

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

Date of decision: 09.08.2016

CRR No.4521 of 2015 (O&M)

Baljit Singh & anr. Petitioners

versus

State of Punjab Respondent

CRR No.1222 of 2016 (O&M)

Kulwant Singh @ Labba Petitioner

versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. D.S.Pheruman, Advocate
for the petitioners.

Mr. K.S.Pannu, DAG, Punjab.

Ajay Tewari, J.(Oral)

This order will dispose of two revision petitions bearing CRR No.4521 of 2015 and 1222 of 2016 as both have arisen out of same order dated 21.10.2015 passed by Addl. Sessions Judge, Tarn Taran. The brief facts of the case are taken from CRR No.4521 of 2015.

Learned State counsel points out that inadvertently some wrong information was given on the last date of hearing and actually the FSL does not inform the police station by post that individuals reports are ready but reports of every district are dispatched together and in this case also, 67 reports relating to Tarn Taran District were received in the office of Sr. Superintendent of Police, Tarn Taran on

06.11.2015 and therefore, no fault can be laid at the door of the police.

By this petition, the petitioners have challenged the order whereby his application for bail under Section 167 Cr.P.C. read with Section 36 of NDPS Act has been declined and the application of the prosecution for extension of time of investigation was allowed.

The admitted facts are that after the arrest of the petitioners, the maximum period of 180 days of permissible detention during investigation were to elapse on 20.10.2015. On 17.10.2015, the Public Prosecutor moved an application for extension of time of investigation on the ground that the sample sent to the FSL had not yet been received. Notice was issued to the petitioners and ultimately by order dated 21.10.2015 the bail application moved by the petitioners was rejected while that of the prosecution was accepted.

Learned counsel for the petitioners has argued that in this case the one sample was analyzed by FSL on 07.10.2015 and the remaining samples were analyzed on 16.10.2015 and there was no justification to move any application for extension on 17.10.2015 and if the investigating agency had not collected the samples from FSL the accused cannot be held liable for the same.

Learned State counsel, however, rely upon the decision of a Division Bench rendered in ***CRR No.54 of 2015 titled as Varinder Singh Sandhu vs. State of Punjab decided on 18.11.2015*** wherein this Court had held as follows:

"(31) As regard to the question whether there existed valid grounds for the Special Court to extend the period for completion of the investigation, each case has to be considered keeping in view the nature of allegations and

other attending circumstances. The petitioner in the first case (Varinder Sandhu) is the co-proprietor of a pharmaceutical industry. The allegations against him are of manufacturing and marketing illicit narcotic drugs as well as of illegal sale of the 'controlled substance' supplied to him under a valid licence. The further allegation is that a huge quantity of pseudoephedrine (a controlled substance) and methamphetamine (ICE) – an illicit narcotic product were recovered from him. The prosecution is thus under a heavy legal obligation to prima facie substantiate its allegations that what was allegedly recovered from the petitioner was either a controlled substance or an illegally manufactured narcotic drug. In the absence of such material, even the report under Section 173 CrPC could not stand for a moment. The FSL report was thus the solitary backbone for the survival of the charge-sheet and in the absence thereof, the petitioner could not be even remotely connected with the offence. This would undoubtedly justify the withholding of Section 173 report by the IO so as to await the FSL report.

(32) The petitioner appears to be true while alleging that the investigating agency did not show the desired promptness in securing the FSL report of the samples sent on 16th and 23rd June, 2014 through special messenger. But then it cannot be overlooked that the Forensic Science Laboratory is not under the administrative control of Police Department and the delay in all probabilities occurred due to long queue of pending samples. The investigating agency therefore cannot be blamed entirely. Unfortunately, the learned Special Court has passed a totally casual order without elaborating the reasons which prompted it to grant extension to the prosecution to complete the investigation.

(33) 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 above mentioned extract completely denies the arguments raised by the learned counsel for the petitioners.

The present petitions are dismissed.

August 09, 2016
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(AJAY TEWARI)
JUDGE

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No