

In the High Court of Punjab and Haryana at Chandigarh

CRR No. 4246 of 2017

Date of Decision:- 3.8.2018

Nirmal Singh alias Nimma

... *Petitioner*

Versus

State of Punjab

... *Respondent*

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Ms. Taranjit Kaur, Advocate, for the petitioner.

Mr. A.S.Sandhu, AAG, Punjab.

GURVINDER SINGH GILL J.

1. The petitioner assails order dated 11.10.2017 passed by learned Special Judge, Jalandhar whereby an application filed by him seeking his release on bail in terms of provisions of Section 167(2) Cr.P.C. in case FIR No.40 dated 1.4.2017 under Section 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 registered at Police Station Mehatpur District Jalandhar has been declined.
2. As per case of prosecution, on 1.4.2017 when the police party headed by ASI Tarlochan Singh was patrolling in the area in Village Gaunswal, the accused was seen coming on foot, who upon noticing the police party tried to hide himself in the wheat fields. On the basis of suspicion, he was apprehended and upon inquiry he disclosed his name as Nirmal Singh alias Nimma. An offer in terms of Section 50 NDPS Act was extended to him but he reposed confidence in the ASI. A search of the accused led to recovery of 130 grams of narcotic substance which, subsequently, upon analysis has been found to be containing '*Diphenoxylate hydrochloride*'.

3. Since the FSL report was not received, therefore, the learned Special Court vide order dated 15.7.2017 ordered for release of the accused on interim bail subject to receipt of report of FSL regarding contents of the alleged contraband.
4. Subsequently, upon receipt of report of FSL to the effect that the recovered contraband contained '*Diphenoxylate hydrochloride*' and the recovered quantity being commercial quantity, the interim bail granted to the accused was cancelled vide order dated 29.7.2017, passed by learned Special Court, Jalandhar and the accused was ordered to be taken into custody.
5. Since the report under Section 173 Cr.P.C. (challan) had not been filed within 180 days, the petitioner filed an application on 11.10.2017 before the trial Court seeking his release in terms of Section 167 (2) Cr.P.C. The said application was, however, dismissed by the learned trial Court after having perused the report of the 'Ahlmad' to the effect that the challan had been presented at 12:50 pm whereas the bail application had been registered at 12:55 pm. Subsequently, a second application under Section 167 (2) Cr.P.C. was filed on behalf of the petitioner on 1.11.2017 wherein a ground was taken that in fact as per record of the Court, the application on behalf of the petitioner had been filed much earlier than presentation of challan and that the Court had twisted the timings so as to make it convenient to dismiss the bail application. The said application was considered by the learned trial Court, and was dismissed on 6.11.2017.
6. Aggrieved with dismissal of his application, the petitioner has challenged order dated 11.10.2017 by way of filing this revision petition.

7. I have heard the learned counsel for the petitioner and also the learned State counsel and have also perused the impugned order as well as the documents annexed with the revision petition.
8. Some of the undisputed facts may be stated as follows :-
- i) The recovery of contraband was effected on 1.4.2017.
 - ii) In view of report of the FSL to the effect that the recovered contraband weighing 130 grams contained '*Diphenoxylate hydrochloride*' which would fall within the category of commercial quantity, the limitation for presentation of challan would be 180 days in accordance with provisions of Section 36A(4) of the Narcotics Drugs and Psychotropic Substances Act, 1985, which as per proviso to said sub-Section is further extendable upto one year.
 - iii) The aforesaid period of 180 days from the date of arrest of petitioner expired on 28.9.2017.
 - iv) It is not in dispute that the challan had not been filed within 180 days.
 - v) It is also not in dispute that no application had been filed by the prosecution for extension of time beyond 180 days in terms of proviso to Section 36A(4) of the NDPS Act, 1985.
 - vi) While the application of release on bail in terms of Section 167 (2) Cr.P.C. was filed by the petitioner on 11.10.2017, the challan was also presented on the same day itself.
9. The application under Section 167(2) as well as the challan having been filed on the same day, the question would be as to which one of the two was filed earlier in point of time. In case it is found that the application had been filed earlier, a valuable right would be vested in the petitioner for his release on bail in terms of Section 167 (2) Cr.P.C. and the subsequent filing of the challan would not defeat the said right. However, in case it is found

that the challan had been presented earlier in point of time on the same day, the application under Section 167 (2) Cr.P.C. deserved to be dismissed.

10. In the present case, as per report of the Ahlmad, while the challan had been presented at 12:50 PM, the bail application had been registered at 12:55 pm. The learned counsel for the petitioner has vehemently argued that the alleged report of the Ahlmad which has been relied upon by the trial Court for dismissing the application under Section 167 (2) Cr.P.C. is not correct and is against the record maintained in the computer section of the District Courts, Jalandhar. The learned counsel has submitted that while the bail application filed on 11.10.2017 was assigned registration No.8650, the challan was assigned registration no.8654, necessarily indicating that the challan had been presented subsequently.
11. I have considered the aforesaid submission. The aforesaid registration numbers are known as CNR numbers (Case Number Record) as maintained in Computer Information System (CIS). CIS is a computer software maintained in “Judicial Suvidha Centre” (JSC) in District Courts wherein fresh cases are registered at the time of filing and are assigned CNR numbers.
12. In order to know the procedure regarding assignment of CNR numbers to reports under Section 173 Cr.P.C. (challans) filed by the police, this Court sought the following information from the District & Sessions Judge, Jalandhar wherein the present case is pending :-

- “1) Whether as per existing practice, the chargesheet filed by the police in terms of Section 173 Cr.P.C. (Challan) pertaining to a case registered under the NDPS Act, is put up before the Presiding Officer of the Special Court in the very first

instance; or as to whether the same is first submitted to the Ahlmad; or as to whether such challan is straightaway filed in the '*Judicial Suvidha Centre*' so as to assign CNR number immediately while registering the same in CIS system?

- 2) Whether any remarks/endorsements are made by the Presiding Officer on the challan? If so, at which stage? Send a copy of any such endorsements/remarks, if any, affixed by the Presiding Officer on the challan in respect of the aforesaid FIR No.40 dated 1.4.2017.
- 3) Whether the challan is assigned CNR number even before the same is presented before the Presiding Officer or as to whether the same is assigned CNR number after any endorsement or after any order of the Presiding Officer of the Special Court?
- 4) Please send copy of the first order passed by the Presiding Officer, Special Court in the present case after challan had been registered and had been put up in the Court.
- 5) Any other information relevant to the procedure followed for registration of challans."

13. Pursuant to aforesaid queries, para-wise reply has been received to the following effect :-

- "1) As per existing practice, charge-sheet in NDPS Act cases is put up before the Presiding Officers of the Special Courts at the first instance. The Presiding Officer then after making endorsement sends the charge-sheet to the Ahlmad for checking the challan and the documents attached with the report u/s 173 Cr.P.C.*
- 2) On receiving the challan, Presiding Officers of the Special Courts usually send file to the Ahlmad with the endorsement "Ahlmad to check and report". This endorsement is made as soon as the challan is received by the Presiding Officer. Copy of one such endorsement made by the Presiding*

Officer dealing with case FIR No.40 dated 01.04.2017 is attached herewith.

- 3) *No CNR number is assigned to any such case before it is presented before the Presiding Officer. The CNR number is assigned after endorsement made by the Presiding Officer vide which report of the Ahlmad regarding correctness of the challan is sought. The CNR number is assigned before registration of the case.*
- 4) *Copy of the first order passed by the Presiding Officer dealing with case FIR No.40 dated 1.4.2014, P.S. Mehatpur, Jalandhar is attached herewith."*

14. A perusal of the aforesaid information would show that when a challan is filed by the police in the Court, the same, in the first instance, is put up before the Presiding Officer of the Special Court, who would make an endorsement upon the same directing the Ahlmad of the Court to check the challan. Such checking is normally in the nature of checking all the pages in accordance with the index. After the challan is checked by the Ahlmad, the same is again put up before the Court concerned and upon perusal of the report of the Ahlmad, the Presiding Officer orders for its registration. It is, thereafter, that the challan would be entered in the 'CIS' i.e. in the record maintained in the computer and would be assigned CNR number. Thus, it is evident that some time would be consumed from the point of time, the challan is presented in the first instance before the Presiding Officer uptill its registration by way of assignment of CNR number. Such time could vary depending the number of challans to be checked by the Ahlmad or on account of some other reason. In a given case, the entire exercise could be completed within less than half an hour whereas on another occasion when there is rush, the same exercise may not be completed within 2-3 hours

depending upon volume of work with the Ahlmad. It is the time when the challan is put up before the Presiding Officer in the first instance when Ahlmad is normally directed to check the challan, which has to be taken to be the time of its “presentation”. In case the challan is not taken to have been presented at that point of time and the time consumed by 'Ahlmad' in checking the challan is excluded and it is only the time when the challan is assigned CNR number which is taken as time of its “presentation”, then chances of delay being caused deliberately in the aforesaid process at the instance of those interested and who are to gain by its delay cannot be ruled out.

15. A perusal of the copy of first page of the challan, which has been received indicates that there is a specific endorsement made by the Judge on 11.10.2017 directing the Ahlmad to check the challan and to report. Thereafter the Ahlmad after checking the challan has made the following report :-

“Sir, challan checked and found correct as per police index. Remand papers FIR 40/17 P.S. Mehatpur fixed for 17.10.2017 attached with file.

Sd/- 11.10.2017”

16. Bearing in mind the above stated procedure followed before the challan is actually assigned CNR number, it goes without saying that such procedure would consume at least 10-15 minutes even if everything is done expeditiously. In these circumstances, the fact that the challan was registered at Serial No. 8654 whereas the application of accused was registered at Sr No.8650 cannot be interpreted to mean that the challan was presented after filing of the bail application especially when the report of

the Ahlmad is to the effect that the challan had been filed at 12:50 pm i.e. before filing of bail application.

17. The aforesaid process of checking and again putting up the file before the Presiding Officer fully explains delay in receipt of challan in the 'Judicial Suvidha Centre' for assignment of CNR number. Thus, the assignment of CNR No. as 8654 after the bail application had been registered is of no consequence and would not confer any right upon the accused to be released on bail in terms of Section 167 (2) Cr.P.C.
18. I do not find any infirmity in the impugned order and the same is hereby affirmed. There is no merit in the revision petition and the same is hereby dismissed.
19. It is desirable that there is no ambiguity in record pertaining to the time of presentation of challans in the Courts as the said time, in certain circumstances, confers an invaluable right to accused to seek release on bail. It would certainly be helpful in case the Presiding Officer before whom the challan is presented in the first instance mentions time of receipt of challan so as to rule out any ambiguity and also to ensure that neither any right of the accused is defeated nor the prosecution feels prejudiced.
20. A copy of this order be circulated to all the District & Sessions Judges so as to direct all the Judicial Officers working under them to ensure that the time of presentation of challan in the first instance is duly recorded.

3.8.2018

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No