

227+247

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

Date of Decision: 04.05.2015

1. CRR No.1384 of 2015

HARMANDEEP SINGH @ HARMAN	Petitioner
Vs	
STATE OF PUNJAB	Respondent

2. CRR No.1484 of 2015

PARDEEP SINGH @ DEEPA	Petitioner
Vs	
STATE OF PUNJAB	Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. D.S. Pheruman, Advocate
for the petitioner(s).

Mr. Varun Sharma, A.A.G., Punjab.

- 1. *Whether Reporters of 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?***

RAJ MOHAN SINGH, J.(Oral)

[1]. Vide this common order CRR No.1384 of 2015 and CRR No.1484 of 2015 are being decided as common issue is involved in both the cases. Facts are being taken from CRR No.1384 of 2015.

[2]. Present revision petition has been filed assailing order dated 27.03.2015 passed by Judge, Special Court, Tarn Taran, whereby application for extension of time under Section 36-A of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') beyond 180 days has been allowed and consequently

bail in terms of Section 167(2) Cr.P.C. has been declined to the petitioner(s).

[3]. Brief facts of the case are that FIR No.370 dated 30.09.2014 under Section 21/29/61/85 NDPS Act, 1985 was registered in Police Station City Tarn Taran, District Tarn Taran.

[4]. As per FIR, Police party was present at the turning of Seven Star Hotel, Tarn Taran for patrolling and for the search of bad elements. Special informer gave information that Jatinder Singh @ Rambo, Harmandeep Singh @ Harman Singh, Nirmal Singh @ Nimma Tunda and Rashpal Singh @ Daula are members of a gang. Rashpal Singh @ Daula is head of this gang, who has been confined in Jail in a murder case. He used to contact Pakistani smugglers and after receiving the consignment of heroin from them, used to supply the same in different States. Jatinder Singh @ Rambo and Nirmal Singh @ Nimma Tunda are coming on motorcycle to Tarn Taran through Chabhal side for supplying the heroin. In case they are apprehended, then heroin can be recovered from them.

[5]. The aforesaid information was considered to be trustworthy. Accordingly information was given to Sukhwinder Singh, DSP City Tarn Taran and he was apprised of the facts and requested to reach at the spot.

[6]. Colleagues were also informed and a Naka was installed. At about 7.15 p.m. a motor cycle was seen coming from the side of

Tharu. On seeing the Police party the driver applied brakes immediately and tried to run away. However, they were apprehended with the help of companions. On being inquired, the driver of the motorcycle disclosed his name as Jatinder Singh @ Rambo and the pillion rider disclosed his name as Nirmal Singh @ Nimma Tunda.

[7]. Necessary compliance was made in terms of offer. Whether the accused want to be searched before the Magistrate or Gazetted Officer? Search from Jatinder Singh was effected in the presence of Sukhwinder Singh, DSP City, Tarn Taran and it was found that a cloth was wrapped around his waist which was kept in a polythene bag. On checking heroin was found. Samples of 10 gram each were taken out with the help of electronic weighing machine and the remaining heroin was weighed which came out to be 480 grams. After necessary compliance both samples and remaining heroin were accordingly sealed.

[8]. Petitioner was arrested on 02.10.2014. Samples were sent to FSL on 04.02.2015. An application for extension of time beyond period of 180 days for filing challan was moved on 26.03.2015. Period of 180 days expired on 31.03.2015. Extension beyond period of 180 days was granted vide order dated 27.03.2015 and thereafter prayer for bail in terms of Section 167(2) Cr.P.C., was declined on 01.04.2015.

[9]. Learned counsel for the petitioner(s) has submitted that the application for extension of time has been filed by Assistant Public

Prosecutor which suffers from legal lacuna inasmuch as that it does not indicate compelling reasons for seeking detention of accused beyond period of 180 days. The application in question is not accompanied by the report of Public Prosecutor, indicating progress of the investigation.

[10]. Learned counsel further submits that report of Public Prosecutor must indicate application of mind in respect of progress of investigation. On this premise, learned counsel relies upon **Sanjay Kumar Kedia @ Sanjay Kedia v. Intelligence Officer, Narcotic Control Bureau and another, 2010(1) RCR (Criminal) 942**, wherein the Hon'ble Supreme Court held that stringent conditions are to be complied with before granting extension of time beyond period of 180 days for several categories of offences. The conditions are as follows:-

- (i) a report of Public Prosecutor;
- (ii) which indicates the progress of the investigation; and
- (iii) Satisfies the compelling reasons for seeking the detention of the accused beyond the period of 180 days; and
- (iv) after notice to the accused.

