

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

CRR-956-2018 (O&M)

Date of Decision:- 9.7.2018

Devaanand @ Deva Nand

... Petitioner

Versus

Narcotics Control Bureau, Chandigarh

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Rajesh Kumar Dadwal, Advocate for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

By way of filing this revision petition, petitioner Devaanand assails order dated 22.12.2017 passed by learned Special Court, Hoshiarpur whereby an application filed by the petitioner under Section 167(2) Cr.P.C. seeking his release on bail on the ground that copy of the challan had not been furnished to the accused though challan had been presented within the stipulated period of 180 days.

A few facts necessary to notice for disposal of this petition are that a complaint for offences under Sections 8, 20, 29 and 60 of NDPS Act was filed by respondent-Narcotics Control Bureau, Chandigarh against the petitioner on the allegation that he was found in possession of 5.300 K.G. of Charas which falls within the category of commercial quantity. Admittedly, the challan was presented on 14.12.2017 i.e. within the stipulated period of

180 days from his date of arrest. However, since the accused had not been produced in the Court on that day, therefore, copy of the challan was not furnished to the accused. The stipulated period of 180 days expired on 19.1.2017. It was on 21.12.2017 when the accused was produced in the Court and that a copy of challan was furnished to him. It is on account of the aforesaid delay of two days in furnishing copy of the challan to the accused that the accused sought benefit of his release on bail in terms of provisions of Section 167(2) Cr.P.C. The said application was however, declined by the learned Special Court which has been challenged by way of filing the present revision petition.

I have heard the learned counsel for the petitioner and have also gone through the impugned order as well as the documents annexed with the petition.

The learned counsel cites a judgement of Madhya Pradesh High Court reported as 1992(2) Crimes 1171 Dodha @ Chainsai Vs. State of M.P. wherein on account of furnishing copies of charge-sheet to accused well beyond 90 days, the accused was held entitled to be released on bail.

The right to be released on bail, on account of non-presentation of challan flows from provisions of Section 167(2) Cr.P.C. which for the sake of ready reference are reproduced below:

“167(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 this sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;
- (b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;
- (c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.”

A special provision as regards cases of recovery of “commercial quantity” of narcotics/psychotropic substance has been incorporated in Section 36A(4) of NDPS Act, 1985, wherein the period for presentation of challan has been extended to 180 days with a further provision for extension upto one year on account of special reasons.

As regards the Dodha's case (Supra), which is relied upon by petitioner, Rajasthan High Court in 1994 Cri. L.R. 39 Harbhajan Singh Vs. State of Rajasthan, while disagreeing with the view taken in Dodha's case (supra) held that under such circumstances, the detention of the petitioner cannot be held to be illegal and the petitioner is not entitled to be released on bail under Section 167 (2) Cr. P.C.

Hon'ble Karnataka High Court in 1994 Cri LJ 651 State of Karanataka Versus Babu alias Venkatesh also differed from the view taken in Dodha's case (supra) and held that for counting 90 days in relation to Section 167(2), it is the date of submission of charge sheet and not the date on which copies of challan papers furnished to accused that has to be taken note of. The relevant extract reads as follows:

“He cited the decision of a Learned Single Judge of the Madhya Pradesh High Court reported in ***Dodha Chainsai v. State of M.P. 1902 (2) Crimes 1171, Govardhan v. State of M.P., 1993 (3) Crimes 104.*** It

is no doubt true that in these decisions, the learned Single judge of the Madhya Pradesh High Court has held that for the purposes of counting 90 days in relation to Section 167(2) of the charge sheet, not the date of submission of charge sheet, but the date on which the copies of the challan papers were furnished to the accused that had to be taken note of. With due respect to the learned Single Judge there is practically no warrant to hold that 90 days has to be counted up to the date of furnishing of the copies, there is absolutely no mention in Section 167 of the Criminal Procedure Code to say that submission of the charge sheet is not expected to be taken note of and the date of supply of copies of the documents referred to in Section 173(5) Criminal Procedure Code should be within 90 days from date of first production of the accused before the Magistrate and that if the documents are not supplied within 90 days, the accused is entitled to be released on bail. There is practically no reasoning in these two decisions to arrive at the aforesaid conclusion. Hence with due respect to learned Single Judge, I am not at all persuaded to follow these two decisions cited by the learned counsel for the respondent.”

Hon'ble Madhya Pradesh in 1993 CriLJ 2821 Bhole alias Bholesh Vs. State of M.P., wherein copies of documents were furnished to accused two days after filing of charge-sheet by police in Court, held that no prejudice is caused to accused and that delay of two days in supply of documents to accused is not fatal and would not furnish ground to claim bail.

It was further held therein as follows:

“10. Term "without delay" in Section 207, Criminal Procedure Code does not mean either immediately or forthwith because these terms are quite distinct and distinguishable. Even the term "forthwith" which is pre-emptory and carries much force, has been interpreted by Supreme Court as being done without avoidable and explicable delay. If the delay is explained then that is all. AIR 1957 Supreme Court 28 : (1957 Cri LJ 10). Term "without delay" naturally carries lesser speed than the term "forthwith" and so has to be understood accordingly. Duty is cast upon the Magistrate under Section 207, Criminal Procedure Code to furnish copies of documents to the accused free of cost. The Magistrate has to ensure this before he proceeds to commit the accused to Sessions. If the copies are not supplied the Magistrate should adjourn the hearing, get the copies prepared and supplied. Naturally, the upper limit for supplying the copies of the documents to the accused is till before the Committal or before trial. (1983) 2 SCC 372 (SC), 1985 (1) Crimes 227 (MP). The word "shall" occurring in Section 173 and Section 207, Criminal Procedure Code is not mandatory but only directory, AIR 1957 Supreme Court 737 : (1957 Cri LJ 1320). Therefore, non-compliance of these provisions has not the result of vitiating the trial.”

The underlying object of introducing the provisions of Section 167(2) Cr.P.C. is to ensure that the accused are not kept behind bars unnecessarily and that the investigating agency conducts and concludes its investigation within a specific time frame. While as per provisions of Section 167(2) Cr.P.C., the prosecution is required to conclude its

investigation within the prescribed time frame, it is under provisions of Section 207 Cr.P.C. that copies of the challan are required to be furnished to the accused. The provisions of Section 207 read as follows:

“207. Supply to the accused of copy of police report and other documents. In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

- (i) the police report;
- (ii) the first information report recorded under section 154;
- (iii) the statements recorded under sub- section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub- section (6) of section 173;
- (iv) the confessions and statements, if any, recorded under section 164;
- (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub- section (5) of section 173:”

The words ‘the Magistrate shall without delay furnish to the accused’ occurring in Section 207 Cr.P.C. cannot be interpreted to mean immediately and forthwith as has been held in Bhole’s case (Supra) and the Magistrate has just to ensure that copies of the documents are furnished to the accused within a reasonable time before he proceeds with trial or commits the case to Court of Sessions so as to enable accused to defend his case. In view of ratio of Babu’s case (Supra) and Harbhajan Singh’s case (Supra) failure on part of the prosecution to immediately furnish a copy of

the chargesheet would not entitle the accused to bail. In any case, in the present case, copy of the chargesheet had been furnished just beyond two days of prescribed period of 180 days, which cannot be said to be gross delay and cannot be said to have prejudiced the accused in his defence. The challan, in any case, had been filed within the prescribed period of 180 days.

In view of the aforesaid discussion I do not find any infirmity in the impugned order and the same is upheld.

There is no merit in this revision petition and the same is hereby dismissed.

July 9, 2018
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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No