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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19076-2024 (O&M)
Date of decision: 05.03.2025

Pawan Kumar

... Petitioner

Vs.

Inspector (Preventive), Central Goods and Services Tax

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anoop Verma, Advocate
for the petitioner.

Mr. Sourabh Goel, Senior Standing Counsel, CBIC with
Mr. Samridhi Jain, Advocate and
Mr. Akash Khurana, Advocate
for the respondent.

****

HARPREET SINGH BRAR, J.

1. Present petition is preferred by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of the order dated 23.02.2024 (Annexure P-11) passed by learned Additional Sessions Judge, Ludhiana, whereby the petition praying for relaxation of conditions prescribed for grant of default bail, imposed by learned Chief Judicial Magistrate, Ludhiana, vide order dated 15.03.2021 (Annexure P-1), has been dismissed.

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FACTUAL MATRIX

2. The facts, tersely put, are that the petitioner was implicated as an accused in a complaint under Section 132(1)(b) & (c) punishable under Section 132(1)(i) of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') read with the corresponding provisions of the Punjab Goods and Services Tax Act, 2007 (for short 'PGST Act'), and the Integrated Goods and Services Tax Act, 2017 (for short 'IGST Act'). According to the allegations in the complaint, co-accused Sahil Jain was the principal orchestrator of a fraudulent scheme involving fake transactions. He allegedly created 14 firms in the names of his family members and close associates, designating them as proprietors or partners. By generating fictitious invoices, he unlawfully availed ineligible input tax credit and further passed on fraudulent input tax credits to purchasers based on these fabricated invoices amounting to ₹17.65 crores. The petitioner was arrested in connection with the case on 12.01.2021. However, the prosecution failed to complete the investigation and to file the final report under Section 173 of Cr.P.C. within the statutory period of 60 days. Consequently, petitioner Pawan Kumar moved an application under Section 167(2) of Cr.P.C. seeking default bail. The said application was allowed and he was accordingly granted bail vide order dated 15.03.2021 subject to his furnishing bail bonds in the sum of Rs.1,10,00,000/- (Rupees one crore ten lacs only) with two sureties in the like amount (at least one surety being local) among other conditions. After this, the petitioner approached this Court to

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assail the conditions of bail by filing CRM-M-16487 of 2021, which was dismissed vide order dated 28.05.2021 (Annexure P-2). Thereafter, the petitioner sought modification of bail conditions under Section 440 of Cr.P.C. before learned Additional Sessions Judge, Ludhiana, which was dismissed vide order 18.07.2022 (Annexure P-3). Subsequently, the petitioner preferred two petitions i.e. a civil writ petition seeking directions to release the petitioner on personal bonds and a petition challenging the order dated 18.07.2022 passed by learned Additional Sessions Judge, Ludhiana. This Court, vide orders dated 05.09.2022 and 15.03.2023 (Annexures P-4 and P-5), permitted the petitioner to withdraw the said petition with liberty to avail appropriate remedy available under law. The petitioner again approached the Court of first instance seeking modification of default bail conditions, which was dismissed vide order dated 10.04.2023 (Annexure P-7). In order to challenge the order dated 10.04.2023, the petitioner knocked the doors of the Hon'ble Supreme Court, however, the petition was dismissed as withdrawn (Annexure P-8). Thereafter, the petitioner again approached learned Additional Sessions Judge, Ludhiana, by filing revision and the said petition also met with the same fate as earlier vide order dated 23.02.2024 (Annexure P-11).

CONTENTIONS

3. Learned counsel for the petitioner, *inter alia,* contends that the conditions imposed by learned Chief Judicial Magistrate with regard to furnishing of surety bonds amounting to Rs.1.10 Crore each and a bank

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guarantee to the tune of Rs.55.00 lakhs are manifestly stringent and onerous. Further, the grant of bail under Section 167(2) of Cr.P.C., as in this case, is an indefeasible right, which accrued to the accused. The respondent was under a statutory duty to complete the investigation within 60 days from the date of authorisation of detention. Since the respondent failed to do the same, the petitioner was rightly granted default bail under Section 167(2) of Cr.P.C. However, the imposition of such harsh conditions would not only frustrate the very object and purpose of Section 167(2) of Cr.P.C., but also violate the fundamental right as enumerated in Article 21 of the Constitution of India, grossly infringing the personal liberty of the petitioner. Lastly, it is contended that the maximum punishment as prescribed under Section 132 of CGST Act is five years and woefully, the petitioner has already undergone more than 4 years of custody. This is all the more egregious given that, till date, the charges have not been framed against the petitioner and the trial is yet to commence.

4. *Per contra*, learned counsel for the respondent submits that the conditions imposed upon the petitioner cannot be said to be stringent or onerous, given that the petitioner and his co-accused are involved in a serious economic offence, causing loss worth crores of rupees to the Government exchequer. The petitioner, in connivance with co-accused namely Sahil Jain, created bogus firms in his name and issue GST invoices without any movement of goods. The petitioner also made a voluntary statement dated 11.01.20121, wherein he admitted the fact regarding opening different firms on

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asking of Sahil Jain in lieu a handsome reward. He also provided his Aadhar Card and PAN Card to create and register fake firms as a proprietor or a partner in said firms. Moreover, the petitioner has categorically admitted to having complete knowledge of the bogus billing scam being carried out by Sahil Jain. The petitioner is also involved in passing of input tax credit of Rs.8,75,13,522/- in order to defraud the Government exchequer. Further, it is contended that the petitioner has approached this Court as well as learned Sessions Court numerous times and every time, the conditions imposed by learned Chief Judicial Magistrate, Ludhiana have been upheld. Resultantly, learned Chief Judicial Magistrate has passed a well-reasoned order based on correct appreciation of evidence available on record, which has been upheld by both learned lower Appellate Court and this Court. As such, no interference is warranted in the instant petition. Lastly, it is submitted that the petitioner has filed another petition i.e. CRM-M-11533 of 2024 before this Court, seeking relief under Section 436-A of Cr.P.C. Therefore, the instant petition is not maintainable and deserves to be dismissed on this ground alone. However, learned counsel for the respondent could not controvert that charges are yet to be framed and the petitioner has already spent more than 04 years in custody.

OBSERVATIONS AND ANALYSIS

5. At the very outset, the conditions imposed by learned Chief Judicial Magistrate, Ludhiana, while granting the bail, are reproduced herein below:

"*Hence accused Pawan Kumar is admitted to bail in this complaint, titled Inspector (Prevention) of CGST Commissionerate, Ludhiana Vs. Pawan Kumar under Section 132(1) (b & c) Punishable Under Section 132(1) (i) of CGST Act, 2017 read with corresponding sections of Punjab GST Act, 2007 and IGST Act, 2017,* ***on his furnishing bail bonds in the sum of Rs.One Crore Ten Lacs (Rs.1,10,00,000/-) with two sureties in the like amount (Atleast one Local)*** *and subject to the conditions mentioned below:*

1. ***Accused shall furnish a bank guarantee/FDR for an amount of Rs.55 Lakh to be forfeited to the State in case of violation of any of the terms and conditions imposed vide this order****.*
2. *Accused shall come present on each and every date of hearing for appearance in the Court and for trial of the case.*
3. *Accused shall not leave the jurisdiction of this Country without permission of the Court. He shall surrender his passport in the court if he possesses the same and in case he do not hold any passport his undertaking in form of an affidavit that he will not get any passport issued in his name without permission of the court.*
4. *Accused shall not commit any offence of like nature or any other offence punishable under law.*
5. *Accused shall not try to influence the witnesses of the prosecution or tamper with the evidence.*
6. *Accused shall not change his appearance during the course of trial.*
7. *Accused shall not change his address without prior intimation to this Court.*
8. *Accused shall not induce, threat or promise any witness to refrain him/her from deposing in the case during the investigation or trial. Accused shall make available himself before I.O./Authority holding investigation to assist the investigating machinery as and when called upon to appear before the authority concerned till final investigation or as and when directed by the Court and accused will cooperate with the investigation even during his release on bail.*

