

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. **CRM-M-15547 of 2015**
Date of Decision : 01.09.2015

Raj Kumar @ VickyPetitioner

Versus

State of PunjabRespondent

2. **CRM-M-6541 of 2015**

Mandeep SinghPetitioner

Versus

State of PunjabRespondent

3. **CRM-M-8705 of 2015**

Harpreet Singh @ Chintu and anotherPetitioners

Versus

State of PunjabRespondent

4. **CRR No. 1430 of 2015**

Hasanpreet Singh @ HassiPetitioner

Versus

State of PunjabRespondent

5. **CRM-M-9722 of 2015**

Jagdeep Singh and anotherPetitioners

Versus

State of PunjabRespondent

6. **CRM-M-20471 of 2015**

Ram NareshPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Vipul Jindal, Advocate
for petitioner in CRM-M-15547 of 2015.

Ms. Satwant Mehta, Advocate
for petitioner in CRM-M-6541 of 2015.

Mr. Abhijeet P.S. Chaudhary, Advocate
for petitioners in CRM-M-8705 of 2015.

Mr. Ashish Aggarwal, Advocate
for petitioner in CRR No. 1430 of 2015.

Mr. Tarunveer Vashist, Advocate
for petitioners in CRM-M-9722 of 2015.

Mr. Deepak Aggarwal, Advocate
for petitioner in CRM-M-20471 of 2015.

Mr. Gazi Mohd., DAG, Punjab.

R.P. Nagrath, J.

This order will dispose of aforesaid six petitions as the common question of facts and law are involved in all these petitions. The facts emerging in all these petitions are that the Public Prosecutor presented reports before the Judges, Special Courts for extension of time in presenting the challan, before expiry of initial period of 180 days. Petitioners had also filed applications for default bail in terms of Section 167 (2) Cr.P.C. on expiry of 180 days but by that time applications filed by the Public Prosecutor seeking extension of time in presenting the challan were pending and decided subsequently.

2. CRM-M-15547 of 2015, CRM-M-6541 of 2015, CRM-M-8705 of 2015, and CRR No. 1430 of 2015 arise from FIR No. 93 dated 28.07.2014 for offence under Section 21 of the Narcotic

Drugs and Psychotropic Substances Act, 1985 (for short to be referred as "the Act"). The facts of the case are that on 28.07.2014, the police party apprehended Raj Kumar @ Vicky-petitioner in CRM-M-15547 of 2015 and Hasanpreet Singh @ Hassi-petitioner in CRR No. 1430 of 2015 while travelling in Safari car No. PB-10-DY-TEMP-9679. 2 kgs. of heroin was recovered from Raj Kumar @ Vicky and 500 gms. of heroin from Hasanpreet Singh @ Hassi-petitioner in CRR No. 1430 of 2015.

3. The interrogation of the two persons revealed names of 7 more accused persons. One of them is Mandeep Singh-petitioner in CRM-M-6541 of 2015 from whom recovery of 1 kg. of heroin was made on 01.08.2014. From Harpreet Singh @ Chintu and Gurmail Singh petitioners in CRM-M-8705 of 2015, 4 kgs. and 1 kg. of heroin respectively was recovered on 04.08.2014. Total quantity of heroin recovered in this FIR is 8½ kgs.

4. Prayer made in CRM-M-15547 of 2015 (*Raj Kumar @ Vicky vs. State of Punjab*) and CRR No. 1430 of 2015 (*Hasanpreet Singh @ Hassi vs. State of Punjab*) is to set aside the order passed by learned Judge, Special Court whereby application for extension of time in filing the challan was allowed and simultaneously application for grant of default bail was dismissed. In CRM-M-6541 of 2015 (*Mandeep Singh vs. State of Punjab*), the petitioner has made prayer for grant of bail under Section 439 read with Section 167 (2) Cr.P.C. In CRM-M-8705 of 2015, the prayer is for grant of bail in the said FIR under Section 439 Cr.P.C. because of the dismissal of application under Section 167 (2) Cr.P.C. and extension of time in presenting challan.

5. CRM-M-9722 of 2015, arises out of FIR No. 81 dated 02.09.2014, under Section 22 of the Act, Police Station Kot Dharmu. In this case, 20 vials of Rexcof each containing 100 ml. of quantity was recovered. In CRM-M-20471 of 2015, which arise out of FIR No. 115 dated 06.12.2014 under Section 22 NDPS Act, Police Station, Cantt. Bathinda, it was the version that 17 vials of Rexcof each containing 100 ml. of quantity and 20 strips of tables Carisoma (each strip containing 10 tables) were recovered. Prayer in these petitions is also for grant of bail under Section 439 read with Section 167 (2) Cr.P.C.

6. To understand the controversy, facts are being extracted from **CRM-M-15547 of 2015 (Raj Kumar @ Vicky vs. State of Punjab)**. The petitioner was arrested on 28.07.2014. As per report of public prosecutor dated 22.01.2015 (Annexure P-2), the period of 180 days was to expire on 23.01.2015, but the report of Forensic Science Laboratory (FSL)/Chemical Examiner had not been received despite reminder dated 23.12.2014 sent by the Senior Superintendent of Police (SSP) Tarn Taran to the Director, Chemical Examiner. Reply filed by the petitioner is Annexure P-3. It was stated that samples were sent to the Chemical Examiner after delay of 1½ month and no effort was made to get the report for another 3½ months. The accused-petitioner filed application for default bail under Section 167(2) Cr.P.C. on 27.01.2015 and by that time the application for extension of time had not been decided.

7. Learned Judge, Special Court allowed the prayer for extension of time on 31.01.2015 (Annexure P-5) simultaneously

declining prayer of petitioner for the default bail under Section 167 (2) Cr.P.C. Learned Judge, Special Court extended the period for completing the investigation for 90 days to be effective from 23.01.2015 i.e. when the period of 180 days was to expire.

8. The Judges, Special Courts have decided the right of petitioners for grant of default bail and not on merits. So, the discussion in this order is confined only on that aspect.

9. The bone of contention of learned counsel for petitioners was that on the day when application for grant of default bail was filed there was no order of extension and thus a statutory right vested in the petitioners to seek default bail. It was also contended that non-receipt of report of Chemical Examiner is not a valid reason for granting such an extension. Learned counsel for petitioners referred to judgments of this Court among others to ***CRM-M-7279 of 2015 (Major Singh vs. State of Punjab)*** decided on 08.05.2015, ***CRR No. 1384 of 2015 (Harmandeep Singh @ Harman vs. State of Punjab)*** decided on 04.05.2015, ***CRM-M-41673 of 2013 (Jeevan Sharma @ Vicky vs. State of Punjab)*** decided on 15.01.2014, ***CRM-M-39703 of 2013 (Sanjeev Kumar vs. State of Punjab)*** decided on 04.12.2013, ***CRM-M-14269 of 2014 (Hargobind Singh vs. State of Punjab)*** decided on 14.05.2014 and ***CRM-M-13473 of 2015 (Jasandeep Singh vs. State of Punjab)*** decided on 15.05.2015, wherein the bail was allowed to the accused in such circumstances.

10. Learned State counsel, vehemently, opposed the prayer for grant of bail and relied upon judgment of Hon'ble Supreme

Court in **Union of India through CBI vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, (2014) 9 SCC 457.**

11. Hon'ble Supreme Court in ***Nirala Yadav's case (supra)*** observed that before expiry of period of 90 days which is initial period for filing the charge-sheet, the prosecution neither had filed the charge-sheet nor had it filed an application for extension. It was further held that had an application for extension been filed, then the matter would have been totally different. In the said case, the prosecution submitted an application seeking extension of time after the accused filed an application for default bail.

12. Learned counsel for petitioners urged that the conflicting views taken by this Court in certain judgments on the issue has been referred to a larger Bench in ***CRR No. 2087 of 2014 (Ranjit Singh @ Rana vs. State of Punjab)*** and while doing so this Court on 11.09.2014 granted interim bail to the said petitioner till the decision of larger Bench. The questions posed in the reference to the larger Bench in ***Ranjit Singh's case (supra)*** are as under:-

- (i) Whether the petitioner has indefeasible right to be released on bail on the expiry of period of 60 or 90 or 180 days as the case may be;
- (ii) Whether the right to bail of the petitioner gets effected in case the application is moved **after the expiry of that period** (emphasis supplied);
- (iii) Whether the petitioner has a right to be released on bail even without moving any application on

expiry of said period;

- (iv) Whether the application moved by the prosecution can be extended as a matter of right or after seeing the reasons and circumstances of each case.
- (v) Whether after dismissal of the bail application before the trial Court, the remedy is of filing revision or petition under Section 439 Cr.P.C. or 482 Cr.P.C.;
- (vi) Whether while deciding the application under Section 167(2) Cr.P.C., the merits of the case or nature of the offence is to be seen or not;
- (vii) Whether the application for extension of time moved by the prosecution and application seeking grant of bail moved by the accused should be decided together on the same date and in the presence of both the parties.

13. I am of the view that every such petition cannot be kept pending till reference to the larger Bench is decided because of the principles discussed in other judgments of this Court on the subject and upheld by the Hon'ble Supreme Court.

14. In ***Ranjit Singh's case (supra)***, a coordinate Bench referred to the conflicting views of this Court in ***CRM-M-20586 of 2014 (Gurwinder Singh vs. State of Punjab)*** decided on 24.06.2014, ***CRM-M-22760 of 2014 (Kaka Singh vs. State of Punjab)*** decided on 12.08.2014 and ***CRM-M-26380 of 2014 (Gurwinder Singh vs. State of Punjab)*** decided on 26.08.2014

while referring the questions to a larger Bench.

15. In **CRM-M-26380 of 2014 (Gurwinder Singh vs. State of Punjab)**, the accused was arrested on 10.01.2014 for being found in possession 800 tablets of Diatil, punishable under Section 22 of the Act. The period of 180 days in presenting the challan expired on 10.07.2014. The prosecution had moved an application for extension of time on 9.07.2014 i.e. a day before expiry of period of 180 days. The application moved by the prosecution was allowed by the lower Court **as investigation could not be completed due to non-receipt of chemical examiner's report**. The accused had filed an application for grant of default bail under Section 167 (2) Cr.P.C. on 10.07.2014. The application for extension was allowed by learned Judge, Special Court on 19.07.2014 and vide the same order application for grant of default bail was also dismissed (**emphasis supplied**). While rejecting the prayer for default bail in **Gurwinder Singh's case (supra)** this Court held as under:-

“Admittedly, in the present case, the period of 180 days for investigation and presentation of charge sheet had expired and thereafter, the application was moved on the ground that the challan has not been presented and the petitioner is not entitled for bail as per provisions of Section 167(2) Cr.P.C. It is also not disputed that the application was moved by the public prosecutor indicating the progress of investigation and for extension of period on the ground that the investigation could not be completed as the Chemical Examiner's Report was

still awaited. The extension of detention of the accused in custody was sought for the specific reason of procuring Chemical Examiner's Report. As per provisions of Section 37(1)(b) of the NDPS Act, no person accused of any offence under Sections 19, 24, 27-A and also for offence involving commercial quantity shall be released on bail unless the public prosecutor has been given an opportunity to oppose the application for such release and when such application has been opposed, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail. The Special Court is debarred from releasing the accused on bail on any ground except where the Court comes on prima facie conclusion that the accused is not guilty. It is clear from the said provision that the bail can only be granted where there are reasonable grounds to believe that the accused is not guilty. As per provisions of Section 167(2) read with Section 36-A(4) of the Act, the accused may be granted bail in case the investigation has not been completed within a period of 180 days and in case, the public prosecutor moves an application for extension of time for compelling reasons, the accused will not be entitled for bail. It is necessary for the Court to see as to whether the public prosecutor has submitted justified reasons for extension of period of investigation.

The word 'Investigation' has been defined under Section 2(h) of the Cr.P.C and it includes all the proceedings for collection of evidence conducted by police official or any other authorized persons on behalf of a Magistrate. Under NDPS Act, when the recovery has been effected, the Investigating Officer sends the sample of recovered substance to the Chemical Examiner for its analysis and report. Only on the basis of such report, it can be verified whether the substance so recovered from the accused is contraband Narcotic drug or not. Accordingly, Chemical Examiner's Report is an important piece of evidence to be collected by the Investigating Officer for the presentation of challan. It has specifically been mentioned in the application for extension of time that the investigation is still incomplete as the Chemical Examiner's Report has not been received. The Investigating Agency cannot be at fault and reasonable/justified ground was there for moving application for extension of time. Learned Judge, Special Court has extended the period of investigation for further 60 days. The trial Court has specifically mentioned in its order that the period has been extended as the application was moved before the date of expiry of period of 180 days. It has also been mentioned in the order that in order to take care of the situation, the time of 60 days was extended to the prosecution to file challan and that

period would start from the date of order i.e 19.07.2014 and the challan is to be presented by 18.09.2014. The application moved by the accused-petitioner under Section 167 Cr.P.C was dismissed.”

16. In **Gurwinder Singh's case (supra)**, accused filed **Special Leave to Appeal (Criminal) No. 8628 of 2014** before Hon'ble Supreme Court but the same was dismissed on 27.02.2015 with the observation that there is no substance in the special leave to appeal.

17. Learned counsel for the petitioner in CRM-M-15547 of 2015 (*Raj Kumar @ Vicky vs. State of Punjab*) referred to **Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau and another, 2009 (17) SCC 631** for contending that non-receipt of chemical examiner's report was not considered as a valid reason for granting extension. I do not think that this was the ratio laid down by Hon'ble Supreme Court because the application filed by the investigating officer in that case did not indicate even remotely any application of mind of Public Prosecutor. It further did not indicate the progress of the investigation nor the compelling reasons which required an extension of custody beyond 180 days. That was a case in which the investigating officer of the case had filed application for seeking extension and not the public prosecutor .

18. In all the petitions before this Court applications for extension of time on the ground of non-receipt of chemical examiner's report were made by the public prosecutor.

19. Similar was the issue before this Court in **CRM-M-**

22419 of 2013 (Pawan Kumar vs. State of Punjab) decided on 18.12.2013. The period of 180 days expired on 13.06.2013. The application for extension of time for filing the challan was moved on 13.06.2013 whereas the petitioner filed an application for bail on 14.06.2013. Applications were disposed of on 18.06.2013 by the Judge, Special Court, granting extension of 45 days and at the same time rejecting the prayer for grant of bail. In that case, a coordinate Bench of this Court held that non-receipt of report of Chemical Examiner is beyond the control of investigating officer and was rightly accepted as a compelling reason requiring extension of custody beyond 180 days. So, the said petition alongwith connected petition was dismissed. By referring to judgment of Hon'ble Supreme Court in **Sayed Mohd. Kazmi vs. State, GNCTD and others, 2012 (12) SCC 1** this Court held in ***Pawan Kumar's case (supra)*** that it was not held in ***Syed Mohd. Kazmi's case (supra)*** that order of extension cannot relate back to the date of application. It was further held by this Court that if the contention of petitioner is accepted that the order of extension would not be effective from the date of application, it would create absurdity, not permissible in law.

20. The order dated 18.12.2013 passed by this Court in ***Pawan Kumar's case (supra)*** and the connected petition ***CRM-M-22279 of 2013*** was taken in Special Leave to Appeal (Criminal) Nos. 2565 and 2566 of 2014 before Hon'ble Supreme Court and those SLPs were dismissed on 18.07.2014 with the observations that there is no legal and valid ground for interference.

21. The observations of this Court in ***Pawan Kumar's***

case (supra) also effectively dealt with the other contention of learned counsel for petitioners that the period of filing the challan cannot be extended with retrospective effect by the Court. The retrospective effect of the order cannot be of course before the date of filing of the application for extension but at least it is to relate back to the period with effect from the date when 180 days expired in case the application was filed before the said date. I would thus not agree with the contention that the order on application for extension should have been passed before the expiry of 180 days or before the accused person exercises his right for the default bail. There is, however, a mandate to the courts to decide the applications expeditiously.

22. Therefore, the view adopted by this Court in **Gurwinder Singh's case (supra)** in CRM-M-26380 of 2014 and **Pawan Kumar's case (supra)** in accepting the plea of non-receipt of Chemical Examiner's report to be sufficient ground for granting the extension merged in the order of Hon'ble Supreme Court.

