

CRM-M-3474-2016

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

CRM-M-3474-2016

Date of decision : 10.11.2016

Avninder Singh and another

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. S.S. Gill, Advocate
for the petitioners.

Ms. A.K.Khurana, Addl. A.G., Punjab.

AJAY TEWARI, J. (Oral)

This petition has been filed under Section 482 Cr.P.C read with Section 167(2) Cr.P.C read with Section 439 Cr.P.C praying for setting aside the impugned order dated 11.01.2016 passed under Section 36-A(d) (4) NDPS Act giving extension of 02 months for filing of challan on the ground of non-receipt of chemical report and for grant of bail pending trial in FIR No.161 dated 20.07.2015, under Sections 15/61/85 of NDPS Act at P.S. Dera Bassi, District SAS Nagar, Mohali.

On 02.03.2016, the following order was passed:

“Two petitioners are seeking the default bail under Section 167 (2) Cr.P.C., while also challenging the order dated 11.01.2016 (Annexure P-2) whereby two months extension for filing the challan has been granted by the trial Court on the simpliciter ground of non-receipt

*of Chemical Report and, thus, being not within the parameters set out for grant of extension by the Hon'ble Supreme Court in case titled as “**Sanjay Kumar Kedia @ Sanjay Kedia Versus Intelligence Officer, Narcotic Control Bureau, 2010 (1) RCR (Criminal) 942**”.*

It is contended that the connected matters are listed and have been adjourned to 04.05.2016 wherein orders of release on interim bail to the petitioner(s) have been granted

Learned State Counsel also prays for time to file reply.

Adjourned to 04.05.2016.

In the meanwhile, it is ordered that the petitioners be released on interim bail to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned.”

Learned counsel for the petitioner states that in this regard vide order dated 11.09.2014 learned Single Judge in **CRR-2087-2014** titled as **Ranjit Singh @ Rana vs. State of Punjab** has referred the following the questions to the Larger Bench:-

- (i) Whether the petitioner has indefeasible right to be released on bail on the expiry of period of 60 or 90 or 180 days as the case may be;
- (ii) Whether the right to bail of the petitioner gets effected in case the application is moved after the expiry of that period;
- (iii) Whether the petitioner has a right to be released on bail even without moving any application on

expiry of said period;

- (iv) Whether the application moved by the prosecution can be extended as a matter of right or after seeing the reasons and circumstances of each case.
- (v) Whether after dismissal of the bail application before the trial Court, the remedy is of filing revision or petition under Section 439 CrPC or 482 CrPC;
- (vi) Whether while deciding the application under Section 167(2) CrPC, the merits of the case or nature of the offence is to be seen or not;
- (vii) Whether the application for extension of time moved by the prosecution and application seeking grant of bail moved by the accused should be decided together on the same date and in the presence of both the parties;

and that reference is still pending.

Learned counsel for the petitioner has however argued that in the present case the prosecution delayed the dispatch of contraband to the FSL by 14 days.

Learned DAG pointed out that independent of that reference this issue had come up before another Larger Bench in **CRR-54-2015** titled as **Varinder Singh Sandhu vs. State of Punjab** decided on 18.11.2015, Paragraph 33 is as follows:

“Be that as it may, in view of the fact

that (i) the Additional Public Prosecutor was competent to apply for extension of time; (ii) such an application was moved before expiry of one hundred and eighty days' period; (iii) the extension was sought before the petitioner applied for his bail under Section 167(2) CrPC and (iv) the fact that no charge-sheet could be filed for want of FSL report as it would have led to rejection of the charge-sheet itself, we are of the considered view that the petitioner (Varinder Sandhu) is not entitled to the benefit of Section 167(2) CrPC. His revision petition is accordingly dismissed. This order shall, however, cause no prejudice to the petitioner's prayer for bail on merits, if he applies for the same."

In my opinion, the judgment in "**Varinder Singh Sandhu vs. State of Punjab**" is binding on this Court.

In the circumstances, the petition stands dismissed.

Let the petitioner be surrender before the Court.

November 10 , 2016
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No