

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRR No.2174 of 2015
Date of Decision : 27.8.2015

Jagdev Singh @ Mahna

.....Petitioner

Vs.

State of Punjab

.....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Sumeet Singh Brar, Advocate for the petitioner.
Mr. K.D. Sachdeva, Addl. A.G., Punjab.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Instant criminal revision petition is directed against the order dated 12.5.2015 passed by the learned Judge Special Court, (Fast Track Court), Bathinda, whereby application of the petitioner for default bail under Section 167(2) of the Code of Criminal Procedure ('Cr.P.C.' for short) was dismissed, as having become infructuous.

Notice of motion was issued.

Learned counsel for the petitioner submits that the FIR No.244 dated 6.11.2014 was registered under Sections 22/61/85 of the Narcotics and Psychotropics Substances Act, 1985 ('NDPS' for short) at Police Station Talwandi Sabo, Bathinda. Statutory period of 180 days expired on 4.5.2015.

Petitioner invoked the provisions of Section 167(2) Cr.P.C., by moving an

appropriate application on 6.5.2015. However, the learned Judge (Special Court) proceeded on a misconceived approach, while allowing the application dated 1.5.2015 filed by the prosecution for extension of time and dismissing the application of the petitioner for default bail under Section 167(2) Cr.P.C., as having been rendered infructuous, by passing the impugned order dated 12.5.2015. In support of his contention, learned counsel for the petitioner places reliance on two orders of this court dated 27.5.2014 passed in Crl.Revision No.1000 of 2014 (Jassa Singh Vs. State of Punjab) and order dated 29.5.2015 passed in CRM No.M-16647 of 2015 (Tarsem Singh @ Sheru Vs. State of Punjab). He prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for the State, while placing on record the order dated 13.11.2014 passed by this court in Crl. Revision No.1928 of 2014 (Manpreet Singh Vs. State of Punjab) and CRM No.M-24528 of 2014 (Manga Singh Vs. State of Punjab), submits that the orders relied upon by learned counsel for the petitioner are clearly distinguishable on facts and the present case is squarely covered against the petitioner, vide order dated 13.11.2014 passed by this court in **Manpreet Singh's case (supra)**. He supports the impugned order contending that once the application of the prosecution had been admittedly filed on 1.5.2015, whereas the petitioner filed his application under Section 167(2) Cr.P.C., seeking default bail at a later point of time i.e. on 6.5.2015, the learned court below was fully justified in passing the impugned order and the same deserves to be upheld. He further submits that the present petition is, in any case infructuous by now, because during the pendency of the present revision petition, police report under Section 173(2) Cr.P.C., has already been presented to the learned court of competent

jurisdiction on 14.7.2015. He concluded by submitting that since commercial quantity was recovered from the petitioner, he is not entitled for default bail. He prays for dismissal of the present petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case noticed herein above, petitioner has not been found entitled for default bail under Section 167(2) Cr.P.C., and the instant criminal revision petition is liable to be dismissed, being bereft of any merit. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that since prosecution has filed its application under Section 36-A of the N.D.P.S. Act on 1.5.2015 and the petitioner invoked the provisions of Section 167(2) Cr.P.C., by moving an application for default bail at a later point of time i.e. on 6.5.2015, the learned trial court was well within its jurisdiction, while passing the impugned order, whereby application of the prosecution for extension of time was allowed and the application of the petitioner under Section 167(2) Cr.P.C., for default bail, was dismissed as having become infructuous, vide same order dated 12.5.2015. Having said that, this court feels no hesitation to conclude that the learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld.

Coming to the above said two orders passed by this court, relied upon by learned counsel for the petitioner, there is no dispute about the observations made therein. However, on close perusal of the cited orders, none of them has been found to be of any help to the petitioner, being distinguishable

on facts. It is so said, because it is not even the argued case on behalf of the petitioner before this court that the application dated 1.5.2015 moved by the prosecution was either lacking in particulars or was not supported with sufficient reasons. In such a situation, it can be safely concluded that the learned trial court proceeded on a factually correct and legally justified approach, while passing the impugned order and the same deserves to be upheld, for this reason also.

Learned counsel for the State has been found justified in contending that in the given fact situation obtaining in the present case, it is squarely covered against the petitioner by the order dated 13.11.2014 passed by this court in **Manpreet Singh's case (supra)**. The relevant observations made by this court in **Manpreet Singh's case (supra)**, which can be gainfully followed in the present case, read as under :-

“ The next question which requires to be determined in the present case is whether an accused would acquire an indefeasible right to be released on bail under Section 167 (2) Cr.P.C., even if an application under Section 36-A (4) of the NDPS Act, has been filed before the expiry of 180 days.

In *Rasheed S/o Ammenshaik Tanveer S/o Akbar Khan and Amruth S/o Mahadev Vinmur Vs. The State of Karnataka through Santhur Police*, 2007 (CrI. L.J.) 2316, it was observed that Section 36-A (4) of the NDPS Act, is an exception to the general rule contained in Section 167(2) Cr.P.C., The NDPS Act was enacted, for the purpose of declaring law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations

relating to narcotic drugs and psychotropic substances to provide for the forfeiture of property derived from or used in illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on narcotic drugs and psychotropic substances and for matters connected therewith.

It is settled principle of law that as per the provisions of Section 167(2) Cr.P.C., which entitle an accused to bail due to default by the investigating agency in completing investigation, an indefeasible right accrues to an accused on expiry of the period prescribed under law for presentation of challan. The Legislation in its wisdom has prescribed 180 days as the outer limit for presentation of challan in cases of recovery of contraband. At the same time, taking into consideration the difficulties of the prosecution with above objective the provisions of Section 36-A (4) of the NDPS Act were incorporated by the Legislation to carve out an exception to the provisions of Section 167 (2) Cr.P.C.

In a recent judgement of Hon'ble the Apex Court Union of India through CBI Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, 2014 (4) RAJ 265, it has been held that court cannot act to extinguish the right of accused if the law so confers on him by laying down the law that application for bail under Section 167 (2) Cr.P.C., is required to be decided on the same day when it is filed before the Magistrate. The adjournment by the Magistrate to extinsuish

the right of an accused conferred by law would defeat his rights. Applying the same analogy to the application under Sections 36-A (4) of the NDPS Act, it is observed that the right of the investigating agency can also not be defeated by delaying the adjudication of the application to defeat the rights of the prosecution agency. A court is a neutral referee to implement the provisions of law.”

A similar view was taken by this court in CrI.Misc.No.M-22760 of 2014 (Kaka Singh Vs. State of Punjab) decided on 12.8.2014.

Reverting back to the facts of the present case and respectfully following the law laid down by this court in **Manpreet Singh's case (supra)**, it is unhesitatingly held that the learned trial court rightly passed the impugned order and the same deserves to be upheld. In the peculiar facts of the case, petitioner has not been found entitled for default bail under Section 167 (2) Cr.P.C. The reason is that no indefeasible right, as a matter of fact, has accrued in favour of the petitioner. The prosecuting agency invoked its right under Section 36-A (4) of the N.D.P.S. Act on 1.5.2015, before the expiry of statutory period of 180 days and also before the petitioner could invoke the provisions of Section 167(2) Cr.P.C., vide application dated 6.5.2015, seeking default bail.

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 present criminal revision petition has been found wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for default bail under Section 167(2) Cr.P.C., has been made out.

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

27.8.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE