

256 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CRR-168-2019 (O&M)

Date of decision: March 26, 2019

Tarlok and others

....Petitioners

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Navnet Jindal, Advocate
 for the petitioner.

Ms. Harpreet Kaur, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer made in this revision petition is for setting aside the order dated 8.1.2019 passed by the Additional Sessions Judge, Sirsa vide which the application filed by the petitioner for grant of default bail as per provisions of Section 167(2) of the Code of Criminal Procedure was dismissed.

Brief facts of the case are that the police party headed by Investigating Officer ASI Deepak Kumar found a motorcycle parked near Kali Mata Mandir and a white plastic sack was found on its seat and six young boys were standing nearby. On seeing the police party, they threw the plastic sack and tried to run away. The police officials stopped the government vehicle and apprehended all the boys and, later on, the boys disclosed their identity. On search of the plastic sack, 29 boxes make NRX

Alprozolam tablets 0.5 mg. were recovered. Each box was containing 600 tablets, totaling 17400 tablets were recovered. Since the accused persons failed to produce any licence or bill of the drugs, information was sent to the Chief Medical Officer, Government Hospital, Sirsa to depute a Drug Control Officer. On examination, he declared that the same fall in the definition of 'psychotropic substance' under the Narcotic Drugs and Psychotropic Substances Act. Thereafter, the recovery was effected, the accused persons were arrested and challan was presented.

Counsel for the petitioner has submitted that since the incomplete challan was presented before the trial Court as the FSL report was not submitted along with challan, the petitioner moved an application under Section 167(2) Cr.P.C. for granting him default bail.

Counsel for the petitioner referred to the application filed before the trial Court in which it was specifically stated that the petitioner is in judicial custody since 15.5.2018 and a period of 180 days has lapsed but the report of the Chemical Examiner is not on the file and no application for extension of time was filed by the prosecution after the lapse of 180 days, therefore, the petitioner is entitled to bail.

The State filed a reply and contested the application on the ground that the challan was presented on 22.9.2018 and, later on, the FSL report was received and if the bail is granted, there is a possibility that the petitioner may absent from the Court proceedings or may again involved in the business of the narcotics. In this reply, it was not mentioned that the police has ever moved any application for extension of time for submitting the FSL report which was received later on.

The trial Court vide impugned order dated 8.1.2019 dismissed the application observing that even if the challan is submitted without the FSL report, the same is to be treated as a complete challan.

Counsel for the petitioner has relied upon the order dated 30.11.2018 passed in CRR-4659-2015, wherein the following observation has been made :-

“The only way that it can be done is to establish the nature of contraband on the basis of the Chemical Examiner's report and for this reason, the Chemical Examiner's report assumes an immense significance for the trial Court, to formulate an opinion as the very cognizance of an offence would depend on it. Non-conclusion of the Chemical Examiner's opinion in the report under Section 173 Cr.P.C. would expose the accused to unfounded dangers imperiling and endangering his liberty since the provisions of the NDPS Act in its applicability to a trial and conclusion are stringent in consequence.

For this reason as well, it is essential that the report of the Chemical Examiner be included in the report under Section 173 Cr.P.C. and without which it can at best be termed to be an incomplete challan depriving the Magistrate of relevant material take cognizance and if it is not submitted within the requisite period of 180 days, it would essentially result in a default benefit to the accused unless an application is moved by the Investigating Agency apprising the Court of status of investigation with a prayer for extension of time to the satisfaction of the Court.

We emphasize on the stringent aspect of the NDPS Act which would compellingly persuade us to take the aforesaid view. Without determining the nature and content of the contraband, it would be draconian to propel an accused into the throes of a trial. The liberty of an individual would constantly be imperiled at the hands of dubious officials of the police who may venture to falsely implicate a person.

It is for this reason that we would unhesitatingly conclude that the Chemical Examiner's report is an essential, integral and inherent part of the investigation under the NDPS act as it would lay the foundation of an accused's culpability without which a Magistrate would not be able to form an opinion and take cognizance of the accused's involvement in the commission of offence under the Act.

We are conscious of the fact that these issues have arisen largely on account of the inability of the State to provide the Chemical Examiner's report in time ostensibly for the reason that it is not equipped with enough laboratories to examine the contraband but for that it is the State which has to be faulted and it would do well to hone up its own infrastructure so that the accused who deserves punishment, does not get the benefit of law and go scot free and gain access to a undeserving liberty.

The State should also sensitize their Investigation Officers to make an application for extension of time to submit the report in the prescribed period so as to obviate any chances of an accused getting benefit of the default clause.

We, therefore, answer the reference as above.

List all the cases before Single Bench appropriately as per roster.

(MAHESH GROVER)
JUDGE

November 30, 2018 (MAHABIR SINGH SINDHU)
JUDGE”

Counsel for the petitioner has argued that since it was an incomplete challan and the FSL report was not submitted within a period of 180 days, the petitioner is entitled to bail under Section 167(2) Cr.P.C.

Counsel for the petitioner has also relied upon 2018(4) RCR (Criminal) 433, Achpal @ Ramswaroop and another Vs. State of Rajasthan wherein Hon'ble the Supreme Court has held as under :-

“xxx

xxx

xxx

16. The letter of and spirit behind enactment of Section 167 of the Code as it stands thus mandates that the investigation ought to be completed within the period prescribed. Ideally, the investigation, going by the provisions of the Code, ought to be completed within first 24 hours itself. Further in terms of sub-section (1) of Section 167, if “it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57” the concerned officer ought to transmit the entries in the diary relating to the case and at the same time forward the accused to such Magistrate. Thereafter, it is for the Magistrate to consider whether the accused be remanded to custody or not. Sub-Section (2) then prescribes

certain limitations on the exercise of the power of the Magistrate and the proviso stipulates that the Magistrate cannot authorize detention of the accused in custody for total period exceeding 90 or 60 days, as the case may be. It is further stipulated that on the expiry of such period of 90 and 60 days, as the case may be, the accused person shall be released on bail, if he is prepared to and does furnish bail.