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> *9. In case of default by the accused in complying with the conditions of bail enumerated above, his bail shall be cancelled, his bail bonds and surety bonds liable to be canceled and forfeited to the State and he shall be liable to be prosecuted under Section 446 of the Cr.P.C." (emphasis added)*

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that as per the custody certificate, the petitioner has been in custody for the past 04 years, 01 month and 20 days, while the maximum sentence for the alleged offences is 05 years. What pricks the conscience of this Court is that in spite of the fact that the complaint was filed in the year 2022 and the petitioner has been incarcerated since the last 04 years and the trial is yet to commence. Moreover, the conditions imposed upon the petitioner to avail the concession of bail are lamentably disproportional.

7. Before delving further into the matter, a gainful reference can be made to the case titled as ***In Re Policy Strategy for Grant of Bail, (2024) 10 SCC 685,*** wherein the Hon'ble Supreme Court dealt with the issue of undertrial prisoners, who were granted the concession of bail, but owing to their inability to satisfy the conditions imposed therein, continue to be incarcerated and issued the following directions:

> *"10. With a view to ameliorate the problems a number of directions are sought. We have examined the directions which we reproduce hereinafter with certain modifications:*
>
> *"1) The Court which grants bail to an undertrial prisoner/ convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent*

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on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software [or any other software which is being used by the Prison Department].

2) If the accused is not released within a period of 7 days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.

3) NIC would make attempts to create necessary fields in the e-prison software so that the date of grant of bail and date of release are entered by the Prison Department and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA.

4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition(s) of bail/surety.

5) In cases where the undertrial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.

6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/ relaxation.

7) One of the reasons which delays the release of the accused/ convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety."

8. Adverting to the matter at hand, it appears that, in violation of the above-mentioned directions, the District Legal Services Authority (for short

'DLSA') has made no efforts to assist the petitioner in securing his release. Nothing available on the record indicates whether the DLSA even had the knowledge qua the circumstances of the petitioner, to say nothing of preparation of the socio-economic report with a subsequent request to relax the conditions imposed. The petitioner has been condemned unheard, languishing in custody for over four years without even framing of charges. This is a stark negation of his fundamental right to a fair trial. This inaction has effectively converted pre-trial detention into a punitive sentence, disregarding the bedrock principle of criminal jurisprudence that an accused is presumed innocent until proven guilty.

9. Pertinently, the petitioner was unjustly incarcerated for over 04 years, while the maximum sentence for the offences allegedly committed by him is 05 years. As such, not only the petitioner did accrue the right to be released on default bail as elucidated under Section 167(2) Cr.P.C. but also the right to be released under Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS'). As per the proviso to Section 479 of BNSS, the petitioner should have been released since he has already undergone detention for the period extending up to one-third of the maximum period prescribed for that offence. Section 479 of BNSS is reproduced herein below:

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> ***"479. Maximum period for which undertrial prisoner can be detained.***
> *(1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:*
> *Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:*
> *Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:*
> *Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.*
> *Explanation.-In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.*
> *(2) Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.*
> *(3) The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail.*

10. While the complaint *(supra)* was filed before the enactment of the BNSS, the provision of Section 479 BNSS would still be applicable to the

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present case, as the same has been given retrospective effect by the Hon'ble Supreme Court in light of the order dated 23.08.2024 passed in ***In Re-Inhuman Conditions in 1382 Prisons***, wherein speaking through Justice Hima Kohli, the following was observed:

> *"3. Today, Ms. Aishwarya Bhati, learned Additional Solicitor General, submits that pursuant to the aforesaid order, instructions have been obtained from the Department to the effect that the aforesaid provision under the BNSS shall apply to all undertrials in pending cases irrespective of whether the case was registered against them before 01st July, 2024, the date when the newly minted legislation has come into effect.*
> *4.* ***In that view of the matter, it is deemed appropriate to direct immediate implementation of Section 479 of the BNSS by calling upon Superintendents of Jails across the country wherever accused persons are detained as undertrials, to process their applications to the concerned Courts upon their completion of one-half/one-third, as the case may be, of the period mentioned in sub-section (1) of the said provision, for their release on bail. This step will go a long way in easing overcrowding in jails which is the primary focus of this Court in the present petition.***
> *5. The aforesaid steps shall be taken as expeditiously as possible, preferably within two months from today. Reports shall be submitted by the Superintendent Jails to their respective Heads of the Department within the same time line for a comprehensive affidavit to be filed by each State Government/Union Territory through their respective Chief Secretaries. The affidavits shall furnish the details of the number of undertrials who would be entitled to extension of the benefit of Section 479 of the BNSS, the number of applications moved before the concerned Courts for their release and the number of undertrials actually released by the date of filing of the affidavits."* (emphasis added)

11. The legal query that need consideration for disposal of the present petition is as follows:

> *Whether the imposition of stringent financial and other onerous conditions is permissible while granting default bail under Section*

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167(2) of Cr.P.C. (now Section 187(3) of BNSS) and bail under Section 479 of the BNSS?

12. Personal liberty holds a pre-eminent position in our constitutional framework, embodying the essence of fundamental rights enshrined in the Constitution. In the present case, onerous conditions such as furnishing surety bonds of Rs.1.10 crore from each of the two sureties as well as a bank guarantee to the tune of Rs.55.00 lakhs have been imposed as a pre-requisite for grant of bail. This Court is of the considered opinion that such an approach is antithetical to the principles of justice and fairness. The primary objective of bail is to ensure the appearance of the accused at trial, and this objective can be achieved by releasing him on bail and imposing reasonable conditions. A surety bond of such exorbitant value cannot be deemed reasonable in good conscience, as it effectively places a monetary price on liberty, which is inherently invaluable. Judicial custody, it must be underscored, is preventive in nature and not punitive. Therefore, deprivation of liberty must not be used as a form of punishment but rather as a measure of last resort to secure the ends of justice.

13. Further still, the imposition of such an egregious condition would, in almost all cases, result in the accused being unable to furnish the required surety, thereby depriving them of their liberty and subjecting them to the harsh realities of jail life. The psychological and physical toll of incarceration during this phase can be devastating. The adverse impact extends beyond the

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individual to their innocent family members, who bear the burden of financial distress and emotional anguish. Such collateral damage undermines the principle of presumption of innocence and the larger goal of ensuring a fair and equitable justice system. The Court must remain mindful that social justice is the cornerstone of our Constitution, and no individual should be priced out of their liberty in the pursuit of justice.

14. At this juncture, it would be apposite to cite the judgment of the Hon'ble Supreme Court in ***Moti Ram Vs. State of M.P., (1978) 4 SCC 47***, wherein Justice Krishna Iyer observed as follows:

> *"15. It is interesting that American criminological thinking and research had legislative response and the Bail Reforms Act, 1966 came into being. The then President, Lyndon B. Johnson made certain observations at the signing ceremony:*
>
> > *"Today, we join to recognize a major development in our system of criminal justice: the reform of the bail system. This system has endured - archaic, unjust and virtually unexamined - since the Judiciary Act of 1789. The principal purpose of bail is to ensure that an accused person will return for trial if he is released after arrest. How is that purpose met under the present system? The defendant with means can afford to pay bail. He can afford to buy his freedom.*
> >
> > *But the poorer defendant cannot pay the price. He languishes in jail weeks, months and perhaps even years before trial. He does not stay in jail because he is guilty. He does not stay in jail because any sentence has been passed. He does not stay in jail because he is any more likely to flee before trial. He stays in jail for one reason only—because he is poor…"*
>
> *xxx xxx xxx*
>
> *17. The Encyclopaedia Britannica brings out the same point even in more affluent societies:*

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> *"We should suggest that the Magistrate must always bear in mind that monetary bail is not a necessary element of the criminal process and even if risk of monetary loss is a deterrent against fleeing from justice, it is not the only deterrent and there are other factors which are sufficient deterrents against flight. The Magistrate must abandon the antiquated concept under which pre-trial release could be ordered only against monetary Bail. That concept is out-dated and experience has shown that it has done more harm than good."*

15. Further, the Hon'ble Apex Court in ***Hussainara Khatoon and others vs. Home Secretary, State of Bihar, Patna (1980) 1 SCC 98***, speaking through Justice P.N. Bhagwati, highlighted the dire state of affairs and opined as follows:

> *"4. It is high time that our Parliament realises that risk of monetary loss is not the only deterrent against fleeing from justice, but there are also other factors which act as equal deterrents against fleeing. Ours is a socialist republic with social justice as the signature tune of our Constitution and Parliament would do well to consider whether it would not be more consonant with the ethos of our Constitution that instead of risk of financial loss, other relevant considerations such as family ties, roots in the community, job security, membership of stable organisations etc., should be the determinative factors in grant of bail and the accused should in appropriate cases be released on his personal bond without monetary obligation. Of course it may be necessary in such a case to provide by an amendment of the penal law that if the accused wilfully fails to appear in compliance with the promise contained in his personal bond, he shall be liable to penal action. But even under the law as it stands today the courts must abandon the antiquated concept under which pretrial release is ordered only against bail with sureties…."*

16. As mentioned previously, the petitioner has undergone over 04 years in custody, in spite of being eligible for default bail, as provided by

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Section 167(2) of Cr.P.C., merely because of his inability to meet the onerous conditions imposed by learned Court below. It is trite law that grant of bail under Section 167(2) of Cr.P.C. is an indefeasible right, which accrues to the petitioner upon failure of the investigating agency to conclude the investigation within the stipulated timeframe i.e. expiration of the prescribed period of 90 days or 60 days, as applicable. Once this right accrues, the accused is entitled to bail upon expressing readiness and furnishing the requisite bail bonds as directed by the Magistrate. Further, default bail is not only a statutory right but flows from the cherished fundamental right to life and liberty as enshrined under Article 21 of the Constitution of India. As such, grant of default bail can reasonably be construed to be a fundamental right once the conditions as prescribed in the first proviso to Section 167(2) of Cr.P.C. are fulfilled. Reference in this regard can be made to the judgments rendered by the Hon'ble Supreme Court in ***Rakesh Kumar Paul Vs. State of Assam, (2017) 15 SCC 67*** and ***Bikramjit Singh Vs. State of Punjab, (2020) 10 SCC 616***.

17. The right to default bail, rooted in the fundamental protections of Article 21 of the Constitution of India, cannot be frustrated by imposing excessively stringent or onerous conditions for furnishing bail bonds. Article 21 of the Constitution of India, is not a mere privilege but a fundamental safeguard against arbitrary detention. Any attempt to frustrate it by imposing excessive, unreasonable, or onerous conditions for furnishing bail bonds is nothing but a blatant subversion of the law. It is a well-settled principle that

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what cannot be done directly cannot be achieved indirectly. Therefore, the imposition of unreasonable bail conditions in cases of default bail, which would almost in all cases amount to an arbitrary deprivation of personal liberty, will defeat the very purpose of this statutory and constitutional safeguard.

18. The Hon'ble Supreme Court, in ***Guddan alias Roop Narayan Vs. State of Rajasthan***, ***2023 SCC OnLine 1242,*** addressed the issue of excessive bail conditions imposed by the High Court. In this case, the High Court had required the accused to deposit ₹1,00,000 along with surety of an additional ₹1,00,000 and two further bail bonds of ₹50,000 each. The Hon’ble Supreme Court found these conditions to be excessive, effectively amounting to a denial of bail. The Court noted that since the appellant was unable to arrange the required amount and remained in jail as a result, it was evident that the conditions imposed were beyond his financial capacity. Similarly, in ***Saravanan Vs. State represented by the Inspector of Police, (2020) 9 SCC 101***, the Hon’ble Apex Court examined a case involving default bail and held that the High Court had committed a serious error by directing the appellant to deposit ₹8,00,000 as a condition for release. The Court emphasized that the considerations for granting default bail under Section 167(2) of Cr.P.C. differ from those applicable to regular bail under Section 437 of Cr.P.C. Furthermore, another condition requiring the appellant to report daily at the police station until further orders was also found to be unjustified and was accordingly modified. The Supreme Court has also commented on the imposition of

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unreasonable conditions in anticipatory bail. In ***Sumit Mehta Vs. State (NCT of Delhi), (2013) 15 SCC 570***, the Court reiterated the principle that an accused is presumed innocent until proven guilty and, as such, is entitled to fundamental rights, including personal liberty under Article 21 of the Constitution. The Court clarified that the term "any condition" in the law does not grant unlimited discretion to impose arbitrary conditions. Instead, conditions must be reasonable, appropriate to the circumstances, and effective in a practical sense, without rendering the grant of bail meaningless.

19. The facts of the present case paint a distressing picture of the criminal justice system's failure to uphold the rights of undertrial prisoners. The petitioner, despite being entitled to default bail continued to languish in custody due to the imposition of excessively stringent conditions. However, what makes this case even more egregious is the fact that the petitioner was not released under Section 479 of BNSS despite having undergone detention exceeding one-third of the maximum prescribed sentence for the alleged offence. Having already spent over four years in custody, his right to release under Section 479 of BNSS was not merely an entitlement but a legal mandate. Despite this, the failure of the authorities to ensure his release underscores a fundamental violation of due process. The duty cast upon the Superintendent of Jail under sub-section (3) of Section 479 of BNSS to inform the Court of an undertrial's eligibility for bail was either overlooked or ignored, resulting in the continued incarceration of the petitioner in clear contravention of the law.

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20. The Hon'ble Supreme Court, in ***In Re-Inhuman Conditions in 1382 Prisons*** *(supra)*, unequivocally held that Section 479 of BNSS applies retrospectively to all undertrial prisoners, irrespective of whether their case was registered before the enactment of the BNSS. It directed the immediate implementation of this provision to address the crisis of overcrowding in jails. Yet, the petitioner was deprived of this relief, showcasing a systemic lapse in adhering to judicial directions.

21. The failure to release the petitioner under Section 479 BNSS, when his right to default bail itself was an indefeasible statutory and constitutional right, reflects a glaring miscarriage of justice. The right to liberty cannot be rendered illusory by administrative inaction or judicial indifference. The present case highlights the urgent need for strict adherence to statutory safeguards meant to prevent arbitrary detention, lest the criminal justice system becomes complicit in perpetuating prolonged and unjustified incarceration.

CONCLUSION

22. Correspondingly, the above cited legal query is answered in the below mentioned terms:

> *The imposition of stringent financial and other onerous conditions while granting default bail under Section 167(2) of Cr.P.C. or under Section 187(3) of BNSS, and bail under Section 479 of BNSS is impermissible. The concerned Court must first ascertain from the accused whether he is prepared to furnish bail, and upon an affirmative response, grant default bail on reasonable*

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> *conditions. The Court granting bail should, as far as possible, should endeavour to release the accused on personal bond in such cases. It is imperative that the test of reasonableness be satisfied at the time of passing the bail order. Bail cannot be rendered illusory by imposing financial constraints as that effectively amounts to continued incarceration, which is in clear violation of statutory and constitutional safeguards.*

23. In view of the discussion above, this Court has no hesitation in holding that the conditions imposed by learned trial Court for grant of default bail do not meet the objective standards of reason and justice. In view of the discussion above, the present petition is allowed. Accordingly, petitioner Pawan Kumar is ordered to be released on bail during the pendency of the trial, on his furnishing bail bonds in the sum of Rs.50,000/- (Rupees fifty thousand only) with one surety in the like amount.

24. Nothing observed hereinabove shall be construed to be expression of an opinion by this Court on merits of the case. Learned Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

25. Before parting with this order, this Court would be remiss, if it does not address the serious issue of non-compliance of the directions issued in ***In Re Policy Strategy for Grant of Bail*** *(supra)*. Let the matter be put up before Hon'ble the Chief Justice for taking appropriate action as he may deem necessary in order to ensure scrupulous compliance thereof.

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26. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

05.03.2025
vishnu

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No