

**(2021) 10 P&H CK 0139**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Miscellaneous Petition (M) No. 20398 Of 2021

Ramdass Singh & Others

APPELLANT

Vs

State Of Punjab

RESPONDENT

**Date of Decision :** 13-10-2021

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 167(2), 378(3)  
Unlawful Activities (Prevention) Act, 1967 — Section 10, 16, 18, 43D  
Indian Penal Code, 1860 — Section 120B, 124A, 153A  
Official Secrets Act, 1923 — Section 3, 4, 5, 9  
National Investigation Agency Act, 2008 — Section 2(g), 21(1), 21(2), 21(4)

**Citation :** Bhanu Pratap Singh, Samina Dhir

**Bench :** Single Bench

**Advocate :** Meenakshi I. Mehta, J

**Final Decision :** Dismissed

## Judgement

Meenakshi I. Mehta, J

1. By way of the instant petition, the petitioners claim default bail, as provided under Section 167(2) Cr.P.C and Section 43-D of the Unlawful Activities (Prevention) Act, 1967 (for short, "the UAP Act"), in the criminal case registered at Police Station Sudhar, District Ludhiana, vide FIR No.94 dated 29.12.2020 under Sections 124-A, 153-A, 120-B IPC as well as Sections 10, 16, 18 of the UAP Act and Sections 3, 4, 5, 9 of the Official Secrets Act.

2. Bereft of unnecessary details, the allegations, as levelled in the subject FIR, are that SI/SHO Jasvir Singh received a secret information regarding the petitioners having been indulging in the unlawful activities in order to create chaos in the State and bringing weapons from across the border in an illegal manner and also sending sensitive information as well as the photographs of Halwara Airbase to anti-national elements and thereby, posing threat to the security, unity and integrity of the Country. During the investigation, the petitioners were arrested on 30.12.2020. Challan was presented in the Court on

24.03.2021, i.e within the stipulated period of 90 days but the requisite sanction of the competent Government was not annexed therewith. The petitioners moved an application before the Court below (Additional Sessions Judge, Ludhiana) under Section 167(2) Cr.P.C read with Section 43-D of the UAP Act, for seeking default bail on the ground that the Challan, so presented in the Court, was incomplete on account of non-submission of the said sanction therewith and vide the order dated 20.04.2021 (Annexure P-2), the said application was dismissed.

3. Reply, as filed on behalf of the respondent-State, is already available on the file and the same is taken on the record.

4. I have heard learned counsel for the petitioners as well as learned State counsel in the present petition and have also perused the file thoroughly.

5. Learned counsel for the petitioners has contended that the Challan has been presented in the Court without the requisite sanction from the competent authority qua the prosecution of the petitioners under the said provisions of the UAP Act, and thus, the same is incomplete and the petitioners are entitled to the default bail on this score, as envisaged under Section 167(2) Cr.P.C read with Section 43-D of UAP Act. To buttress his contention, he has placed reliance upon the observations as made by Hon'ble Supreme Court in Fakhrey Alam vs. The State of Uttar Pradesh, Criminal Appeal No.319 of 2021 (arising out of SLP (Crl.) No.6181/2020) Decided on 15.03.2021.

6. Per-contra, learned State counsel has argued that the Challan was presented in the Court within the stipulated period of 90 days from the date of the arrest of the petitioners, on completion of the investigation and the non-submission of the requisite sanction along-with the same, does not render it incomplete.

7. However, it is worth-while to mention here that the National Investigation Agency Act, 2008 (for short "the NIA Act"), has been enacted with the object of constituting an investigation agency at the national level to investigate and prosecute the offences affecting the sovereignty, security and integrity of India. As discussed earlier, besides the offences under the Indian Penal Code and the Official Secrets Act, the offences under the UAP Act are also involved in the subject FIR. Section 2(g) of the NIA Act defines "Scheduled Offence" as the offences specified in the Schedule and in the Schedule appended to the said Act, the UAP Act finds mention at Sr. No.2 meaning thereby that the investigation as well as the prosecution of the offences under the UAP Act, are to be governed by the NIA Act.

8. It is again pertinent to mention here that Section 21(1), (2) and (4) of the NIA Act read as under:-

21. Appeals:- "(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law".

"(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges

of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal".

"(4) Notwithstanding anything contained in sub-Section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail."

9. From the above-discussed provisions, it becomes quite explicit that an appeal shall lie against the order Annexure P-2 whereby the application moved by the petitioners for claiming default bail, has been dismissed by the Court below and such appeal is to be heard by a Bench of two judges, i.e the Division Bench of this Court. However, the petitioners, instead of preferring an appeal against order Annexure P-2, have moved the present Criminal Miscellaneous Application (Main) to seek the relief of default bail and the same is not maintainable in the present form before the Single Bench.

10. As a sequel to the fore-going discussion, it follows that the instant petition deserves dismissal. Resultantly, the same stands dismissed accordingly.