

CRM-M-37781-2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Judgment Reserved on: 26.03.2015

Pronounced on: May 13, 2015

Surjit Singh

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 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 ?

Argued by: Mr. P.S.Sekhon, Advocate,
for the petitioner.

Mr. S.S.Chandumajra, DAG, Punjab.

Paramjeet Singh, J.

Instant petition has been filed under Section 439 of the Code of Criminal Procedure (in short, 'Code) read with Section 167 (2) of the Code for grant of regular bail to the petitioner in case FIR No.133 dated 19.08.2013, registered at Police Station Dharamkot, District Moga, under section 15/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'Act').

I have heard learned counsel for the parties and perused the record.

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Learned counsel for the petitioner contended that since at the time of presentation of challan under Section 173 of the Code, report of chemical examiner was not attached, therefore, the petitioner has indefeasible right of bail. Learned counsel further contended that the said application was dismissed by the trial Court on the ground that on 20.03.2014, the report of chemical examiner was received on 20.03.2014 i.e. one day prior to filing of application under Section 167 (2) of the Code. When the challan was presented in the trial Court, the same was incomplete and report of chemical examiner was not attached therewith. Learned counsel further contended that the petitioner has been behind bars since 19.08.2013 and not required for any custodial interrogation. In support of his contentions, learned counsel relied upon *Sayad Mohamad Ahmad Kazmi vs. State, GNCTD and others* 2012 (12) SCC(1), *Janta Singh vs. State of Punjab* 1996(1) R.C.R. (Criminal) 1, *Taj Singh vs. State (Delhi Administration)* 1988(2) R.C.R. (Criminal) 313, *Krishan Lal vs. State* 1989 (2) ILR (Delhi) 446, *State of Haryana vs. Mehal Singh and others* 1978 PLR 480, *Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau and Another* 2010 (1) R.C.R. (Criminal) 942, *Sham Lal vs. State of Punjab*, Criminal Appeal No.2125 of 2013 decided on 06.08.2013, *Jeevan Sharma @ Vicky vs. State of Punjab*, CRM-M-41673-2013, decided on 15.01.2014, *Sanjeev Kumar vs. State of Punjab*, CRM-M-39703-2013, decided on 04.12.2013, *Hargobind Singh vs. State of Punjab*, CRM-M-14269-2014, decided on 14.05.2014, *Malkiat Singh @ Totti*

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vs. State of Punjab, CRM-M-28074-2014, decided on 04.12.2014, *Sukhpal Singh @ Kala vs. State of Punjab*, CRM-M-12991-2014, decided on 23.05.2014, *Kabul Singh @ Sahib Singh vs. State of Punjab*, CRM-M-17345-2014, decided on 11.12.2014, and *Sukha @ Sukhdev Singh vs. State of Punjab*, CRR-3837-2014, decided on 18.12.2014.

Learned counsel for the petitioner further contended that vide order dated 11.09.2014 passed by a Coordinate Bench of this Court in CRR-2087-2014, titled *Ranjit Singh @ Rana vs. State of Punjab*, similar matter has been referred to the Larger Bench of this Court and this Court should await the decision before disposal of this petition and till then interim bail may be granted to the petitioner, as has been done by the Coordinate Bench of this Court.

Per contra, learned State counsel vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned order. Learned State counsel further contended that report of chemical examiner was filed one day prior to filing of application by the petitioner under Section 167(2) of the Code.

I have considered the rival contentions of learned counsel for the parties.

In view of the arguments advanced by learned counsel for the parties, following point arises for consideration of this Court:

Whether non-filing of chemical examiner report with report under Section 173 of the Code amounts to

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incomplete challan and the same gives an indefeasible right of bail to the petitioner under Section 167(2) of the Code?

Before proceeding further, it would be appropriate to reproduce relevant sections. Section 173 of the Code, which envisages the submission of a report to the Magistrate after the completion of the investigation for the purpose of enabling him to take cognizance of the offence is as follows :

"173. (1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2)(i) As soon as it is completed, the officer incharge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government stating -

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been

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appointed under section 158, the report shall, in any case in which the State by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer incharge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report,

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution propose to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to a report forwarded under sub-section (2)."

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Section 190 of the Code provides three different modes to take cognizance of an offence and a relevant part thereof reads as under:

"190. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed."

Admittedly, challan was presented on 29.01.2014 i.e. within 180 days of arrest of the petitioner. The petitioner has sought the bail on the ground that report of chemical examiner was not filed with the challan report. Section 190 of the Code prescribes three different modes to taking cognizance of an offence. The investigating officer has collected all evidence and facts that are detailed in sub-section (2) of Section 173 of the Code and from the evidence thus collected he is satisfied that the case deserves to be initiated against the accused.

In ***State of Haryana vs. Mehal Singh and others*** 1978 PLR 480, a Full Bench of this Court has held under:

"16. In view of the above conclusion, the accused would be on still a weaker ground in canvassing that the report, which did not include the report of the experts such as Chemical Analyst, Serologist, Ballistic Expert, finger Print Expert etc., would not be a complete police report envisaged in sub-section (2) of section 173 of the Code, which in terms is prepared and submitted only after the completion of the

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investigation. So far as the investigation part of the job of the investigating officer is concerned, it is complete if he has collected all evidence and facts that are detailed in sub-section (2) of section 173 of the Code and from the evidence thus collected he is satisfied that the case deserves to be initiated against the accused. And, even if the investigating officer had not received the report of the expert, so far as his job of collecting of the evidence is concerned, that is over the moment he dispatches the material for the opinion of the expert and incidentally cites him as a witness if he relies on his testimony.

17. xxxx

18. xxxx

19. *It would be thereafter, at the discretion of the Court whether to permit the prosecutor to adduce in evidence the reports of the experts of the kind. If the Court permits the prosecutor to do so, then a copy thereof shall have to be furnished to the accused. The Court, under section 91 of the Code (which is reproduced below) has to determine whether to call for a document from a witness on the application of the police officer.*

"91. (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section

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merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed -

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872, or the Banker's Books Act, 1891 or.

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or thing in the telegraph authority."

And the provisions of section 91 of the Code further envisage that such a person need not appear before the Court in person. He may send the document directly to the Court through some other person. The Court has also the power under section 311 of the Code to permit production of the additional evidence if it is considered in the interest of justice. However, in the exercise of its discretion the Court has always to balance the interest of the accused in that he should not remain incarcerated for unduly long period as the concern on the part of the legislature spare him from unduly delayed incarceration is apparent from the provisions of the proviso to sub-section (2) of section 167 of the Code. However, the interest of justice has always to be kept in view and no prosecution evidence, which have a vital bearing on the case should be shut out.

20. *For the reasons stated, I hold that the investigation of an offence cannot be considered to be inconclusive merely for the reason that the investigating officer, when he submitted his report in terms of sub-section (2) of section 173 of the Code to the Magistrate, still awaited the reports of the experts or by some chance, either inadvertently or by design,*

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he failed to append to the police report such documents or the statements under section 161 of the Code, although these were available with him when he submitted the police report to the Magistrate.”

In ***Abdul Azeez P.V. And others vs. National Investigation Agency*** 2015 (1) RCR (Criminal) 239, the Hon'ble Supreme Court has held as under:

3. 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.

4. 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

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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.”

In view of the law laid down in ***Mehal Singh (supra)*** and ***Abdul Azeez P.V. (supra)***, I am not persuaded to take a view different from the one taken by the trial Court. The challan filed by the investigating agency is sufficient to enable the Special Court to take cognizance in the matter. Merely non-filing of report of chemical examiner with report under Section 173 of the Code cannot be treated as an incomplete challan. It appears that the persons defending the cases on behalf of the State are not updating themselves about the settled position of law. There is a provision in the Code for submitting supplementary challan also in which other documents can also be brought on the record which may be collected by the investigating agency during further investigation. The case law cited by learned counsel for the petitioner is distinguishable to the facts and circumstances of the present case. The above point is answered accordingly.

So far as the contention of learned counsel for the petitioner

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that since a similar matter referred to a Larger Bench of this Court and interim bail as has been granted in that case, may also be granted in this case, is concerned, the same is not sustainable. It would be suffice to state that reference to Larger Bench does not lead to an inescapable conclusion that such matters be not decided on merit and be kept in abeyance. In a recent case reported as ***Ashok Sadarangani and Anr. vs. Union of India and Ors.***, AIR 2012 SC 1563, the Hon'ble Supreme Court has observed:

“19. As was indicated in Harbhajan Singh's case (supra), the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh's case (supra) need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.”

In view of above, the petitioner is not entitled for bail.

Dismissed.

May 13, 2015
parveen kumar

(Paramjeet Singh)
Judge