a short distance, both the boys threatened him with knife and made him stop the car and forcibly made him to get down from the car and they ran away with his car. All the documents of the car and his mobile phone was also in the car. Thereafter, the complainant ran and reached Sector 17 bus stand and informed the PCR vehicle parked there about the incident. It is also stated in the FIR that he can identify those two unknown persons when they come forward. On the basis of the aforesaid FIR, the present petitioner was arrested on 12.05.2023.

3. The police did not present the challan within a period of 60 days and the petitioner moved an application for grant of default bail under Section 167(2) of the Code of Criminal Procedure on 12.07.2023 at 11.30 a.m. The aforesaid date i.e. 12.07.2023 was the 61st day. Learned JMIC issued notice on the same day for the next day i.e. for 13.07.2023. However on the day when the application was filed in the morning at 11.30 a.m i.e. on 12.07.2023, on the same day in the evening at 4.30 p.m, challan was presented. So far as the applicability of the provisions of Section 167(2) Cr.P.C as to whether 60 days are to be counted or 90 days are to be counted since offence under Section 392 IPC was also added, the learned Magistrate considered this issue in detail and came to the conclusion that in view of the judgment of Hon'ble Supreme Court in ***Rakesh Kumar Paul Vs. State of Assam, (2017) 15 SCC 67***, the statutory period would be 60 days and not 90 days and since the challan was presented although on the same day but after the filing of the application by the petitioner for grant of default bail, the right for grant of default bail became absolute in view of judgment of Hon'ble Supreme Court in ***Uday Mohan Lal Acharya Vs. State of Maharashtra, (2001) 5 Supreme Court Cases 453 and M Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence (2021) 2 Supreme Court Cases 485*** Therefore,

the learned JMIC decided that it is a fit case for grant of default bail to the petitioner being a statutory right and therefore allowed the application vide Annexure P-3 on 13.07.2023. However in the order granting default bail to the petitioner a condition was imposed that the petitioner shall be released on default bail subject to furnishing of bail bonds in the sum of Rs. 1,00,000/- with one surety in the like amount before 4.30 p.m. today i.e. on the same date i.e. 13.07.2023 and further directed that the file be now put up as and when the bail bonds are furnished on behalf of accused. The relevant portion of the aforesaid order as contained in para No.9 of the order is reproduced as under:-

“9. In view of the aforesaid two judgments, the Court is satisfied that the prosecution was required to submit the challan/charge-sheet in the present case within 60 days of the arrest of accused. As per the report of Ahlmad, the present bail application under Section 167(2) of Cr.P.C was filed at 11.30 a.m on 12.07.2023 whereas the challan was presented on the said date at 04.30 PM. Therefore, the Court is satisfied that accused Mohd. Javed has availed his right under Section 167(2) of Cr.P.C before the presentation of challan in the present case. Accordingly, the present application under Section 167(2) of Cr.P.C stands allowed and the accused is ordered to be released on default bail subject to furnishing of bail bonds in the sum of Rs. 1,00,000/- with one surety in the like amount before 04.30 PM today. File be now put up as and when the bail bonds are furnished on behalf of accused.”

4. Thereafter, the petitioner on the basis of his application filed for grant of default bail wherein in para No.13 of the application, he had stated that the petitioner is ready to furnish bail bonds/surety bonds to the entire satisfaction of the Court, he now filed an application for furnishing of bail bonds/surety bonds. However when the surety was to be furnished by him then the Reader of the Court informed the learned JMIC that the surety of Lakhwinder Singh cannot be accepted because he has already given surety in another case as per CIS record and therefore, the surety bond cannot be accepted on this ground. On this the learned JMIC passed an order by observing that the

learned counsel for the petitioner have appeared and furnished the bail bonds on behalf of the petitioner but the Reader of the Court had reported that the surety namely, Lakhwinder Singh is already a surety in another case as per CIS record and in view of the report of the Reader and the fact that surety Lakhwinder Singh has already stood surety for another accused, the said bail bonds cannot be accepted and attested and further directed that the file be now put up as and when the bail bonds are furnished on behalf of accused or at 4.30 p.m today. The aforesaid order passed by the learned JMIC and as attached alongwith this petition as a part of Annexure P-3 is reproduced as under:-

“File taken up again as Sh. Shubham Dogra and Sh. Sunil Kumar Dahiya, counsel for accused Mohd. Javed have appeared and furnished the bail bonds on behalf of accused Mohd. Javed. However, the Reader of this Court has reported that surety Lakhwinder Singh is already a surety in another case as per the CIS record. In view of the Report of reader and the fact that surety Lakhwinder Singh has already stood surety for another accused, the said bail bonds cannot be accepted and attested. File be now put up as and when the bail bonds are furnished on behalf of accused or at 04.30 PM today.”

In this way, the bail and bonds of the petitioner were not accepted by the learned JMIC on technical grounds. Thereafter, the petitioner filed a Revision Petition before the learned Additional Sessions Judge who also dismissed the Revision Petition on the ground that once a time frame work was fixed by the learned JMIC for furnishing of bail and bonds, the same was not adhered to by the petitioner and also on the ground that he was not prepared to furnish the bail bonds/surety bonds at the time of filing of application and therefore, did not deem it fit to interfere in the Revisional jurisdiction. In this way, the petitioner has filed the present petition before this Court under Section 482 of the Code of Criminal Procedure for quashing of the order passed by the learned revisional Court.

5. The aforesaid factual position has not been disputed by both the learned counsel for the parties.
6. Learned counsel appearing on behalf of the petitioner submitted that once a default bail has been granted to the petitioner under Section 167(2) of the Code of Criminal Procedure and an application was moved with a specific averment in the application that he is ready to furnish bail bonds/surety

bonds to the entire satisfaction of the Court, then at the time of filing of the application which was filed after the expiry of period of 60 days, the right of the petitioner to be released on bail became indefeasible and absolute notwithstanding the fact that on the same day in the evening at 4.30 p.m, challan was filed. To substantiate his argument, he has referred to numerous judgments of the Hon'ble Supreme Court and particularly in ***Uday Mohan Lal Acharya Vs. State of Maharashtra(Supra) and M Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence(Supra)*** in this regard.

7. Learned counsel has also submitted that so far as the grant of default bail is concerned, the same was in accordance with the statutory rights conferred upon the petitioner under Section 167 (2) Cr.P.C and the State has not challenged the order of the learned JMIC by which the default bail was granted and therefore, there is no dispute with regard to the same that the petitioner was entitled for the grant of default bail and rightly so the learned JMIC granted default bail to the petitioner. However, he has not been released on bail because unreasonable and onerous condition was imposed by the JMIC that the petitioner shall furnish bail and bonds by 4.30 p.m on the same day. He submitted that the learned JMIC had pronounced the orders at 3.45 p.m and directed the petitioner to furnish bail and bonds before 4.30 p.m and granted only 45 minutes in this regard. He submitted that the petitioner was already in jail and he is also having mental depravity and it cannot be expected that within 45 minutes a person who is already in custody will furnish bail and bonds. He further submitted that even otherwise also, it was so specifically stated in the application filed by the petitioner that he is ready to furnish the bail bonds/surety bonds and the counsel for the petitioner was ready with the surety but at the time when the surety was produced before the Court it was the Reader of the Court who had apprised the Court of JMIC that the surety was not competent for being a surety because he stood surety in some other case and it was only because of the technical reasons that the surety was not accepted but the net result of the same was that the unreasonable period fixed by the Court i.e 4.30 P.M in the meantime expired and when the matter was again put up before the learned Magistrate at 4.30 p.m wherein it was so directed by the learned JMIC that since the petitioner has not been able to furnish surety, then his right which has accrued to him has been extinguished. He submitted that the personal liberty of the petitioner is involved in the present case where he gained a statutory right but was defeated arbitrarily by passing of erroneous orders by the learned JMIC and also the learned Additional Sessions Judge has failed to exercise his jurisdiction by ignoring the fact that the condition was a onerous, highly restricted and unreasonable condition. He submitted that although he has not challenged the order passed by the JMIC in the present petition but has challenged the order passed by the learned Additional Sessions Judge, Chandigarh only and his oral prayer for such challenge to the orders passed by the JMIC may be also accepted in the interest of justice and while exercising jurisdiction under Section 482 of the Code of Criminal Procedure.
8. Learned counsel has also referred to various other judgments of Hon'ble Supreme Court wherein it was held that such kind of onerous and

