

In the High Court of Punjab and Haryana at Chandigarh

CRR-1785 of 2018 (O&M)
Reserved on: August 06, 2018

Date of Decision: August 13, 2018

Vicky Kaur

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Suresh Kumar Arya, Advocate,
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

P.B. Bajanthri, J.

1. Present criminal revision is directed against the order dated 10.05.2017 passed by learned Additional Sessions Judge, Patiala, whereby bail application filed by the petitioner under Section 167(2) Cr.P.C. in case FIR No. 06, dated 09.01.2018, under Sections 15/25/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Sadar Patiala, District Patiala, has been dismissed.

2. Gist of the matter is that on 09.01.2018, an FIR No. 6 was registered against one Sandeep Singh in connection with recovering 40 kg. of poppy husk and he was arrested and released on bail on 22.02.2018 with reference to recovery of poppy husk is non-commercial quantity. Similarly, on 24.02.2018 recovery of 60 kg. of poppy husk effected from Amrik Singh

on account of disclosure statement of Sandeep Singh. So also with reference to disclosure statement of Sandeep Singh, petitioner was arrested by the police on 09.03.2018 and recovered 20 kg. of poppy husk from her. In this backdrop, petitioner filed an application under Section 167(2) Cr.P.C. for bail before Special Court, Patiala and it was rejected on 10.05.2018 on the score that recovery was commercial quantity having regard to the fact that total recovery of 40 kg. of poppy husk from Sandeep Singh, 20 kg. from petitioner and 60 kg. from Amrik Singh.

3. Learned counsel for the petitioner submitted that Special Court has erred in holding that recovery of 20 kg. of poppy husk read with recovery of 40 kg. of poppy husk from Sandeep Singh would be commercial quantity. He vehemently contended that recovery of poppy husk from Sandeep Singh and petitioner cannot be clubbed together for declaring that recovery is commercial quantity in view of date of recovery in respect of Sandeep Singh is on 09.01.2018, whereas recovery of 20 kg. of poppy husk from the petitioner is on 09.03.2018 and such recovery is from different place, date and time. In this regard, learned counsel for the petitioner relied on Section 15(b) of NDPS Act. Further he relied on Section 36A (4) of NDPS Act stating that said section is not attracted in the present case. In view of these factual aspects that recovery of 20 kg. of poppy husk from the petitioner read with Section 15(b) of NDPS Act and Section 167 (2) of Cr.P.C., it would be non-commercial and petitioner is entitled to bail on the score that challan was filed on 02.08.2018 i.e. beyond 60 days period. In support of this contention, learned counsel for the petitioner relied on the following decisions:-

- i) Amarsingh Ramjibhai Barot vs. State of Gujarat reported in (2005) 7 SCC 550 [Para 7 and 8];*
- ii) Jaffar Iqbal and others vs. State of Punjab, reported in 2014 (3) R.C.R. (Criminal) 302 [Para 3 and 4];*
- iii) Dinesh Singh Dadhwal vs. State of Punjab, CRM M-23217 of 2012, decided on 15.10.2012 [Para 5];*
- iv) Raj Karan Singh @ Rajan vs. State of Punjab, CRM M-17321 of 2015, decided on 29.06.2015 [Par 3]*
- v) Nirmal Singh @ Nimma vs. State of Punjab, reported in 2016 (2) RCR (Crl.) 112 (Para No.8);*
- vi) Ishwar Jat vs. State of Punjab, reported in 2011 (22) RCR (Crl.) 525 (Para Nos. 3 and 4);*
- vii) Chanda Son (Smt.) @ Pushpa vs. State of Rajasthan, reported in 2010(3) RCR (Crl.) 728 (Para No.7);*
- viii) Yday Mohanlal Acharya vs. State of Maharashtra, reported in 2001 (2) RCR (Crl.) 452 [Para 12]*

4. On the other hand, learned State counsel while resisting the petitioner's contention submitted that recovery of poppy husk from Sandeep Singh, Amrik Singh and the petitioner – Vicky Kaur is 40 kg., 60 kg. and 20 kg. respectively. Such recovery is pursuant to the arrest of Sandeep Singh on 09.01.2018 while effecting recovery of 40 kg. poppy husk and his disclosure statement that there was a transaction of money and poppy husk among Amrik Singh, petitioner and Sandeep Singh. Pursuant to Sandeep Singh's disclosure statement, police have proceeded to investigate the matter while recovery of 60 kg. of poppy husk from Amrik Singh and his arrest was on 24.02.2018. Similarly, on 09.03.2018 petitioner was arrested while recovery of 20 kg. poppy husk. Thus, the aforesaid three recoveries would arise with reference to FIR No. 6 dated 09.01.2018. Consequently, all the three recoveries of poppy husk are put together would be commercial quantity. In view of these facts and circumstances, challan is required to be

filed within 180 days, whereas petitioner was arrested on 09.03.2018 and challan has been filed on 02.08.2018 and it is within 180 days, therefore, petitioner is not entitled to benefit of bail with reference to Section 167(2) Cr.P.C. Learned State counsel insofar as calculating recovery of poppy husk from three persons and to determine all the three recoveries together and to hold it is a commercial quantity, he relied on Full Bench decision of this Court in the case of ***Bhupinder Singh alias Bhinda vs. State of Punjab***, reported in ***2005(1) RCR (Crl.) 168***. It was further submitted that petitioner was convicted in FIR No. 126 wherein she has already undergone custody period. In another case FIR No. 35 dated 31.03.2016 wherein recovery of 120 kg of poppy husk was effected and it is pending consideration. These events reveals that petitioner is a habitual offender under the offences of NDPS Act. Thus she is not entitled to relief under Section 167(2) of Cr.P.C. and Special Court has rightly rejected and no interference is called for in the case.

5. Heard learned counsel for the parties.

6. Ready reference, the following provisions are extracted herein below:-

Sections 15(b) and 36A(4) of NDPS read as under:-

“15. Punishment for contravention in relation to poppy straw --

xxx xxx xxx

(a) xxx xxx

(b) *where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees.”*

“36A. Offences triable by Special Courts-

xxx xxx xxx

(4) *In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to “ninety days” where they occur, shall be construed as reference to “one hundred and eighty days”.*

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period upto one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.”

Section 167(2) of Cr.P.C. reads as under:-

“167. Procedure when investigation cannot be completed in twenty-four hours:-

(1) xx xx

(2) *The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:*

Provided that -

(a) *the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied*

that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding -

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under the sub-section shall be deemed to be so released under the provisions of Chapter XXXII for the purposes of that Chapter;”

7. Perusal of the aforesaid provisions read with petitioner's contention, question for consideration in the present petition is whether petitioner is entitled to bail under Section 167(2) Cr.P.C. on the score that police have not filed challan within a period of 60 days or not, for which factual aspects are required to be taken into consideration like date of arrest, quantum of recovery of poppy husk and date of filing of challan. Undisputed facts are that recovery of 40 kg. poppy husk is from Sandeep Singh on 09.01.2018. Accordingly, an FIR was registered on the said date. Later on, he was released on bail on 22.02.2018. On his disclosure statement, one Amrik Singh and petitioner were arrested on 24.02.2018 and 09.03.2018 and recovered poppy husk of 60 kg. and 20 kg. respectively. For the purpose of determining whether Section 167(2) Cr.P.C. is attracted or not, to file challan within 60 days or 180 days in the present petition is

required to be determined. Petitioner was arrested on 09.03.2018 and recovered 20 kg. poppy husk whereas challan was filed on 02.08.2018 i.e. beyond 60 days and it is within 180 days. Learned State counsel's contention is that recovery of 20 kg poppy husk from the petitioner is required to be added with recovery of 40 kg and 60 kg. poppy husk from Sandeep Singh and Amrik Singh respectively. Thus, it would amounts to commercial quantity and challan has been filed within 180 days, therefore, petitioner is not entitled for benefit under Section 167(2) Cr.P.C. No doubt challan was filed against the petitioner within 180 days and it cannot be accepted having regard to the dates and events like arrest of petitioner and co-accused are on different places and dates like 09.01.2018, 24.02.2018 and 09.03.2018 so also recovery on the date of arrest. Learned State counsel relied on **Bhupinder Singh alias Bhinda** cited supra. In that case, recovery of 110 kg. of poppy husk from three persons at a time. There the contention of the petitioner was that recovery of poppy husk is 110 kg. from three persons, it has to be divided among three so as to show the recovery within the purview of non-commercial quantity. Therefore, cited decision by the State is distinguishable on facts. On the other hand, petitioner's counsel relied on Supreme Court's decision in the case of **Amarsingh Ramjibhai Barot** cited supra, in para nos. 7 and 8 held as under:-

