

CRR-2092-2014 and connected petitions

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

Judgment Reserved on: 26.03.2015

Pronounced on: May 13, 2015

1. CRR-2092-2014 (O & M)

Sukhwinder Kumar @ Sukha

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

2. CRM-M-6365-2015

Harpreet Singh @ Bahadur

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

3. CRM-M-7221-2015

Navjit Singh

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

4. CRM-M-7731-2015 (Judgment Reserved on 30.03.2015)

Rakesh Kumar @ Kesha

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

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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. Rajesh Kapila, Advocate,
for the petitioner in CRR-2092-2014.

Mr. Atul Jain, Advocate,
for the petitioner in CRM-M-6365-2015.

Mr. H.S.Dhandi, Advocate,
for the petitioner in CRM-M-7221-2015.

Mr. Vipul Jindal, Advocate,
for the petitioner in CRM-M-7731-2015.

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

Paramjeet Singh, J.

**CRM-20652-2014 in
CRR-2092-2014**

Having heard learned counsel for the parties and in view of grounds mentioned in application, delay of 92 days in filing the revision is condoned.

CM stands disposed of.

Main Cases

This order shall dispose of CRR-2092-2014, titled 'Sukhwinder Kumar @ Sukha vs. State of Punjab', CRM-M-6365-2015, titled 'Harpreet Singh @ Bahadur vs. State of Punjab' CRM-M-7221-2015, titled 'Navjit Singh vs. State of Punjab' and CRM-M-7731-2015, titled 'Rakesh Kumar @ Kesha vs. State of Punjab' as common questions of fact and law are involved in all these petitions.

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Before proceeding further, a brief reference to the facts is necessary which are being given in a tabular form as under:

Petition No.	FIR No./under Section/Police Station	Date of Arrest of accused	Quantity of allegedly recovered contraband	Date of filing of application moved under Section 36 (4) of NDPS Act	Application under Section 167 (2) Cr.P.C.	Any other remarks
CRR-2092-2014	FIR No.77 dated 30.06.2013, u/s 20/61/85 NDPS Act, P.S.Dorangala	30.06.2013	2 kgs charas	Application moved on 03.01.2014 and allowed on 13.01.2014 and two months' time was extended	Application was dismissed on 21.03.2014.	Challan not presented and time was extended on 13.01.2014 i.e. after more than 190 days
CRM-M-6365-2015	FIR No.163 dated 11.08.2014, u/S 22 NDPS Act, P.S.Sultanpur	11.08.14	250 grams	Application moved on 04.02.2015, allowed on 06.02.2015 and 60 days' time was granted	Application moved on 09.02.2015 and dismissed on 11.02.2015	Challan not presented for want of report of chemical examiner.
CRM-M-7221-2015	FIR No.144 dated 05.09.2012, u/S 15/61/85 NDPS Act, P.S.Sadar Khanna	07.09.12	40 kgs poppy husk	NA	Application dismissed on 14.03.2013	When accused moved application under Section 167(2) Cr.P.C., the prosecution filed the challan.
CRM-M-7731-2015	FIR No.127 dated 13.06.2014, u/s 22/61/85 NDPS Act, P.S.Maqsudan	13.06.2014	500 grams intoxicating powder	Application moved on 05.12.2014, allowed on 12.02.2015, time was extended for three months	Application moved on 12.12.2014 and dismissed on 12.02.2015	Challan not presented for want of report of chemical examiner.

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

Learned counsel for the petitioners vehemently contended that the petitioners have indefeasible right of bail, as challan has not been presented in their respective cases. Learned counsel further contended that application for extension of time should have been filed by the Public Prosecutor independently without being influenced by the investigating agency. Learned counsel further contended that though quantity of the alleged recovered contraband may be commercial or

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huge, the default bail is a right. Learned counsel further contended that even if the accused have committed second offence under the NDPS Act, there is no effect of Section 37 of NDPS Act for grant of default bail in such cases. In support of their 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 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.

Per contra, learned State counsel vehemently opposed the

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contentions of learned counsel for the petitioners and contended that the petitioners are habitual offenders and their release will spoil the youth by putting them to drugs. Learned State counsel further contended that the Public Prosecutor filed applications for extension of time by independently applying his mind to the request of the investigating agency. The prosecution filed applications for extension of time within the stipulated period, therefore, it cannot be said at fault. In support of his contentions, learned State counsel relied upon the decision of a Coordinate Bench of this Court passed in CRM-M-22760-2014, titled '**Kaka Singh vs. State of Punjab**', rendered on 12.08.2014. Learned State counsel further contended that since reports of chemical examiners have not been received in CRM-M-6365-2015 and CRM-M-7731-2015, therefore, challan could not be presented and the delay occurred in presentation of challan is beyond the control of the investigating agency.

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

The Hon'ble Supreme Court and various High Courts have laid down the law on the true import and ambit of Section 173 Cr.P.C. in various landmark judgments. In a celebrated judgment titled **State of Haryana vs. Mehal Singh and others** 1978 PLR 480, a Full Bench of this Court has held as 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

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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.

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

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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 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

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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, 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.”

Recently, 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

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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 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.”

It has been pointed out 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. Be that as it may, it would suffice to state that reference to Larger Bench does not lead to an inescapable conclusion that such matters 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)*

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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 CRM-M-6365-2015 and CRM-M-7731-2015, the prosecution has taken a plea that challan could not be presented for want of reports of chemical examiner. However, learned State counsel has failed to show any provision as to why the challan without the reports of chemical examiner could not be presented to the trial Court. In ***Mehal Singh's case (supra)*** and ***Abdul Azeez P.V.'s case (supra)***, it has been held that filing of challan without report of the forensic science/chemical examiner cannot be treated as incomplete filing of challan. The investigating agency can submit other evidence by way of supplementary challan. It appears that the persons defending on behalf of the State are not updating themselves about the settled position of law. In the present case, the investigating agency has failed to perform its duty by not following the mandatory provisions of law. There is acute shortage of number of Forensic Science Laboratories specifically in State of Punjab for conducting the test to find out whether the allegedly recovered substance is contraband or not. The investigating agency as well as the prosecuting agency are aware of the statutory provisions that delay in completing investigation and delay in filing the challan entitle the accused for statutory bail under Section 167 (2) of the Code. When the cases are of serious nature, it becomes the duty of the investigating agency as well as the senior officers having control over them to see that

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the investigating officers are performing their duty with due diligence and are not swayed by other reasons. The State should ensure that refresher courses are conducted for the Public Prosecutors as well as the Investigating Officers so that they may become aware of the latest law on the subject. The respondent-State appears to have failed in complying with the statutory provisions as a result of which the accused get benefit.

In view of above, the petitioners are directed to be released on interim bail, however, only till filing of report under Section 173 Cr.P.C, on their furnishing adequate bail bonds and surety bonds to the satisfaction of the learned trial Courts.

It is made clear that as and when the report under Section 173 Cr.P.C. or report of chemical examiner, if any, is presented to the trial Court, the same shall be taken into consideration, in accordance with law.

All the petitions are disposed of accordingly.

May 13, 2015
parveen kumar

(Paramjeet Singh)
Judge