unreasonable condition cannot be imposed which defeats the rights of a person especially when a default bail is to be granted and particularly in view of the fact that the right of regular bail is different from that of right of default bail. He referred to a judgment of Hon'ble Supreme Court in ***Guddan alias Roop Narayan Vs. State of Rajasthan, 2023 SCC OnLine 1242*** wherein a condition for grant of suspension of sentence was imposed by the High Court for deposit of fine amount of Rs. 1,00,000/- along with a surety of another Rs. 1,00,000/- and two further bail bonds of Rs. 50,000/- each and it was held by the Hon'ble Supreme Court that these are the excessive conditions. He further referred to another judgment of Hon'ble Supreme Court in ***Saravanan Vs. State represented by the Inspector of Police, (2020) 9 Supreme Court case 101*** where a condition of Rs. 8,00,000/- was imposed for grant of bail and it was a case pertaining to default bail and there was another condition imposed for directing the appellant to report to the police station concerned daily at 10.00 a.m for further interrogation and same was also set aside and modified. He submitted that in view of the aforesaid position, a direction be issued to the learned Court below for release of the petitioner immediately on default bail by modifying the condition as imposed by the learned JMIC.

9. Mr. Vivek Singla, learned Additional Public Prosecution appearing on behalf of U.T, Chandigarh has submitted that so far as the proposition of law as stated by the learned counsel for the petitioner is concerned, there is no dispute with regard to the same. He has however submitted that the petitioner was required to have a sound surety with him at the time of filing of the application and this occasion would have not arisen had he been able to arrange surety at the time of filing of the application for default bail.

10. I have heard the learned counsel for the parties.

11. An important issue has arisen in this case as to whether at the time of granting default bail any impractical, unreasonable and onerous time limit condition can be imposed for furnishing of bail and bonds and its effect thereof.
12. This Court has requisitioned the entire record from the learned JMIC and the Revisional Court and has perused the same. The factual position as stated in preceding paras is not in dispute. The petitioner was granted bail under Section 167 (2) Cr.P.C as a default bail or a statutory bail and legality of grant of default bail is not in dispute in the present case nor it has been so challenged by the State. The petitioner is aggrieved by the order which was passed by the learned JMIC whereby a condition was imposed that the furnishing of bail bonds shall be till 4.30 p.m on the same day when the bail was granted. It is a categorical case of the learned counsel for the petitioner that the learned JMIC when granted default bail, the same was pronounced at 3.45 p.m with a condition to furnish bail and bonds till 4.30 p.m and according to the learned counsel for the petitioner only 45 minutes were given. This factual position as so stated by the learned counsel for the petitioner was also noted by the learned Revisional Court but the learned Revisional Court has not given any finding on the same as to at what point of time the pronouncement of judgment was made by the learned JMIC but so far as the last time of 4.30 p.m limited by the learned JMIC is concerned, the same is a part of the order and therefore is not in dispute. A perusal of the record of the Court of learned JMIC would show that the petitioner filed an application for grant of default bail on 12.07.2023 and in para no.13, he specifically averred that he is ready to furnish the bail bonds/surety bonds. Para 13 is reproduced as under:

“13. That petitioner is ready to furnish the bail bonds/surety bonds to the entire satisfaction of this Hon'ble Court”.

