

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

CRR No.2087 of 2014 (O&M)

Date of Decision: 08.02.2017

Ranjit Singh @ Rana

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Mr. D. S. Virk, AAG Punjab.

AMOL RATTAN SINGH, J.

This revision petition filed under Section 401 of the Cr.P.C., challenges the impugned order of the learned Special Judge, Tarn Taran, dated 02.07.2014, by which the application of the Public Prosecutor for extension of time to file the report under Section 173 (2) of the Cr.P.C. was allowed and further time, beyond the statutory period of 180 days, i.e. till 11.09.2014, was granted to the prosecution, to file the aforesaid report, 180 days having expired on 11.06.2014.

On the same date, i.e. 02.07.2014, the bail application of the petitioner, filed under Section 167(2) Cr.P.C., read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985, was dismissed. That order has also been challenged in this petition.

2. Briefly, the background of the case is that FIR No.272 dated 13.12.2013 was registered against the petitioner, for the alleged commission of an offence punishable under Section 21 of the Act of 1985, read with Section 61 thereof, at Police Station Sadar, Tarn Taran, upon 280 gms heroin having been allegedly recovered from him.

The report under Section 173 Cr.P.C. was to be submitted to the learned Special Court within a period of 180 days in terms of Section 36A of the Act of 1985 and Section 167 of the Cr.P.C., which period admittedly was to expire on 11.06.2014.

The report, however, was not presented within the aforesaid period, on the ground that the Chemical Examiners' report was not received. The application for extension of time was therefore filed by the prosecution on 07.06.2014, seeking extension of the period for filing the report.

The petitioners' application seeking grant of bail in terms of Section 167(2) (a)(ii) of the Code, read with section 36A of the Act of 1985, was filed on 12.06.2014, i.e. immediately after the period of 180 days expired on 11.06.2014.

Thus, the impugned two orders in this petition, referred to hereinabove, came to be passed by the learned Special Judge on 02.07.2014.

3. When this petition came up for actual hearing after notice was issued, a co-ordinate Bench referred the case to a larger Bench, on two judgments of co-ordinate Benches being cited by counsel for the petitioner and counsel for the State, which apparently took contradictory views on the statutory right of an accused to be granted bail under Section 167(2) of the Code, when an application for extension of time had been filed by the prosecution.

4. The seven questions formulated by the learned co-ordinate Bench (hon'ble Mrs. Daya Chaudhary, J.), for consideration of the Division Bench were as follows:-

- “(i) Whether the petitioner has an 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 Cr.P.C. or 482 Cr.P.C.;
- (vi) Whether while deciding the application under Section 167 (2) Cr.P.C., 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;”

5. Following the reference, four other petitions (not being revision petitions filed under Section 401 Cr.P.C.), were also clubbed with this petition, all of which came up for hearing for a decision on the aforesaid questions framed, before a Division Bench, on 08.11.2016.

6. That detailed order of the Division Bench being already on

record in this case, it is not being reproduced in detail except to highlight the answers given by their Lordships to each of the questions formulated by the learned Single Judge.

Question no.(i), pertaining to an indefeasible right to an accused to be released on bail on the expiry of the period of 60/90/180 days, was answered as follows:-

“In the background of the above decisions laid down by the Hon'ble Supreme court, we hold that a statutory right accrued to the accused in terms of Section 167(2) of the Code read with Section 36A(4) of the Act becomes completely indefeasible so long as no extension of the period fixed thereunder was sought for and granted by the Court and no final report was laid down by the investigating agency.”

The 2nd question, pertaining to whether such right to bail gets affected if the application is moved after the expiry of the statutory period, was answered as follows:-

“In view of the authoritative pronouncement of the hon'ble Supreme Court on the above issue, we hold that the indefeasible right of the accused is not affected by filing an application by the accused subsequently so long as no challan was laid. But in a case where extension of period of investigation has been granted on the report submitted by the Public Prosecutor before the expiry of the period fixed under the Code/Act, application, if any, moved by the accused seeking statutory bail will be affected. But, it is made clear that the Public Prosecutor cannot file a report seeking extension of time after the expiry of the period of 60/90/180 days as the case may be.”