17. The provision has a definite purpose in that; on the basis of the material relating to investigation, the Magistrate ought to be in a position to proceed with the matter. It is thus clearly indicated that the stage of investigation ought to be confined to 90 or 60 days, as the case may be, and thereafter the issue relating to the custody of the accused ought to be dealt with by the Magistrate on the basis of the investigation. Matters and issues relating to liberty and whether the person accused of a charge ought to be confined or not, must be decided by the Magistrate and not by the Police. The further custody of such person ought not to be guided by mere suspicion that he may have committed an offence or for that matter, to facilitate pending investigation.
18. In the present case as on the 90th day, there were no papers or the charge-sheet in terms of Section 173 of the Code for the concerned Magistrate to assess the situation whether on merits the accused was required to be remanded to further custody. Though the charge-sheet in terms of Section 173 came to be filed on 05.07.2018, such filing not being in terms of the order passed by the High

Court on 03.07.2018, the papers were returned to the Investigating Officer. Perhaps it would have been better if the Public Prosecutor had informed the High Court on 03.07.2018 itself that the period for completing the investigation was coming to a close. He could also have submitted that the papers relating to investigation be filed within the time prescribed and a call could thereafter be taken by the Superior Gazetted Officer whether the matter required further investigation in terms of Section 173(8) of the Code or not. That would have been an ideal situation. But we have to consider the actual effect of the circumstances that got unfolded. The fact of the matter is that as on completion of 90 days of prescribed period under Section 167 of the Code there were no papers of investigation before the concerned Magistrate. The accused were thus denied of protection established by law. The issue of their custody had to be considered on merits by the concerned Magistrate and they could not be simply remanded to custody dehors such consideration. In our considered view the submission advanced by Mr. Dave, learned Advocate therefore has to be accepted. We now turn to the subsidiary issue, namely, whether the High Court could have extended the period. The provisions of the Code do not empower anyone to extend the period within which the investigation must be completed nor does it admit of any such eventuality. There are enactments such as the Terrorist and Disruptive Activities (Prevention) Act, 1985 and Maharashtra Control of Organised Crime Act, 1999 which clearly contemplate extension of period and to that extent those enactments have

modified the provisions of the Code including Section 167. In the absence of any such similar provision empowering the Court to extend the period, no Court could either directly or indirectly extend such period. In any event of the matter all that the High Court had recorded in its order dated 03.07.2018 was the submission that the investigation would be completed within two months by a Gazetted Police Officer. The order does not indicate that it was brought to the notice of the High Court that the period for completing the investigation was coming to an end. Mere recording of submission of the Public Prosecutor could not be taken to be an order granting extension. We thus reject the submissions in that behalf advanced by the learned Counsel for the State and the complainant.

In our considered view the accused having shown their willingness to be admitted to the benefits of bail and having filed an appropriate application, an indefeasible right did accrue in their favour.

19. We must at this stage note an important feature. In Rakesh Kumar Paul (supra), in his conclusions, Madan B. Lokur, J. observed in para 49 as under:-

“49. The petitioner is held entitled to the grant of “default bail” on the facts and in the circumstances of this case. The trial Judge should release the petitioner on “default bail” on such terms and conditions as may be reasonable. However, we make it clear that this does not prohibit or otherwise prevent the arrest or re-arrest of the petitioner on cogent grounds in respect of the subject charge and upon arrest or re-arrest, the

petitioner is entitled to petition for grant of regular bail which application should be considered on its own merit. We also make it clear that this will not impact on the arrest of the petitioner in any other case.” In his concurring judgment, Deepak Gupta, J. agreed with conclusions drawn and directions given by Madan B. Lokur, J. in paragraphs 49 to 51 of his judgment. According to the aforesaid conclusions, it would not prohibit or otherwise prevent the arrest or re-arrest of the accused on cogent grounds in respect of charge in question and upon arrest or re-arrest the accused would be entitled to petition for grant of regular bail which application would then be considered on its own merit.

20. We, therefore, allow this appeal and direct that the appellants are entitled to be admitted to bail in terms of Section 167(2) of the Code on such conditions as the trial Court may deem appropriate. The matter shall be immediately placed before the trial court upon receipt of copy of this Judgment. We also add that in terms of conclusions arrived at in the majority Judgment of this Court in Rakesh Kumar Paul (supra), there would be no prohibition for arrest or re-arrest of the appellants on cogent grounds and in such eventuality, the appellants would be entitled to petition for grant of regular bail.

21. The appeal thus stands allowed.”

Learned State counsel could not dispute the factual position, on perusal of the photocopy of the lower Court record which was requisitioned to verify the aforesaid facts.

After hearing learned counsel for the petitioner as well as learned State counsel, this Court finds that the case of the petitioner is squarely covered by the judgment rendered by the Hon'ble Supreme Court in Achpal @ Ramswaroop's as well as of the Division Bench in case Ajit Singh @ Jeeta's case (supra), this petition is allowed and the impugned order dated 8.1.2019 passed by the Additional Sessions Judge, Sirsa is set aside and the trial Court is directed to be release the petitioner on bail during the pendency of the trial, subject to his furnishing bail/surety bonds to its satisfaction.

Lower Court record be sent back, immediately.

March 26, 2019
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No