23. No doubt, the Court concerned is bound to decide the application at the earliest but principle held by Hon'ble Supreme Court in **Sanjay Dutt vs. State through CBI, Bombay, (1994 (5) SCC 410** is also required to be followed that if there be an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in section 20(4)(bb) of the Terrorist and Disruptive Activities (Prevention) Act, 1987, both of them should be considered together. It was further held as obvious that no bail can be given even in such a case unless the prayer for extension

of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer for extension of time, if such prayer is made. Hon'ble Supreme Court further held that if the accused applies for bail under this provisions on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith.

24. It is not the contention of any of the petitioners that accused persons were not issued notice or they were not heard on the application for extension of time for presenting the challan. It has also been held by Hon'ble Supreme Court in **Sanjay Dutt's case (supra)** that production of the accused before the Court is sufficient notice of the application for extension.

25. Learned counsel for Raj Kumar @ Vicky-petitioner in CRM-M-15547 of 2015 would rely upon **Sham Lal vs. State of Punjab** in **SLP (Criminal) No. 8224 of 2013** for contending that non-receipt of chemical examiner's report should not be considered a valid ground for extension of time. I have carefully gone through the judgment and find that contention raised by the learned counsel was not the ratio laid down by Hon'ble Supreme Court.

26. The matter arose in **Sham Lal's case (supra)** before Hon'ble Supreme Court from judgment of this Court in CRM-M-25204 of 2013. That was a case where the application for extension of time for presenting challan was moved by the Sub-Inspector and not by the Public Prosecutor. Hon'ble Supreme Court observed that the factual details as well as contents made therein and also the officer, who made such application, were

gone through. It was further held that in the light of decision of Hon'ble Supreme Court in **Sanjay Kumar Kedia's case (supra)** more particularly in paragraph 18 of the decision coupled with factual details furnished by the appellant, the appeal was allowed.

27. In paragraph 18 of the judgment of **Sanjay Kumar Kedia's case (supra)**, Hon'ble Supreme Court had observed that a bare perusal of application shows that it was filed by the investigating officer of respondent no. 1 and did not indicate even remotely any application of mind on the part of Public Prosecutor. The application also did not indicate progress of the investigation, nor the compelling reasons which required an extension of custody beyond 180 days. So the above judgment of Hon'ble Supreme Court would not support petitioners' contention.

28. Otherwise, there cannot be any quarrel with the proposition that once the application for default bail has been filed, presentation of challan during consideration/disposal of the application cannot defeat the right of accused. This principle has been clarified by Hon'ble Supreme Court in **Nirala Yadav 's case (supra)**. However, that proposition would not help the petitioners because extension was granted to the prosecution to complete the investigation and in all these cases applications were filed before expiry of the period of 180 days as permissible in terms of proviso to Section 36(A)(4) of the Act.

29. Certain additional facts in CRM-M-9722 of 2015 also require some discussion. Admittedly the period of 180 days would have expired on 01.03.2015. The prosecution filed application (Annexure P-1) for extension of time on 27.02.2015 and reply of

petitioner thereto is dated 03.03.2015 (Annexure P-2). The application for grant of default bail was filed by the petitioner on 02.03.2015. The application for extension of time was decided on 03.03.2015.

30. There was a specific observation of learned Judge, Special Court that the extension was granted from the date of passing of the order i.e. 03.03.2015 for 45 days for completing investigation. I am of the view that above observation would not mean that the extension of time was granted w.e.f. 03.03.2015. It is only the period of extension that was granted for 45 days from 03.03.2015 but under all circumstances the extension would relate back to the initial date of expiry of 180 days as the application had already been filed for seeking extension on 27.02.2015.

31. Another ground taken in this petition was that the recovery would amount to non-commercial but that was not the reason on which the prayer for bail was declined by learned Judge, Special Court on merits but only on the aspect of default of prosecution in presenting challan within the stipulated period.

32. In view of the above, I find no merit in all the petitions and the same are dismissed. In case the petitioners claim concession of bail on merits they would be at liberty to move the Judge, Special Court concerned.

September 01, 2015
jk

(R.P. NAGRATH)
JUDGE