

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 10669 of 2015
Date of decision: 29.4.2015

Ajitpal Singh @ Jeeta

.....Petitioner

Versus

State of Punjab

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Bikramjit Aurora, Advocate,
for the petitioner.

Mr. Varun Sharma, AAG, Punjab.

RAJ MOHAN SINGH, J.

Petitioner prays for grant of regular bail in terms of Section 167 (2) Cr.P.C. in FIR No. 347 dated 14.9.2014 under Sections 21/29/61/85 of the N.D.P.S. Act, Police Station City Tarn Tarn District Tarn Tarn.

FIR was registered on the basis of secret information that the petitioner along with Ranjit Singh and Satwinder Singh @ Hero are indulged in the business of selling intoxicant/ narcotic products in connivance with each other. They used to supply heroin after smuggling from Pakistan by using Pakistani sim. It was informed that all the three were coming from Jhabhal side to Tarn Tarn in a car and are going to Rajasthan and Delhi for supplying the heroin. In case they are caught then the contraband and Pakistani sim card can

be recovered. The information was treated to be trustworthy and FIR was registered and necessary proceedings, thereafter, followed. Recovery of 300 grams heroin is alleged against the petitioner. Petitioner was arrested on 14.9.2014. Period of 180 days stipulated for filing challan expired on 13.3.2015. An application for extension of time was moved on 9.3.2015 by Additional Public Prosecutor, Tarn Taran on the ground that the investigating agency had tried their level best to get the report from Chemical Examiner but could not succeed despite number of letters issued by the police authority to Chemical Examiner, Punjab.

Vide order dated 11.3.2015, time was extended upto three months from the date of filing application by Special Court, Tarn Taran. Notice issued for the service of the petitioner was shown as received back with the report of refusal. Compelling reasons were alleged for seeking extension in time for filing challan beyond 180 days.

Learned counsel for the petitioner relies upon **Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau and another** 2010 (1) RCR (Cri.) 942 to contend that the application for extension of time is to be considered after compliance of stringent conditions provided therein. The conditions are:- (i) a report of the public prosecutor (ii) which indicates the progress of the investigation and (iii) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days and (iv) after notice to the accused.

The report of public prosecutor must indicate application

of mind in respect of progress of the investigation and the compelling reasons in seeking extension beyond 180 days for the purposes of filing challan. Since notice to the accused is one of the condition without observing principles of natural justice, the order granting extension would be a nullity. Learned counsel relies upon order dated 9.3.2015 passed by the Judge Special Court/ITT. The contents of the order are reproduced as under:-

“State vs. Ajit Pal etc.

Present: Sh.Amarpal Singh, Addl.P.P.for the State

Application for extension of period for filing report u/s 173 (2) of Cr.P.C. filed by the prosecution. Let notice to accused through counsel be issued for 11.3.2015.

Sd/-

(Darbari Lal)

JSC/TT/9.3.2015.”

A perusal of aforesaid order shows that the notice of the application for extension of time in submitting challan was issued to the accused through his counsel for 11.3.2015. Thereafter, whether counsel for the accused received notice or not remained conspicuous as nothing has been brought on record whether counsel was served or not.

On the other hand, a refusal from the petitioner is shown with reference to report dated 10.3.2015, which on being translated runs as under:-

“It is requested that I, HC with PHC Ashwani Kumar went

to Central Jail, Amritsar for Tameel Haza of the accused.

Thereupon calling Deputy Superintendent Paramjit Singh, accused were called for but they refused service.

Time 3.45 PM inside

Time 4.15 P.M.outside.

Signed Hardev Singh HC, P.S City Tarn Taran.”

Learned counsel for the petitioner relies upon the aforesaid report to attack that the aforesaid report and alleged refusal do not correspond to the legal criteria. No witness has been cited before whom the refusal was made by the accused. The aforesaid service cannot be treated as lawful service on the accused particularly when notice was never issued by the court to the accused, rather the same was issued to the accused through his counsel vide order dated 9.3.2015. Aforesaid lacuna assumes significance in view of requirement of issuance notice to the accused for the purposes of seeking extension in time for filing challan beyond the prescribed period of 180 days. Since stringent punishment is provided under the provisions of N.D.P.S. Act, therefore, there has to be a strict compliance of the procedure in terms of the Act.

Learned counsel also relied upon the alleged compelling reasons shown in the application for extension in time which are not sufficient to comply with the requirement. Time sought on account of non receipt of FSL report is not sufficient to seek extension for the purposes of denying the benefit arising to the petitioner in terms of Section 167 (2) Cr.P.C. The accused has indefeasible right of bail on expiry of 180 days and such a benefit cannot be curtailed by the

prosecution on imaginary grounds and the court also not to act to extinguish the right if law permits the same to the accused.

In view of non service of notice on the accused, the one of the requirement for complying with stringent condition in seeking extension of time beyond 180 days is not complied with in terms of **Sanjay Kumar Kedia's case (supra)**. Resultantly, this Court is of the opinion that the benefit accrued to the petitioner under Section 167 (2) Cr.P.C. could not have been curtailed by the extension in time. Therefore, action of the prosecution in obtaining further extension of time for filing challan is in violation of principles of natural justice and is not binding upon the petitioner.

Resultantly, this petition in terms of Section 167 Cr.P.C. is allowed. Petitioner is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of the Special Court, Tarn Taran. However, nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

April 29, 2015
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