

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1347-2017

Date of decision: - 19.7.2017

Ravi Dutt Sharma

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate for the petitioner.

Mr. Arun Kumar, AAG, Haryana.

ARVIND SINGH SANGWAN (ORAL)

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Challenge in the present revision petition is to the order dated 27.3.2017 passed by the Additional Sessions Judge, Fatehabad, declining the benefit of Section 167(2) Cr. P.C., as it was prayed that at the time of submission of challan, report of the chemical examiner was not submitted.

Learned senior counsel for the petitioner submits that as on today, petitioner has undergone custody of 295 days and the prosecution has failed to submit the complete challan within a period of 180 days as per the mandate provided under Section 167 of the Cr.P.C.

In support of his arguments, learned senior counsel for the petitioner has referred to the order dated 1.4.2016 passed in CRM-M-10262-2016, Sandeep Kumar vs. State of Punjab, order dated 12.10.2015 passed in CRM-M-34330-2015, Pawan Kumar vs. State of Punjab and the order dated 18.7.2014 passed in

CRM-M-15041-2014, Sukhchain Singh @ Chaina vs. State of Punjab, to submit that in identical circumstances, where the complete challan was not submitted i.e. without the report of the chemical examiner, the petitioner(s) (in these cases) were released on regular bail as per provisions of Section 167 (2) of Cr. P.C.

Learned counsel for the petitioner has further referred to Division Bench judgment dated 11.9.2014 in Criminal Revision No. 2087 of 2014, Ranjit Singh @ Rana vs. State of Punjab, to submit that while answering the reference on various issues, under issue No. 1, it has been held that a statutory right accrues to an accused in terms of Section 167(2) of the Code of Criminal Procedure read with Section 36A(4) of the Act and this right is completely infeasible so long as no extension of the period for completing challan was requested and granted by the Court as no final report was submitted by the investigating agency.

Learned counsel for the petitioner in reference to this judgment has referred to the order dated 18.5.2017 passed by the learned trial court whereby it is noticed that FSL report is still awaited and the case was adjourned for 22.8.2017.

Learned counsel for the State, on the other hand, has not disputed the actual custody period of the petitioner but has opposed the prayer made in the present revision petition.

Since the petitioner has already undergone custody of 295 days from the date of his arrest and the report of the chemical examiner is still awaited, and no valid reasons are given before the learned trial Court for seeking extension of time for submission of the report of the chemical examiner, it is apparent that there is a failure on the part of the prosecution agency in filing the chemical examiner report within time prescribed under Section 36 A(4) of the NDPS Act.

In view of the facts of the case, this petition is allowed and the order passed by the Additional Sessions Judge, Fatehabad dated 27.3.2017, declining the benefit of Section 167(2) Cr. P.C. is hereby set aside.

Petitioner is ordered to be released on bail on furnishing his bail bonds/surety bonds to the satisfaction of trial Court/CJM, Fatehabad.

However, it will be open for the prosecution to apply for cancellation of bail in case the applicant is found involved in any other subsequent case.

(ARVIND SINGH SANGWAN)
JUDGE

19.7.2017
preeti

whether speaking/reasoned *yes/no*

whether reportable *yes/no*