

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

Sr.No.207

**Criminal Revision No.2537 of 2018 (O & M)
Date of Decision:17.11.2018**

Hoshiar Singh @ Gora

....petitioner

Versus

State of Punjab

.....respondent

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Vipul Jindal, Advocate
for the petitioner

Mr.Manreet Singh, AAG Punjab

ARVIND SINGH SANGWAN, J.(ORAL) :

CRM-27056-2018

This is an application for condonation of delay of 15 days in filing the accompanying petition.

For the reasons set out in the application, the same is allowed.

Delay of 15 days in filing the application is condoned.

CRM stands disposed of.

Criminal Revision No.2537 of 2018

Prayer in this petition is for setting aside the order dated 24.04.2018, whereby the trial Court has extended the time for a period of three months for filing the report under Section 173(2) of the Code of Criminal Procedure (for short, 'Cr.P.C.').

Learned counsel for the petitioner submits that while passing the impugned order, the statutory right of the petitioner to seek bail under Section 167(2) Cr.P.C. is infringed as the trial Court has granted extension of time only on the ground that report of the chemical examiner is awaited and that certain other investigation qua involvement of some other persons is pending.

Learned counsel for the petitioner submits that both these conditions do not satisfy the mandate in law as provided under Section 36-A (d)(4) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “NDPS Act”).

Learned counsel for the petitioner has relied upon order dated 04.12.2013 passed in CRM-M-39703-2013, titled as “Sanjeev Kumar vs. State of Punjab”, wherein this Court has held as under:

*“Learned counsel for the petitioner has submitted that while presenting the application under Section 36-A of the NDPS Act for extension of time for presenting the challan, the Investigating Agency and the Additional Public Prosecutor did not give any specific reason as to why the detention of the petitioner was required beyond the period of 180 days. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Sanjay Kumar Kedia @ Sanjay Kedia v. Intelligence Officer, Narcotic Control Bureau and another**, 2010(1) RCR (Criminal) 942, counsel submitted that when no compelling reasons were indicated for extension of time for presenting the final report under Section 173 Cr.P.C., the petitioner was entitled to be released on bail.*

Learned State counsel has opposed the prayer made on behalf of the petitioner by submitting that the trial Court was justified in extending the time for presenting the final report under Section 173 Cr.P.C. and, therefore, the

petitioner was not entitled to the concession of bail.

*Having heard counsel for the parties and going through the aforementioned judgment in the case of **Sanjay Kumar Kedia @ Sanjay Kedia** (supra), this Court finds that in the application dated 21.10.2013 (P-3) prepared by ASI Bhupinder Singh and forwarded by the Additional Public Prosecutor, it was not mentioned as to why further detention of the petitioner beyond the period of 180 days was required. Merely because the report of the chemical examiner had not been received was no ground to decline the concession of bail to the petitioner. A bare perusal at the proviso to Section 36A(4) of the NDPS Act reveals that in the event of the investigation not being completed within the period of 180 days, the Court concerned could extend the said period 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 180 days. In the application (Annexure P-3), no reason, much less specific reason, was stated as to how detention of the petitioner could have served any purpose beyond the period of 180 days in the event of investigating agency not obtaining the report of the chemical examiner and presenting the final report under Section 173 Cr.P.C. Therefore, this Court is of the considered view that the petitioner deserves the concession of bail during the pendency of the trial of the case.*

Resultantly, the petition is accepted and the petitioner is ordered to be released on bail during the pendency of the trial of the case on his furnishing adequate bail bonds to the satisfaction of Special Judge, Fatehgarh Sahib.”

Similar view has been taken by this Court vide order dated 14.05.2014 passed in CRM-M-14269-2014 titled as “Hargobind Singh vs. State of Punjab”.

Learned counsel for the petitioner submits that as per the allegations in the FIR, ASI Paramjit Singh-complainant has himself conducted the investigation and no second investigating officer was called. Therefore, it would be a debatable issue whether the judgment rendered by the Hon'ble Supreme Court "*Mohan Lal vs State of Punjab*" passed in **Criminal Appeal No.1880 of 2011**, decided on 16.08.2018, will be applicable in this case or not.

Learned counsel for the petitioner has further submitted that the petitioner is not involved in any other case and he is in custody since 27.10.2017. The charges have been framed. There are 10 prosecution witnesses and no witness has been examined and conclusion of the trial will take some time.

Custody certificate dated 17.11.2018 has been filed in the Court today and the same is taken on record. As per the custody certificate, the petitioner has undergone 01 year and 16 days of actual sentence and he is not involved in any other case.

Learned State counsel on instructions from ASI Dilbagh Singh has not disputed the factual position. However, learned State counsel submits that the trial Court has rightly extended the time as the FSL report was awaited and therefore the impugned order has been passed in accordance with law. He, however, does not dispute the fact that no prosecution witness has been examined so far.

After hearing learned counsel for the parties, I find merit in the present petition.

The prosecution had filed an application for extension of time

on 23.04.2018 and the FIR was registered on 27.10.2017 and the petitioner was arrested on the same date i.e. 27.10.2017. The trial Court has recorded a finding that the application was moved before the expiry of the requisite period of 180 days i.e. 23.04.2018 for presentation of final report under Section 173(2) Cr.P.C.

Considering the view taken by this Court in Sanjeev Kumar's case (*supra*), I find that merely because the report of the chemical examiner/FSL was not received, is not a ground to decline the concession of bail to the petitioner as per proviso to Section 36-A(d)(4) of the NDPS Act. In case, the investigation is not completed within a period of 180 days, the Court can extend the said period on a request of the public prosecutor, indicating the progress of the investigation and specific reasons for the detention of the accused beyond the period of 180 days. In the application dated 23.04.2018 (Annexure P2) filed by the public prosecutor, the only reason given is that the report of the chemical examiner/FSL is awaited and arrest of some other persons is effected and therefore, this cannot be a ground for detention of the petitioner beyond the period of 180 days. Therefore, this Court is of the considered view that the petitioner deserves the concession of bail during the pendency of the petition. Even otherwise, in view of the judgement of the Hon'ble Supreme Court in *Mohan Lal's case (supra)*, the complainant ASI Paramjit Singh and the investigating officer are the same officer and no second investigating officer was appointed and therefore it will be open for the trial Court to decide whether the investigation was carried out in accordance with law or not.

For the aforesaid reasons, the present petition is allowed. The

petitioner Hoshiar Singh @ Gora is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court.

(ARVIND SINGH SANGWAN)
JUDGE

17.11.2018
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Whether speaking/reasoned	Yes/No.
Whether reportable-	Yes/No