13. Notice of the application was given by the learned JMIC for 13.07.2023 and the order was passed by the learned JMIC on the same day. In the concluding part of the order dated 13.07.2023, the learned JMIC directed that the application under Section 167(2) Cr.P.C stands allowed and the petitioner was directed to be released on default bail subject to furnishing of bail bonds in the sum of Rs. 1,00,000/- with one surety in the like amount **before 4.30 p.m today** and it was further directed that the file be now put up as and when the bail bonds are furnished on behalf of accused. There is another order passed by the learned JMIC thereafter wherein it was so observed by the learned JMIC that the counsel for the petitioner have appeared and furnished the bail bonds on behalf of the petitioner but the Reader of the Court reported that the surety Lakhwinder Singh is already a surety in another case as per CIS record and the bail bonds were not accepted. The learned JMIC directed that the file be now put up as and when the bail bonds are furnished on behalf of accused or at 4.30 p.m today.
14. There is another order on the judicial file of the learned JMIC in which it has been recorded that the file was taken up at 4.30 p.m and surety bonds were not furnished and while referring to the judgment of

Hon'ble Supreme Court in ***Uday Mohan Lal Acharya Vs. State of Maharashtra (Supra)***, the JMIC observed that in the present case bail bonds could not be furnished by the accused despite bail order passed under Section 167(2) Cr.P.C. The challan has already been filed and the Court is satisfied that the accused has failed to avail his right under Section 167(2) and accordingly, the right of default bail of accused stands extinguished due to his failure to furnish the bail and surety bonds and the application was disposed of and papers were tagged with the main case for record. In this way at 4.30 p.m the learned JMIC on the same day when the order of default bail was granted directed that the bail which was granted to the petitioner some hours/minutes ago on the same day stands extinguished since the petitioner was not able to furnish the bail and bonds. The operative part of the aforesaid order is reproduced as under:-

“In the present case, bail bonds could not be furnished by the accused despite the bail order under Section 167(2) Cr.P.C. As the accused has failed to furnish the bail bonds and the challan has already been filed, the Court is satisfied that the accused has failed to avail his right under Section 167(2) of Cr.P.C. Accordingly, the right of default bail of accused Mohd. Javed stands extinguished due to his failure to furnish the bail and surety bonds. Accordingly, application stands disposed of. Papers be tagged with main case file for record.”

15. When the petitioner challenged the aforesaid order by filing a Revision Petition, the learned Revisional Court also concurred with the learned JMIC that since the time frame work has not been adhered to, he has no right for grant of default bail.
16. The law relating to right of default bail under Section 167 (2) Cr.P.C and imposition of conditions thereon is no longer *res integra*. The Hon'ble Supreme Court in ***Uday Mohan Lal Acharya Vs. State of Maharashtra (Supra)*** observed that an accused must be held to be availed of his right flowing from the legislative mandate and engrafted in the proviso to sub-section (2) of Section 167 of the Code, if he has filed an application after the expiry of the stipulated period alleging that no challan has been filed and he is prepared to offer the bail that is ordered and it is found as a fact that no challan within the period prescribed from the date of the arrest of the accused.

It was observed that personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof as stipulated under Article 21 of the Constitution of India. There is no provision in the Code of Criminal Procedure authorising detention of an accused in custody after the expiry of the period indicated in proviso to sub-section 2 of Section 167 Cr.P.C except the contingency indicated in Explanation-1, namely, if the accused does not furnish the bail i.e. in case the accused does not satisfy the condition of bail and does not furnish bail and bonds, then his right gets extinguished when in the meantime the challan is filed. In other words, if the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation-I and the proviso to sub-section 2 of Section 167, the continued custody of the accused even beyond the specified period in clause (a) will not be unauthorized and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.

17. In ***Rakesh Kumar Paul Vs. State of Assam(Supra)*** it was observed by the Hon'ble Supreme Court that in the matters of personal liberty the Court should not be too technical and must lean in favour of personal liberty and whether the accused makes a written application for 'default bail' or an oral application for 'default bail' is of no consequence. The concerned Court 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. It was further observed that this view was being taken 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 the Supreme Court and other Constitutional Courts includes petition for 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. Para No.40 and 41 are reproduced as under:-

40. In the present case, it was also argued by learned counsel for the State that the petitioner did not apply for 'default bail' on or after 4th January, 2017 till 24th January, 2017 on which date his indefeasible right got extinguished on the filing of the charge sheet. Strictly speaking this is correct since the petitioner applied for regular bail on 11th January, 2017 in the Gauhati High Court – he made no specific application for grant of 'default bail'. However, the application for regular bail filed by the accused on 11th January, 2017 did advert to the statutory period for filing a charge sheet having expired and that perhaps no charge sheet had in fact been filed. In any event, this issue was argued by learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the petitioner did not make any application for default bail – such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and 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.

41. 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”

It was further observed in strong words that for adopting the aforesaid principles it would equally be the duty and responsibility of a Court on coming to know that the accused person before it is entitled to 'default bail' to at least apprise him or her the indefeasible right and a contrary view would diminish the respect for personal liberty on which so much emphasis has been laid by the Supreme Court in number of case. It was further observed that in case of default bail, the trial Judge should release the petitioner on default bail on such terms and conditions as may be reasonable. Para No.49 of the aforesaid judgment is also reproduced as under:

*“49. The petitioner is held entitled to the grant of 'default bail' on the facts and in the circumstances of this case. The Trial Judge should release the petitioner on 'default bail' on such terms and conditions **as may be reasonable**. However, we make it clear that this does not prohibit or otherwise prevent the arrest or re-arrest of the petitioner on cogent grounds in respect of the subject charge and upon arrest or re-arrest, the petitioner is entitled to petition for grant of regular bail which application should be considered on its own merit. We also make it clear that this will not impact on the arrest of the petitioner in any other case”*

(emphasis supplied)

18. The Hon'ble Supreme Court in ***M Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence (Supra)*** again discussed the statutory

right of grant of default bail and also concluded that 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 occurring after expiry of the stipulated time period for investigation and the right of default bail continues to remain when an application for default bail has been filed and right continues to remain even thereafter when the challan has been presented. 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), the actual release of the accused from custody is contingent of the directions passed by the competent Court granting bail and if the accused fails to furnish bail 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. Para No.25 of the aforesaid judgment is reproduced as under:-

“25.1 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\(2\)](#), [Cr.PC](#) 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 investigating agency.

25.2 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 charge-sheet or a report seeking extension of time by the prosecution before the Court; or filing of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.

25.3 However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a charge-sheet, 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 Cr.PC.

25.4 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.”

19. The aforesaid law which has been laid down by the Hon'ble Supreme Court is that when an application for grant of default bail is filed under Section 167(2) Cr.P.C, then the rights for grant of default bail after the expiry of the period mentioned in sub-section 2 i.e. either 60 days or 90 days, the right becomes infeasible notwithstanding the fact that a challan is filed afterwards. In the present case, the aforesaid position is not in dispute. The application was filed prior to the filing of the challan and after the expiry of 60 days and therefore, there is no dispute nor it has been so disputed by the learned counsel for the State that the right of default accrued to the petitioner and so far as the order of grant of default bail is concerned, the same is not erroneous and is in accordance with law but the only difficulty which arose in the present case was that at the time of grant of default bail, the learned JMIC imposed a condition that the bail and bonds to be furnished only on the same day by 4.30 p.m. which is the subject matter of the present case. As discussed aforesaid, even the Hon'ble Supreme Court in **Rakesh Kumar Paul Vs. State of Assam (Supra)** also observed that the condition must be a reasonable condition. 20. The law with regard to imposition of any kind of unreasonable or onerous condition is no longer *res integra*. The Hon'ble Supreme Court in **Guddan alias Roop Narayan Vs. State of Rajasthan(Supra)** observed that when the High Court imposed the excessive condition of deposit of Rs. 1,00,000/- along with surety of another Rs. 1,00,000/- and two further bail bonds of Rs. 50,000/- each, it was considered as excessive condition of bail imposed by the High Court and it was held that the excessive condition in fact in practical manifestation acted as a refusal to grant of bail. The fact that the appellant was not able to pay the amount and in default thereof is still languishing in jail is sufficient indication that he was not able to make up the amount.

21. The Hon'ble Supreme Court in **Saravanan Vs. State represented by the Inspector of Police (Supra)** while dealing with a default bail held that the High Court had committed a grave error in imposing a condition that the appellant shall deposit a sum of Rs. 8,00,000/- when a person is to be released on default bail. It was further observed by the Supreme Court in para No. 9.2 that circumstances while considering the regular bail application

under Section 437 Cr.P.C are different while considering the application for grant of default bail/statutory bail. Another condition imposed by the High Court in that case directing the appellant to report before the police station concerned daily at 10.00 a.m until further orders was also held to be unsustainable and the condition was modified.

22. The Hon'ble Supreme Court while dealing with imposition of unreasonable condition in anticipatory bail in ***Sumit Mehta Vs. State (NCT of Delhi, (2013) 15 Supreme Court Cases 570*** 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. Para No.12 and 15 of the aforesaid judgment are reproduced as under:-

“12. The law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under [Article 21](#) of the Constitution.

15. The words “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 circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed.”

23. The Hon'ble Supreme Court in ***Ramesh Kumar Vs. State of NCT of Delhi, (2023) 7 Supreme Court Cases 461*** observed that a reading of the precedents laid down by the Supreme Court referred to above makes the

position of law clear that the conditions to be imposed must not be onerous or unreasonable or excessive.

24. In the present case the condition which was imposed by the learned Magistrate was that on the day on which the default bail was granted under Section 167(2) Cr.P.C on 13.07.2023, the petitioner was directed to furnish bail and bonds by 4.30 p.m. It was the case of the petitioner that the learned JMIC had pronounced the order of grant of default bail at 3.45 p.m but from the record the time is not discernible. However such a ground taken by the petitioner before the Revisional Court was not even considered in true perspective as to at what point of time the order was pronounced. Be that as it may be, once a default bail has been granted by the Court, then imposition of such a condition although permissible under the law cannot be unreasonable, impractical and onerous condition. Under the provisions of Section 167(2) read with Explanation-1, a condition can certainly be imposed by the Court while granting default bail and in case the condition is not complied with and the bail and bonds are not furnished, then it is a settled law that the right of default bail gets extinguished. However, the question which would arise in the present case would be as to whether such unreasonable and onerous condition can be imposed so as to defeat the rights of an accused person who is still an undertrial and is presumed to be innocent.

25. Hon'ble Supreme Court in ***Maneka Gandhi Vs. Union of India, 1978(1) SCC 248*** while dealing with the issue of grant of passport observed that the procedure has to be just fair and reasonable. While dealing with the provisions of Article 21 of the Constitution of India, it was so observed that although the right conferred under Article 21 which is a part of Chapter-III of the Constitution of India but the right is not absolute because a person can be deprived of his right and personal liberty except by the procedure established by law. However, such a procedure has to be just, fair and reasonable. In the present case, on the face of it, the condition imposed by the learned JMIC was totally onerous and unreasonable condition. Apart from the above, it is not a case where the petitioner was not ready with the surety and he had not produced a surety but it has come on record by the order passed by the learned JMIC that in fact he had furnished a surety but the same was not accepted on technical issues that the surety had already stood

surety in some other case. The test of reasonableness has to be satisfied at the time of passing of order especially when it affects the rights of personal liberty of citizen of India.