The 3rd question, on whether the petitioner has a right to be

released on bail even without moving application on expiry of the statutory period, was answered as follows:-

“In the background of the above pronouncement of the hon'ble Supreme Court, we have no hesitation to hold that the accused person shall not be released by the Court without any application moved by him praying for statutory bail on the expiry of the period fixed under the Code/Act expressing his willingness to furnish bail to the satisfaction of the Court.”

The 4th question, on whether the application moved by the prosecution can be extended as a matter of right, or only after seeking the reasons and circumstances of the each case, was answered as follows:-

“Therefore, we hold that there is no automatic extension of the period of investigation on mere filing a report by the Public Prosecutor. It could be extended only after weighing the merit of the report disclosing the progress of investigation and the necessity to extend the period of detention.”

The 5th question, on whether, after dismissal of the bail application filed before the trial Court, the remedy to an accused is by way of filing of a revision petition, or a petition under Section 439 Cr.P.C. or one under Section 482 Cr.P.C., was answered as follows:-

“In the above facts and circumstances, we are of the considered view that the final order passed under Section 167(2) of the Code read with Section 36A(4) of the Act shall be challenged only by way of revision and not by filing a petition under Section 439 Cr.P.C. or under Section 482 Cr.P.C.”

The 6th question, on whether while deciding the application

(seeking bail) filed under Section 167(2) of the Code, the merits of the case or nature of the offence is to be seen or not, the Division Bench, citing Hitendra Vishnu Thakur v. State of Maharashtra 1994(3) RCR (Criminal) 156, held as follows:-

“In the above facts and circumstances, we hold that neither the merits of the case nor the nature of the offence shall be taken into consideration by the Court of law while deciding an application under Section 167(2) of the Code.”

The last (7th) question, on whether the application for extension of time moved by the prosecution and the application seeking bail moved by the accused, should be decided together on the same day and in the presence of both the parties, was answered as follows:-

“The report/application filed by the Public Prosecutor on or before the date of expiry of the period contemplated under the Code/Act shall be disposed of on the very same day or by the next day after giving due notice to the accused. In case, the accused files an application praying for statutory bail immediately after the expiry of the period fixed under the Code/Act, the said application also be taken up alongwith the report/application moved by the Public Prosecutor seeking extension of time and decided on the very same day or at the most the next day after giving due notice to the parties concerned.”

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“In view of the above, we are of the considered view that the report/application submitted by the Public Prosecutor for extension of time and an application seeking grant of statutory bail moved by the accused shall be decided simultaneously after giving notice to both the parties. If the parties have chosen not to

appear before the Court to prosecute or contest the application, as the case may be, the Court having already given notice to them in the respective applications shall be decided the applications on merit. Accordingly, issue no.(vii) is answered.”

7. It is to be further noticed that though the hon'ble Division Bench was answering the specific questions formulated for decision before it, the facts and background of the matter was taken from this very petition, i.e. CRR No.2087 of 2014, the questions obviously having been formulated in this petition.

8. Mr. Pheruman, learned counsel for the petitioner, has pointed to the order of the hon'ble Division Bench answering the seven questions posed in the reference made to it.

He submits that though the application seeking extension of time beyond 180 days to submit the report under Section 173 Cr.P.C. was filed by the prosecution before the said period of 180 days had expired, however, the order of the learned trial Court was pronounced on 02.07.2014, granting such extension of time to the prosecution. Vide the same order, the application seeking statutory bail by the petitioner, was also dismissed.

The aforesaid factual position is not refuted by learned State counsel, except to say that there were two separate orders passed on the same date, in respect of the two applications filed, one by the prosecution and the other by the present petitioner.

9. Mr. Virk, learned State counsel, further submits that another application, seeking further extension of time, was filed by the prosecution on 10.09.2014, which was allowed on 12.09.2014, granting extension of time for another 90 days.

10. Mr. Pheruman, however, submits that the order dated 02.07.2014 itself being erroneous, the question of granting further extension would not arise.

11. Since the seven questions that were formulated for a decision thereon by a Division Bench, were so formulated in this very petition, the answer to each needs to be seen in the context of the facts of this case.

