

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH****CRM-M-12928-2015
Date of decision:29.04.2015**

Amritpal Singh @ Sonu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Vivek Salathia, Advocate for
Mr.Vikas Gupta, Advocate for the petitioner.**RAMESHWAR SINGH MALIK, J. (Oral)**

Petitioner seeks bail pending trial in FIR No.168 dated 22.9.2014 registered under Sections 21 and 22 of the Narcotic Drugs and Psychotropics Substances Act, 1985 (for short 'NDPS Act') at Police Station Gate Hakima, District Amritsar.

Notice to the Advocate General, Punjab as well as Advocate General, Haryana.

On the asking of Court, Ms.Anmol Grewal, AAG, Punjab accepts notice on behalf of the State of Punjab and Mr. Manoj Kumar Sangwan, DAG, Haryana, accepts notice on behalf of the State of Haryana.

During the course of hearing, when confronted by the Court as to how the petitioner has got an indefeasible right of bail, the matter being serious in nature as it pertains to NDPS Act, learned counsel for the petitioner submits that by way of instant petition under Section 439 read with Section 167(2) of the Code of Criminal Procedure ('Cr.P.C.' for short), petitioner seeks only an interim bail till the presentation of police report under Section 173 Cr.P.C. He further submits that report under Section 173

Cr.P.C. has not been presented to the court so far, despite expiry of the statutory period. He submits that although the investigating agency is seeking extension in time, yet an indefeasible right has accrued in favour of the petitioner under Section 167(2) Cr.P.C.. However, he fairly states that he restricts his prayer only for an interim bail till the presentation of challan.

On the other hand, learned counsel for the State, on instructions from ASI Tapinder Singh, Police Station, Gate Hakima, District Amritsar, submits that since the report from FSL has not been received so far, presentation of challan is being delayed, which is beyond the control of the investigating agency. However, the learned counsel for the State had no answer as to why the challan without the report of FSL could not be presented to the Court and rightly so, because, it was a matter of record.

In fact, it is a very sorry state of affair that the investigating agency, particularly in the State of Punjab, is miserably failing in its duty in very many cases, particularly in the NDPS matters, while not following the mandatory provisions of law. Because of this wholly unwarranted situation created at the hands of the State, even the hardened criminals under the NDPS Act are getting the benefit of default bail. This is one of the strong reasons which gives rise to the cases under the NDPS Act.

On the one hand, the State of Punjab is not setting up sufficient number of Forensic Science Laboratories ('FSL' for short) for the reasons best known to it, so as to ensure that no undue delay is caused in conducting the test of narcotic drugs and on the other hand in many cases police report under Section 173 Cr.P.C. is not being presented to the learned courts of competent jurisdiction within the statutory period or even during the extended period granted by the courts. Due to this delayed process, habitual

and chronic offenders, particularly who are repeatedly indulging in NDPS cases, are getting undue benefit of default bail and had to be released by the courts, having been left with hardly any discretion in this regard. It has become a vicious circle and ultimately, the innocent public as well as the justice delivery system are the sufferers. It is very much avoidable, of course, but will to do is required to achieve this objective, which is conspicuously missing. The State cannot ignore its constitutional obligation in this regard and become a silent spectator.

This unhealthy practice, nay an apparent unholy nexus between the accused persons and the concerned authorities, is going on for obvious and extraneous reasons, in spite of the fact that the Hon'ble Supreme Court has made the scope and ambit of Section 173 (8) Cr.P.C. clear on more than one occasions. In this regard, reference can be made to the judgments of the Hon'ble Supreme Court in **Kaptan Singh v. State of M.P 1997 (6) SCC 185**, **Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj v. State of Andhra Pradesh, 1999 CrI. L.J. 366**, **Hemant Dhasmana v. Central Bureau of Investigation, 2001 (7) SCC 536**, **Zahira Habibulla H. Sheikh and another v. State of Gujarat and others, 2004 (4) SCC 158**, **Popular Muthiah v. State represented by Inspector General of Police, 2006 (7) SCC 296**, **Manoj Narain Agrawal v. Shashi Agrawal and others, 2009(6) SCC 385**, **Samaj Parivartan Samudaya and others v. State of Karnataka and others, 2012 (7) SCC 407**, **Sudipta Lenka v. State of Odisha and others, 2014 (11) SCC 527**, **Abdul Azeez P.V. and others v. National Investigation Agency, 2015 (1) RCR (CrI.) 239** and **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and others, 2015 (3) SCC 123**. Full Bench judgment of this Court in **State of Punjab v.**

Mehar Singh and others, 1974 CrL. L.J. 1970 has also laid down the law in this regard making detailed observations on the true import of Section 173 Cr.P.C.