26. In view of the above, it is held that at the time when default bail is granted then no such impractical, unreasonable and onerous time limit can be imposed for furnishing of bail and bonds. The condition imposed in the present case is onerous, unreasonable and impractical and does not qualify the test of reasonableness under Article 21 of the Constitution of India. Consequently, the present petition is allowed. The impugned order passed by the learned Revisional Court dated 12.09.2023 is hereby set aside. The condition imposed by the learned JMIC by which the petitioner was directed to furnish surety by 4.30 PM on the same day is also set aside. The condition of furnishing of bail bonds in the sum of Rs. 1,00,000/- with one surety of like amount is also unreasonable and is modified and it shall be of Rs.10,000/- only instead of Rs. 1,00,000/-. The petitioner shall be released on default bail forthwith subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned on the basis of the modified conditions. The later order passed by the learned Magistrate dated 13.07.2023 by which the right of the petitioner was directed to be extinguished is also set aside.

27. Before parting with the judgement, this Court is of the view that there is a dire necessity of further enlightening the judicial officers of the States of Punjab, Haryana and UT, Chandigarh at District level due to dynamism in the scope of Article 21 of the Constitution of India. The Fundamental Rights as enshrined in Part III of the Constitution of India are fundamental to the rights of the citizens of India and some other persons as well and they are inherent and also part of the Basic Structure of the Constitution. The scope of Article 21 of the Constitution of India is dynamic and is not static in nature. It has now evolved over a period of time by various judicial precedents laid down by the Hon'ble Supreme Court of India that the right to life and personal liberty under Article 21 of the Constitution of India includes all varieties of life which go to make the personal liberty of a person and not merely the right to continuation of a person as an animal existence. The Fundamental Rights have always been put on a very high pedestal particularly in the light of Article 13 of the Constitution of India. The Constitution of India not only confers and guarantees various kinds of Fundamental Rights enshrined in Part III of the

Constitution of India but also provides remedy for the aforesaid guarantee under Articles 32 and 226 of the Constitution of India.

28. The criminal justice system in India, especially the criminal Courts dispense justice and they are under an obligation to always keep in their mind the Fundamental Rights of accused persons especially when they are undertrials and presumed to be innocent at that stage. For the purposes of considering bail matters, the Fundamental Rights especially under Article 21 of the Constitution of India have to be always kept in mind since the personal liberty of an individual is involved. Article 21 of the Constitution of India does not extend only to the citizens of India but it also extends to every person including foreign nationals. Therefore, the judicial officers of District Courts who every day deal with the personal liberty of accused persons should have full expertise not only on the practical aspects but also on the academic aspects pertaining to the Fundamental Rights since a balance has to be struck every time when any matter for grant of bail is considered. The judicial officers need to be imparted Orientation Course in this particular aspect in a proper manner in order to gain and enhance expertise.
29. In view of the above, the Registrar General of this Court shall coordinate with the Director of the Judicial Academy, Chandigarh for making all earnest efforts for arranging orientation course only on specialized subject of Fundamental Rights to all the judicial officers of District Courts across the States of Punjab, Haryana and UT, Chandigarh. Appropriate faculty, who are experts in the field of Constitutional Law be arranged and impetus has to be made on the topic of Fundamental Rights particularly and the Constitution of India in general. All the study material including law laid down by the Hon'ble Supreme Court of India and other High Courts shall also be made available for discussion.
30. However, it is made clear that the aforesaid will not be deemed to mean any adverse observation against any judicial officer but it is only meant for the

purposes of further enriching the academic intellect based upon evolution of law.

31. Copy of this order be forwarded to the Registrar General of this Court and also to the Director of the Judicial Academy, Chandigarh.
32. LCR be returned back forthwith.

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