

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

CRM-M-9411 of 2015.

Date of Decision: May 27, 2015.

Nirmal Singh @ Kala

....Petitioner.

VERSUS

State of Punjab

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Rajat Malhotra, Advocate for the petitioner.

Mr. Ashish Sanghi, Deputy Advocate General, Punjab.

SNEH PRASHAR, J.

This petition for grant of bail was filed by the petitioner invoking the provisions of Section 36A(4) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "N.D.P.S. Act") read with Section 167(2) of the Code of Criminal Procedure (for short, "Cr.P.C.") in case First Information Report No.133 dated 21.08.2014 under Section 15/25 of the N.D.P.S. Act, registered at Police Station Sadar, Jagraon, District Ludhiana.

Heard the submissions made by Mr. Rajat Malhotra, learned counsel representing the petitioner and Mr. Ashish Sanghi, Deputy Advocate General, representing the State of Punjab.

Admittedly, the petitioner is in custody since the date of his arrest i.e. 21.08.2014. Learned counsel for the petitioner argued that the statutory period of 180 days as envisaged under Section 36A(4) of N.D.P.S. read with Section 167(2) Cr.P.C. has since elapsed but the prosecution has not been able to file a complete charge sheet against the petitioner consisting of the report of the chemical examiner on the basis of which the learned Special Court could take cognizance of the matter. Though the challan was filed but the report of the chemical examiner was not attached with the same which shows that in their anxiety to keep the petitioner inside, the police had presented an incomplete challan. In the said set of facts, the petitioner has become entitled to the concession of bail under Section 167(2) Cr.P.C. To support his arguments, learned counsel replied upon ***Ravinder @ Binder vs. State of Haryana in Crl. Misc. No.M-28367 of 2014 (O&M) and Anwar @ Anwar @ Ansar Rahaman vs. State, 1998(1) R.C.R. (Criminal) 174.***

To further support his argument that since the report of the Forensic Science Laboratory has not been received so far, the investigation by the police could not be taken to have been completed within the stipulated period of 180 days and admittedly no application for extension of time as required under Section 36A(4) of N.D.P.S. Act had been filed by the Public Prosecutor, therefore, the detention of the petitioner was being wrongly extended, learned counsel relied upon ***Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau and another, 2010(1) Recent Apex Judgements (R.A.J.) 597 and Sunil***

Vasantrao Phulbande and another vs. State of Maharashtra, 2003(2) R.C.R. (Criminal) 171.

Learned State counsel opposed the prayer made by the petitioner. He submitted that the final report as envisaged under Section 173 Cr.P.C. was filed by the prosecution within the stipulated period of 180 days. The report of the Forensic Science Laboratory was not attached with the charge sheet since it had not been received by then. Relying upon a Full Bench pronouncement of this Court in ***State of Haryana vs. Mehal Singh and others, 1978 Punjab Law Reporter 480***, learned State counsel submitted that police report is required to contain only such facts as are mentioned in sub section 2 of Section 173 Cr.P.C. Failure to append the documents including the report of the expert or the statement under Section 161 Cr.P.C. was no ground to consider the report of the police as inconclusive/incomplete.

Having considered the arguments submitted by learned counsel for the petitioner and learned State counsel in the light of the pronouncement of Full Bench of this Court in ***Mehal Singh and others' case (supra)***, I am of the considered opinion that merely because the report of the Forensic Science Laboratory was not appended with the final report submitted by the police under Section 173 Cr.P.C., it was no ground to hold that the charge sheet/challan was incomplete/inconclusive. It is clause (b) of sub section 1 of Section 190 of the Code which envisages the taking of cognizance of an offence by the Magistrate on a police report. The expression 'police report' is defined in section 2(r) of the Code as follows:-

2. In this Code, unless the context otherwise requires -

* * * *

(r) 'police report' means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173."

The definition of the 'police report' noticed above identifies that report to be a 'police report' which is forwarded by the police officer to a Magistrate under sub-section (2) of section 173. In **Mehal Singh and others' case (supra)**, it was held as under:-

"Since a report to qualify itself to be a 'police report' is required to contain only such facts as are mentioned in sub-section (2) of section 173, so if once it is found that the police report contained all those facts, then so far as the investigation is concerned the same has to be considered to have been completed. For this view, we receive authoritative backing from the decision of the Supreme Court in Tara Singh vs. The State, AIR 1951 Supreme Court 411.

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It was further held:-

"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 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."

Reverting to the instant case, admittedly 35 Kg poppy husk was recovered from the petitioner and his co-accused. Even an ensury look on the contraband was enough for the police official to conclude that it was poppy husk. In any case, a sample of the contraband was separated and was sent to Forensic Science Laboratory for chemical analysis and the said fact was mentioned in the police report.

In the above premises, it can be held without two thoughts that the investigations of an offence cannot be considered to be incomplete/ inconclusive merely for the reason that the report of the expert/Forensic Science Laboratory was still awaited when the investigating officer submitted his final report in terms of sub-section (2) of section 173 Cr.P.C. to the Magistrate. Once it is found that the police report was presented within the stipulated period by the police and it was certainly complete, the petitioner cannot be held entitled to concession of bail under Section 167(2) Cr.P.C. read with Section 36A(4) of N.D.P.S. Act and his petition is hereby dismissed.

(SNEH PRASHAR)
JUDGE

May 27, 2015
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