

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2015.01.13 11:32
I attest to the accuracy and
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CRM No. M-44096 of 2014 (O/M)
Date of decision : 8.1.2015

Prithi Raj

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Manish Kumar Singla, Advocate, for the petitioner.

Mr. Ashish Sanghi, Deputy A.G. Punjab.

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

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KULDIP SINGH, J. (ORAL)

5 kg. opium is alleged to have been recovered from the petitioner on 14.6.2014 and he was booked and arrested on the same day under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act') by the Fatehgarh Sahib police. FIR No. 106 dated 14.6.2014 was registered at Police Station Fatehgarh Sahib, under Section 18 of Act. The statutory period of 180 days in presenting the challan in Court elapsed on 10.12.2014. However, on 9.12.2014, the prosecution had moved an application for extension of time under Section 36(A) of the said Act to present the challan. In the meanwhile, the accused filed an application for bail on 12.12.2014. Both the applications were decided by the learned Special Judge, Fatehgarh Sahib, on

17.12.2014. The time for presenting the challan was extended by 90 days and the bail application of the petitioner under Section 167(2) Cr.P.C. was dismissed.

I have heard learned counsel for the petitioner, learned Deputy Advocate General for the State and have also carefully gone through the file.

Learned counsel for the petitioner contends that the time could not be extended retrospectively. Therefore, the learned Special Judge, Fatehgarh Sahib, erred in extending the time on 17.12.2014. It has been further argued that in the application the ground is that the report of the Forensic Science Laboratory has not been received and only in the last line, prayer has been made for extending the time for presenting the challan in Court. The application was filed by the learned Additional Public Prosecutor.

It comes out that after the filing of the application for extension of time before the expiry of 180 days, the notice was issued to the accused and the matter was decided after obtaining the reply of the accused. It appears that due to this reason, the learned Special Judge, Fatehgarh Sahib, took time in deciding the matter.

Now, the question would arise whether the extension would operate retrospectively or prospectively ?

Learned counsel for the petitioner has relied upon the authorities of this Court in Ranjit Singh @ Rana Versus State of

Punjab, CRR No. 2087 of 2014 (decided on 11.9.2014), Malkiat Singh @ Totti Versus State of Punjab, CRM No. M-28074 of 2014 (decided on 4.12.2014) and has stated that the matter has been referred to the Larger Bench after granting interim bail to the accused. In the said case, the issue was raised that the matter should have been decided before the expiry of 180 days. The learned counsel has further relied upon authorities of the Hon'ble Supreme Court in Sham Lal Versus State of Punjab, Criminal Appeal No. 2125 of 2013 (decided on 17.12.2013 and Sanjay Kumar Kedia @ Sanjay Kedia Versus Intelligence Officer, Narcotic Control Bureau and anotehr, 2010 (1) RCR (Criminal) 942.

Now, the further question would arise as to whether the prosecution should suffer because of delay in passing the order on the part of the Court ?

I am of the view that the prosecution should not suffer on account of delay on the part of the Court to pass the order on the application for extension of time from the day 180 days were to expire, as requested in the application. Normally, an order on the application would operate from the date of application, unless the contrary intention appears from the order. In the present case, there is no such contrary intention that it should operate from the date of order. Therefore, the order is deemed to be operative from the date the application was filed. Further, since the impugned order dated 17.12.2014 (Annexure-P-1) has not been challenged in the

present petition, therefore, the validity of the said order is not in issue.

In view of the matter, I am of the view that the petitioner is not entitled to the benefit of bail under Section 167(2) Cr.P.C. However, if a subsequent right accrues to the petitioner, he is always at liberty to approach this Court.

Dismissed.

(KULDIP SINGH)
JUDGE

8.1.2015
sjks