“7. The learned counsel appearing for the appellant urged only one contention in support of the present appeal. He contended that the High Court fell into an error in taking the total quantity of the offending substances recovered from the two accused jointly and holding that the said quantity was more than the commercial quantity, warranting punishment under Section 21(c) of the Narcotic Drugs and Psychotropic

Substances Act. He contended that as far as the appellant is concerned, the High Court erred by assuming that there was criminal conspiracy within the meaning of Section 29 of the Narcotic Drugs and Psychotropic Substances Act, and erroneously proceeded under the said section. The High Court fell into a further error of assuming that because Section 29 was applicable, the total quantity of opium recovered was 920 grams plus 4.250 kgs. The counsel urged that because of this error the High Court took the wrong view that the total recovered opium was of "commercial quantity" and, therefore, attracted Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act.

8. *Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld. It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased, Danabhai Virabhai Rabari. In our view, however, there was no warrant for this conclusion at all as there is no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of Section 29 of the Narcotic Drugs and Psychotropic Substances Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section 29 was attracted."*

The said decision was followed by this Court in the case of **Jaffar Iqbal and others, Dinesh Singh Dadhwal and Raj Karan Singh alias Rajan** cited supra. In the case of **Amarsingh Ramjibhai Barot** cited supra, Supreme Court has held that "Quantity of contraband carried by both the

accused could not be added to bring it within meaning of commercial quantity and Section 29 will not be attracted". Whereas Section 36A(4) is not attracted in the present matter. On the other hand, having regard to the date of arrest and recovery are independent from each of the accused including petitioner, therefore, Section 167(2) Cr.P.C. to the extent that challan was required to be filed in the present case would be within 60 days and not within 180 days as contended by the State counsel.

8. The State counsel's contention that petitioner is facing one identical case in FIR No. 35 which is pending consideration and she was earlier involved identical case in case FIR No. 126 in which she has been convicted and has undergone sentenced and she is habitual offender and not entitled to bail as claimed by her under Section 167(2) Cr.P.C. These issues cannot be apprised while considering whether petitioner is entitled to bail due to non-compliance of Section 167(2) Cr.P.C. by the State with reference to the date of recovery of poppy husk, arrest and date of challan. The Special Judge while deciding the petitioner's application under Section 167 (2) Cr.P.C. considered as if the recovery of poppy husk from Amrik Singh is 60 kg and recovery of 20 kg. poppy husk from the petitioner and total quantity is exceeding 50 kg., in that event, punishment for offence is more than 10 years, therefore, period of presentation of challan as per special provisions under NDPS Act is 180 days and as on 10.05.2018 only 60 days have lapsed, thus petitioner's bail application under Section 167 (2) Cr.P.C. has been dismissed while ignoring the fact that recovery of poppy husk from different persons on different date, time and place cannot be put together for the purpose of determining quantity of poppy husk and to determine that it would be commercial quantity for which 180 days is stipulated for the

purpose of filing challan would be arbitrary and contrary to the factual aspects, statutory provisions and aforesaid cited decisions. Thus, petitioner has made out a case to extend benefit of bail under Section 167(2) Cr.P.C.

9. Therefore, without expressing any opinion on the merits of the case, the instant revision petition is allowed. Petitioner, namely, Vicky Kaur is ordered to be released on bail under Section 167(2) Cr.P.C. on her furnishing bonds to the satisfaction of trial Court.

August 13, 2018

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**[P.B. Bajanthri]
Judge**

Whether speaking / reasoned : Yes

Whether reportable : No