Further, Section 173 (8) Cr. P.C. is crystal clear in this regard. The law laid down by the Hon'ble Supreme Court in paras 78 and 79 of the judgment in **Zahira Habibulla H. Sheikh's** case (supra), aptly applies to the present case and the relevant observations made therein read as under:-

“Since we have directed re-trial it would be desirable to the investigating agency or those supervising the investigation, to act in terms of Section 173 (8) of the Code, as the circumstances seem to or may so warrant. The Director General of Police, Gujarat is directed to monitor re-investigation, if any, to be taken up with the urgency and utmost sincerity, as the circumstances warrant.

Sub-section (8) of Section 173 of the Code permits further investigation, and even de hors any direction from the Court as such, it is open to the police to conduct proper investigation, even after the Court took cognizance of any offence on the strength of a police report earlier submitted.”

Similarly the law laid down in the aforesaid judgments by the Hon'ble Supreme Court as well as Full Bench judgment of this Court has been reiterated by the Hon'ble Supreme Court in its judgment in **Abdul Azeez P.V.'s** case. The relevant observations made in paras 3 and 4, which can be gainfully followed in the present case, read as under:-

“The petitioners filed Criminal M.C. No. 100 of 2013 on 22.10.2013 before the learned Special Court, NIA Cases submitting that they were entitled to get statutory bail under Section 167(2) of the Code of Criminal Procedure (for short " Cr.P.C.") inasmuch as the investigating agency had failed to file the final report within 180 days. It was further submitted that the bank account details and mobile phone call details of

the petitioners, as stated in the charge-sheet itself, were yet to be verified and that the charge-sheet filed on 19.10.2013 was not a final report as contemplated under Section 173(2) Cr.P.C. The submissions were negated by the learned Special Court by its order dated 04.11.2013 holding that the petitioners were not entitled to statutory bail under Section 167 (2) Cr.P.C., which view was challenged by filing Criminal Appeal No. 1711 of 2013 in the High Court of Kerala at Ernakulam. The High Court went through paragraph Nos. 17.1., 17.2, 17.3 and 17.8 of the charge-sheet and found that the materials so disclosed and adverted to in the charge-sheet did show that it was a final report. The High Court, thus, dismissed the appeal. The present special leave petition has been filed to challenge the view taken by the High Court.

Having gone through the charge-sheet, we are not persuaded to take a different view. The materials adverted to show that it was a final report on the facets investigated into by the investigating agency. Furthermore, the requisite sanctions as required under Sections 18 and 18A of the UAPA and so also under Section 7 of the Explosive Substances Act were also accorded by the concerned authorities. The charge-sheet so filed before the learned Special Court was complete in all respects so as to enable the learned Special Court to take cognizance in the matter. Merely because certain facets of the matter called for further investigation it does not deem such report anything other than a final report. In our opinion Section 167(2) of Cr.P.C. stood fully complied with and as such the petitioners are not entitled to statutory bail under Section 167(2) of Cr.P.C.”

However, the respondent-State seems to be totally disinterested and the concerned agencies are proceeding on an indifferent approach. This is how a very serious damage is being caused to the social fabric.

In view of the totality of facts and circumstances of the case

noticed hereinabove, present petition is allowed. Petitioner is directed to be released on interim bail, however, only till filing of report under Section 173 Cr.P.C., on his furnishing adequate bail bonds/surety bonds to the satisfaction of the learned trial Court.

It is made clear that once the report under Section 173 Cr.P.C. along with report of FSL is presented to the court of competent jurisdiction, the same shall be taken into consideration, in accordance with law.

However, before parting with this order, the Chief Secretary, State of Punjab as well as the Chief Secretary, State of Haryana, are directed to look into this matter and ensure that no undue delay is caused in presentation of the challan, particularly in NDPS matters so that hardened criminals in NDPS cases may not get the undue benefit, in this regard, only because of the laxity on the part of investigating agency. Both the Chief Secretaries of Punjab and Haryana, shall issue appropriate instructions to all the authorities concerned in their respective State and ensure meticulous compliance thereof so as to ensure that this kind of unwarranted situation, as in the present case, does not repeat in future.

Let both the Chief Secretaries of Punjab and Haryana issue the appropriate instructions at an early date and in any case within a period of two months from the date of receipt of a certified copy of this order and this Court shall be apprised by filing their own affidavits along with action taken report.

Let a copy of this order, under the signatures of Special Secretary attached to this Bench, be given dasti to the learned counsel for both the States, for onward transmission to the authorities concerned for compliance thereof.

With the above-said observations made and directions issued,
present petition stands disposed of.

29.04.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE