

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH****CRM-M-8543-2015
Date of decision:24.3.2015**

Amar Singh

...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.C.L.Verma, Advocate for the petitioner.

Mr. Daljeet Singh Virk, AAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

Petitioner, by way of present petition under Section 439 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks bail pending trial in FIR No.175 dated 28.6.2014 registered under Sections 15, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act for short) at Police Station, Phillaur, District Jalandhar.

Notice to the Advocate General, Punjab.

On the asking of Court, Mr. Daljeet Singh Virk, AAG, Punjab, accepts notice.

Learned counsel for the petitioner submits that although the FIR was dated 28.6.2014, yet the report under Section 173 Cr.P.C. was not presented by the investigating agency up-to 6.1.2015, under the pretext that report from chemical examiner was not received, the case being under the NDPS Act. He further submits that once the statutory period and even the period extended by the Court has expired and no report under Section 173

Cr.P.C. was presented to the Court, the accused-petitioner would get indefeasible right of default bail under Section 167(2) Cr.P.C. In support of his contentions, he relied upon the following judgments:-

- 1. Uday Mohanlal Acharya v. State of Maharashtra, 2001(5) SCC 453;**
- 2. Sayed Mohd. Ahmed Kazmi v. State, GNCTD and others, 2012 (4) RCR (Crl.) 877 SC;**
- 3. Suresh Kumar Bhikamchand Jain v. State of Maharashtra and another, 2013 (3) SCC 77;**
- 4. Rakesh Kumar and another v. State of Punjab, 2011 (3) RCR (Crl.) 297 (P&H);**
- 5. Satnam Singh v. State of Punjab, 2013 (2) RCR (Crl.) 356 (P&H);**
- 6. Raj Singh @ Babu v. State of Punjab, 2013 (3) RCR (Crl.) 1054 (SC);**
- 7. Sarabjit Singh @ Sabi v. State of Punjab, 2014 (1) RCR (crl.) 341 (P&H;).**

Finally, he prays for allowing the present petition.

On the other hand, learned counsel for the State submits that since the challan, as a matter of fact, has been presented in the present case before moving the application by the petitioner under Section 167(2) Cr.P.C., he has got no statutory right for bail under Section 167(2) Cr.P.C., because the said prayer of the petitioner has been rendered infructuous. Learned counsel for the State, on instructions from HC Om Parkash, Police Station, Phillaur, submits that charge has already been framed against the petitioner on 20.1.2015 and the next date for recording the prosecution

evidence is 6.4.2015. He next contended that since the material facts have been withheld by the petitioner from the notice of this Court, present petition is liable to be dismissed also on account of concealment of facts. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant one has not been found to be a fit case, warranting interference at the hands of this Court. The present petition is misconceived and the same is liable to be dismissed for more than one following reasons.

A bare reading of the challan under Section 173 Cr.P.C. (Annexure P-4) would show that it was prepared by the Station House Officer, Police Station, Phillaur, on 12.12.2004. However, it seems that when the application under Section 167(2) Cr.P.C. filed by the petitioner before the learned trial Court, came up for consideration on 6.1.2015, challan had already been presented on 5.1.2015 by the investigating agency.

This was the reason that the learned Special Court, Jalandhar, vide its order dated 6.1.2015 dismissed the application of the prosecution for extension of period for presentation of challan, as having been rendered infructuous at Annexure P-5. Again, this was the reason for dismissing the application of the petitioner under Section 167(2) Cr.P.C. While passing the order dated 6.1.2015, the learned Special Court, Jalandhar, observed that since the challan has already been presented in this FIR against the accused, hence application for default bail of accused has become infructuous and is dismissed as such.

In view of the peculiar facts and circumstances of the case noticed hereinabove, it has been found that petitioner is not entitled for the default bail under Section 167(2) Cr.P.C. It is so said because the challan had already been presented, before the application of the petitioner for bail under Section 167(2) Cr.P.C. came up for consideration before the learned Special Court, Jalandhar. However, it is equally true that had the application moved by the petitioner under Section 167(2) Cr.P.C. come before the learned court of competent jurisdiction for its consideration, before filing the report under Section 173 Cr.P.C., petitioner would have the indefeasible right of compulsive bail.