[11]. Learned counsel further highlights that sending of sample to FSL was inordinately delayed. Sample should have been sent to Chemical Examiner within 72 hours of recovery as contemplated by

Standing Order No.1/1988.

[12]. Learned counsel refers to the application dated 26.03.2015 submitted by Additional Public Prosecutor, Tarn Taran for extension of period beyond 180 days wherein recital has been made that SHO, Police Station Tarn Taran has brought to the notice of Assistant Public Prosecutor that report of Chemical Examiner has not been received despite letters, reminders and best efforts made by the Investigating Agency. The request of SHO was considered genuine for extending the period for filing the challan.

[13]. Since there was no scope of receiving of report of Chemical Examiner in the near future, therefore, request was made that in view of above mentioned submission and record produced by the Police, application for extension of time for filing challan be allowed. Aforesaid application has not been accompanied by any report of Public Prosecutor nor progress of investigation and compelling reasons have been specified. Merely because report of Chemical Examiner has not been received, the same cannot form valid ground for rejection of prayer of bail in terms of Section 167(2) Cr.P.C.

[14]. No reasons much less specific reasons were stated as to how the detention of the petitioner could have served any purpose beyond 180 days. In the event of Investigating Agency not obtaining report of Chemical Examiner for filing report under Section 173 Cr.P.C., reasons recorded by the Judge, Special Court in order dated 27.03.2015 do not specify the conditions as provided under Section

36(A)(4) of the NDPS Act and the criteria laid down by the Apex Court in **Sanjay Kumar Kedia @ Sanjay Kedia's case** (supra).

[15]. The only reason given in the application for extension of period beyond 180 days is that the report of Chemical Examiner has not been received despite best efforts. Non-receipt of report of Chemical Examiner is no ground to seek extension of time beyond 180 days. In support of aforesaid contention learned counsel for the petitioner(s) relies upon decision rendered in **CRM-M No.39703 of 2013** titled as **Sanjeev Kumar v. State of Punjab** decided on 04.12.2013, **CRM-M No.11650 of 2014** titled as **Rashpal Singh v. State of Punjab** decided on 09.04.2014, **CRM-M No.3339 of 2014** titled as **Nardev Inder Singh v. State of Punjab** decided on 04.02.2014 and **CRR No.3837 of 2014 Sukha @ Sukhdev Singh v. State of Punjab** decided on 18.12.2014 by this Court.

[16]. Sending of sample to Chemical Examiner on 04.02.2015 suffers from vices of inordinate delay. Learned counsel further states that according to Standing Order No.1/1988 the sample should reach to Chemical Examiner within 72 hours. This fact also multiplies the non-compliance of mandatory conditions, thereby making the entire process to be not legally sustainable. In support of aforesaid, learned counsel relies upon decision in **CRM-M No.61 of 2015** titled as **Ashok Kumar @ Shelly v. State of Punjab** decided on 12.01.2015.

[17]. In the aforesaid cited case, sample/parcel was deposited after delay of five days in FSL. The said factor was also considered

along with other factors in which non-compliance was made by the Investigating Agency.

[18]. Learned State counsel however opposes the contention of learned counsel for the petitioner(s) and submits that a gang operating in narcotics has been busted.

[19]. Having heard learned counsel for the parties and going through contents of the case and case law cited at the bar, it is found that application submitted by Additional Public Prosecutor does not satisfy the ingredients and requirement of law in terms of **Sanjay Kumar Kedia @ Sanjay Kedia's** case (supra) and other decisions rendered by this Court as mentioned in the preceding para. No reasons much less specific reasons have been stated in the application as to how the detention of the petitioner could have served any valid purpose beyond period of 180 days. In the event of prosecution not obtaining report of Chemical Examiner for the purposes of filing challan under Section 173 Cr.P.C, there is non-compliance of Section 36-A of the N.D.P.S. Act.

[20]. For the reasons recorded above, this Court finds that the application seeking extension of time for filing report under Section 173 Cr.P.C., and impugned order passed thereon by the Judge, Special Court, Tarn Taran, granting extension in time has been made in routine and mechanical manner.

[21]. Consequently, this Court is of the considered view that the

petitioner(s) deserves concession of bail in terms of Section 167(2) Cr.P.C.

[22]. Accordingly, both the petitions are allowed. Petitioner(s) Harmandeep Singh @ Harman and Pardeep Singh @ Deepa are ordered to be released on bail subject to their furnishing adequate bail bonds to the satisfaction of Judge, Special Court, Tarn Taran.

May 04, 2015.

Atik

**(RAJ MOHAN SINGH)
JUDGE**