12. Thus, as regards the first question, and the answer thereto, in the present case, it is actually not applicable, inasmuch as, the application filed by the prosecution for extension of time was filed four days before the 180 days time limit expired, whereas the petitioners' application for bail was filed one day immediately thereafter, i.e. on the 181st day after the statutory period expired.

13. As regards the second question, on whether the right to bail of an accused gets affected in case the application is moved after the expiry of the statutory period, as seen, the Division Bench held that the indefeasible right of the accused is not affected, provided extension of the period for investigation has not already been granted by the trial Court, upon an application for such extension having been filed before the expiry of the statutory period.

In the present case, though the petitioner filed the application seeking bail one day after the statutory period was over, but no order had been passed by that time granting extension to the prosecution on its application moved on 07.11.2014; hence the petitioners' right continued to subsist on the date that he filed the application, i.e. on 12.06.2014.

14. The 3rd question, on whether an accused has a right to be released on expiry of the statutory period, even without moving an application is also

inapplicable in the present case as the petitioner did file such an application immediately upon expiry of that period.

15. The 4th question, on whether a right accrues to the prosecution to have the time period for investigation extended, simply upon moving an application, or it is to be seen as per the circumstances of each case, though otherwise would be a matter to be gone into, to determine whether the impugned orders of the learned trial Court are correct on merits or are erroneous, however, in view of the answer given by the Division Bench to question no.7, with regard to the time period within which the applications for extension of time and bail are to be decided, this Court is precluded from going into the merits of the impugned orders of the learned Special Judge, passed on the application filed by the prosecution.

16. The 5th question, on whether the remedy against such an order of the trial Court is by way of filing a revision petition or one under Section 439 or Section 482 of the Code, is 'redundant' in this case, this petition having been filed by way of a revision petition under Section 401 Cr.P.C., in terms of what has been held by the Division Bench.

17. The 6th question, on whether the merits of the case are to be gone into or not, in the case of an application for bail filed by the accused, has been answered by the Division Bench in the negative, while citing the judgment of the Supreme Court in *Hitendra Vishnu Thakurs'* case (supra).

Hence, this Court is again precluded from going into the merits of the bail application of the petitioner, it having been filed before the trial Court not on the merits of his case for bail, but under the provisions of 167(2) of the Cr.P.C.. Therefore, that issue has obviously been decided in favour of the petitioner herein.

18. As regards the applicability of the 7th question answered by the Division Bench, to the circumstances of the present case, it is seen that though the application filed by the prosecution was on 07.06.2014, and the one filed by the present petitioner seeking bail under Section 167(2), were both decided on the same date, i.e. 02.07.2016 and as such, the impugned orders are in consonance with what has been held by the Division Bench, however, the first part of the answer to the 7th question having been given by the Division Bench to the effect that the application filed by the Public Prosecutor for extension of time and the bail application filed by the accused, if it has been moved immediately after expiry of the statutory period, are both to be decided on the very same day or at the most the next day thereafter, the impugned orders cannot be sustained, on that ground alone.

That is to say, that the application of the prosecution having been moved within time before the expiry of the statutory period of 180 days and the bail application of the petitioner herein having been filed within one day of the expiry of that period, they were both to be decided together, either on the date of filing of the bail application itself, i.e. 12.06.2014 or at best the next day, i.e. 13.06.2014, after giving notice of the bail application to the prosecution.

Undoubtedly, the two impugned orders passed in the two separate applications, were decided more than 20 days after the application seeking bail was filed.

19. Learned State counsel also does not dispute, and has in fact on the query of the Court, very fairly stated, that in Union of India through CBI v. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav 2014(5) SCC (Cri) 212, the Supreme Court has also held that the bail application of the accused

filed under Section 167(2) Cr.P.C. must be decided by the date when the period stipulated in Section 167(2) Cr.P.C., or the period specified in the Special Act, expires.

Consequently, in view of the above, the petition is allowed. Though the petitioner is stated to be already on bail, fresh bail bonds be now furnished by him, to the satisfaction of the learned trial Court

(AMOL RATTAN SINGH)
JUDGE

February 08, 2017
Meenu/dinesh

Whether speaking/reasoned	Yes
Whether Reportable	Yes