The above-said view taken by this Court also finds support from the following judgments of Hon'ble Supreme Court in **State of M.P. v. Rustam and others**, 1995 SCC (Crl.) 830, **Abdul Azeez P.V. and others v. National Investigation Agency**, 2015 (1) RCR (Crl.) 239 (SC) and **Narendra Kumar Amin v. CBI and others**, 2015 (1) RCR (Crl.) 566 SC, judgments of this Court in **State of Haryana v. Mehal Singh and others**, 1978 PLR 480 (FB), **Nirmal Singh v. The State of Punjab**, 1983 (2) RCR (Crl.) 169; **Sanjeev Kumar @ Gurdeep Singh v. State of Punjab**, 2001(2) RCR (Crl.) 615; **Siya Ram v. State (U.T.), Chandigarh**, 2009 (1) RCR (Crl.) 58, CRM-M-36141-2014 (**Shanker Lal v. State of Punjab**), decided on 4.11.2014, CRM-M-22760-2014 (**Kaka Singh v. State of Punjab**), decided on 12.8.2014 and CRM-M-18261-2014 (**Buta Singh @ Makhan Singh v. State of Punjab**), decided on 29.8.2014 and judgment of Delhi High Court in **Kishan Lal v. State**, 1989 (39) DLT 392.

The Hon'ble Supreme Court in paras 3 and 4 of **Abdul Azeez P.V.'s** case (supra), while dealing with an identical situation, observed 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.”

Again, the Hon'ble Supreme Court in its recent judgment in **Narendra Kumar Amin's case (supra)**, after detailed deliberations on the earlier judicial proceedings, laid down the law for guidance of all the courts of the country. The relevant observations made by the Hon'ble Supreme Court in paras, 13, 14 and 16 of the judgment, which can be gainfully followed in the present case, read as under:-

“In this regard he squarely relied on the three Judge Bench judgment of this Court in Central Bureau of Investigation v. R.S. Pai & Anr., 2002(2) R.C.R.(Criminal) 536 : (2002) 5 SCC 82 wherein at para 7, regarding relevant documents to be submitted at the time of charge sheet, it is held as under:-

7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court. In our view, considering the preliminary stage of prosecution and the context in which the police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which the prosecution proposes to rely, the word "shall" used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if

there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in Narayan Rao v. State of A.P. (SCR at p. 293) and it was held that the word "shall" occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207-A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained."

In the said decision it is held that if some mistake is committed in not producing the relevant documents at the time of submitting the report, it is always open to the investigating officer to produce the same with the permission of the court. The Bench proceeded further to observe that if further investigation is not precluded, then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation and the word "shall" used in sub-section (5) cannot be interpreted as mandatory, but as directory. Therefore, it is contended that the High Court is justified in refusing to grant Default Bail in favour of the appellant.

With reference to the aforesaid rival legal contentions we have examined the impugned order to find out the correctness of the findings and reasons recorded keeping in view the statutory provisions under Section 173 (2) and (5) read with Section 2 (r) of Cr.P.C. and with reference to the

judgments on which both the learned senior counsel placed reliance upon. In our considered view, it is an undisputed fact that the charge sheet was filed on 3.7.2013 that is 90th day. Section 2 (r) of Cr.P.C. defines the expression "police report" as a report forwarded by a police officer to a magistrate under Section 173 (2) of Cr.P.C. The particulars to be furnished in the police report which are extracted as above are complied with in the instant case. Therefore, filing of the police report as required under Section 173 (2) is within 90 days in the instant case.

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The observation made at para 76 of the constitution Bench judgment of this Court in the case of K. Veeraswamy (supra) that the report is complete if it is accompanied by all documents and statement of witnesses as required under Section 173 (5) of Cr.P.C. cannot be construed as the statement of law, since it was not made in the context of the police report under Section 2 (r) read with Section 173 (2) (5) and (8) of Cr.P.C. On the contrary, the three Judge Bench of this Court in the decision in Central Bureau of Investigation v. R.S. Pai's case (supra), after referring to the earlier judgment of the coordinate Bench in Narayan Rao's case (supra) categorically held that the word "shall" used in sub-Section (5) cannot be interpreted as mandatory, but directory. The said statement of law is made after considering the provisions of Section 2(r) read with Section 173 (5) and (8) of Cr.P.C. Therefore, filing of police report containing the particulars as mentioned under Section 173 (2) amounted to completion of filing of the report before the learned ACJM, cognizance is taken and registered the same. The contention of the appellant that the police report filed in this case is not as per the legal requirement under Section 173 (2) & (5) of Cr.P.C. which entitled him for default bail is rightly rejected by the High Court and does not call for any interference by this Court."

So far as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, the same have been found distinguishable on facts and are of no help to the petitioner. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

Further, the law laid down on default bail in the above-said cases, has been reiterated by the Hon'ble Supreme Court in its recent judgment in the case of **Ravi Parkash Singh @ Arvind Singh v. State of Bihar, 2015 (2) RCR (Crl.) 89.** The relevant observations made by the Hon'ble Supreme Court in paras 9 to 13 of the judgment aptly apply to the present case, which read as under:-

*“It is argued on behalf of the learned senior counsel for the appellant that the appellant should have been given benefit of Section 167(2) of the Code. According to him, it was 91st day of detention on 3.10.2013. It is further contended by Mr. Nagendra Rai, learned senior counsel, that even Sunday or holiday on ninetieth day cannot deprive the benefit of proviso (a) to sub-section (2) of Section 167 of the Code. In support of his arguments he relied upon cases of **Powell Nwawa Ogechi v. The State (Delhi Administration), 1986(3) Crimes 577** and **State of Maharashtra v. Sharan B. Sarda, 1983 (2)***

Crimes 254 (Short Note). In *Sharan B. Sarda (supra)* single Judge of Bombay High Court, and in *Powel Nwawa Ogechi (supra)* the Division Bench of Delhi High Court took the view that even if last day for filing charge sheet is holiday, the accused cannot be deprived of benefit of Section 167(2) of the Code.

Contrary to this, in *N. Nureya Reddy and another v. State of Orissa, 1985 CRLJ 939 (Orissa)*, the Division Bench of Orissa High Court, interpreting the provisions of Section 167(2) of the Code read with Section 10 of the General Clauses Act, held that if ninetieth day is a holiday, filing of charge sheet on the next day should be treated sufficient compliance of filing of charge sheet within a period of ninety days and it cannot be said that provision contained in Section 167(2) of the Code is infringed.

In *Chaganti Satyanarayana and others v. State of Andhra Pradesh, 1987(1) R.C.R. (Criminal) 40 : (1986)3 SCC 141*, it has been held by this Court that period of ninety days under Section 167(2) of the Code shall be computed from the date of remand of the accused and not from the date of his arrest under Section 57 of the Code. However, in the present case, we have to see the relevant date as the date when the accused surrendered and remanded by the court.

In *State of M.P. v. Rustam and others, 1995 Supp (3) SCC 221*, this Court has laid down the law that while computing period of ninety days, the day on which the accused was remanded to the judicial custody should be excluded, and

the day on which challan is filed in the court, should be included. That being so, in our opinion, in the present case, date 5.7.2013 is to be excluded and, as such, the charge sheet was filed on ninetieth day, i.e., 3.10.2013. Therefore, there is no infringement of Section 167(2) of the Code.

For the reasons, as discussed above, in our opinion, the High Court has not erred in law in dismissing the petition under Section 482 of the Code, and upholding the refusal of bail to appellant prayed by him under Section 167(2) of the Code”.

Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court, this Court as well as by the Delhi High Court, in the cases referred to hereinabove, it is unhesitatingly held that since the report under Section 173 Cr.P.C. had already been presented to the learned court of competent jurisdiction, before the application of the petitioner under Section 167(2) Cr.P.C., came up for consideration before the learned trial Court, right of the petitioner under Section 167(2) Cr.P.C. was no more surviving and the same had been rendered infructuous. In this view of the matter, it can be safely concluded that no prejudice has been caused to the petitioner, because he was not entitled for default bail under Section 167(2) Cr.P.C.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has

been made out.

Resultantly, with the above-said observations made, the present petition stands dismissed, however, with no order as to costs.

24.3.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE