

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

106

CRR-1228-2020

Date of decision: 17.12.2020

Dalel Singh @ Harman

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Bikramjeet Singh Jatana, Advocate
for the petitioner.

Mr. Balbir Singh Sewak, Addl. A.G., Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

1. The petitioner has filed the present petition under Section 401 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for setting aside order dated 09.07.2020 passed by learned Judge, Special Court, Mansa whereby the application filed by the petitioner for grant of default bail as per the provisions of Section 167(2) of the Cr.P.C. in case FIR No.06 dated 07.01.2020 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') in Police Station Jhunir, District Mansa was dismissed.

2. Briefly stated the facts giving rise to the filing of the present revision petition are that on 07.01.2020 at about 4 P.M. in the area of Village Danewala, the petitioner was apprehended on suspicion of having intoxicating substance in his possession and on search 65

strips of intoxicating tablets Clovidol-100 SR containing 10 tablets each were recovered from the polythene bag of the petitioner. On the basis of written communication sent to SHO, PS Jhunir the above said FIR was registered. The petitioner was, subsequent to his arrest in the case on 07.01.2020, produced before learned Judicial Magistrate First Class, Mansa on 08.01.2020 and was remanded to judicial custody in terms of order passed on that date and from time to time thereafter.

3. The petitioner filed application under Section 167(2) of the Cr.P.C. on 06.07.2020 for grant of default bail on the ground of not filing of report under Section 173(2) of the Cr.P.C. within the prescribed period of 180 days. Subsequently, report under Section 173(2) of the Cr.P.C. was also filed on the same day at about 4:25 P.M. The above said application was dismissed by learned Judge, Special Court, Mansa vide order dated 09.07.2020 on the ground that the stipulated period of 180 days was to be counted from 09.01.2020 by excluding 08.01.2020 the date of first remand order passed by the concerned Judicial Magistrate and when so counted the aforesaid period expired on 06.07.2020 and that report under Section 173(2) of the Cr.P.C., presented on 06.07.2020, was filed within the stipulated period of 180 days.

4. Feeling aggrieved the petitioner has filed present revision for setting aside of order dated 09.07.2020.

5. Notice of the petition was given to the State vide order dated 09.11.2020. The petition has been opposed by the learned State Counsel in terms of reply filed by way of affidavit of Sanjeev Goyal, PPS, Deputy Superintendent of Police, Sub-Division Sardulgarh,

District Mansa.

6. I have heard Mr. Bikramjeet Singh Jatana, learned Counsel for the petitioner and Mr. Balbir Singh Sewak, learned Addl. A.G., Punjab and have gone through the relevant record.

7. Mr. Bikramjeet Singh Jatana, learned Counsel for the petitioner has contended that the petitioner was arrested on 07.01.2020. In view of Section 167(2)(a)(i) of the Cr.P.C. read with Section 36-A(4) of the NDPS Act, report under Section 173(2) of the Cr.P.C. was required to be filed within the stipulated period of 180 days. In calculating the stipulated period of 180 days the date of arrest of the petitioner has to be excluded as held by Hon'ble Supreme Court in ***Chaganti Satyanarayana and others Vs. State of A.P. (SC) : 1987(1) R.C.R.(Criminal) 40*** but the date of first remand of the petitioner to custody has to be included as held by this Court in ***Gurcharan Singh @ Mintu Vs. State of Haryana (PHHC) : 2016(1) Law Herald 679*** and ***Sarabjit Singh @ Sabi Vs. State of Punjab (PHHC) : 2014 (1) R.C.R. (Criminal) 341***. The stipulated period of 180 days when computed from 08.01.2020 the date of first remand expired on 05.07.2020. On expiry of the stipulated period of 180 days on 05.07.2020 without filing of report under Section 173(2) of the Cr.P.C., the petitioner became entitled to grant of default bail. The petitioner filed application for grant of default bail on 06.07.2020 which was adjourned to 08.07.2020. Report under Section 173(2) of the Cr.P.C. was filed on the very same day i.e. 06.07.2020 subsequently at 04:25 P.M. Right of the petitioner to grant of default bail could not be defeated by subsequent filing of report under Section 173(2) of the Cr.P.C. Application filed by the

petitioner for grant of default bail has been wrongly dismissed by the learned Judge, Special Court, Mansa who by wrongly relying on the judgments in *Yash Pal Gupta Vs. State of Punjab and another CRM-M-39463-2014 decided on 31.07.2017*; *State of M.P. Vs. Rustam and another : 1995 Supreme Court Cases (Criminal) 830* and *Ravi Prakash Singh @ Arvind Singh Vs. State of Bihar : (2015) 8 Supreme Court Cases 340* excluded the date of first remand of the petitioner to judicial custody and wrongly held that the report under Section 173(2) of the Cr.P.C. was filed by the police within the stipulated period of 180 days which expired on 06.07.2020. In *Ravi Prakash Singh @ Arvind Singh Vs. State of Bihar : (2015) 8 Supreme Court Cases 340* Hon'ble Supreme Court followed its judgment in *State of M.P. Vs. Rustam and another : 1995 Supreme Court Cases (Criminal) 830* but that judgment had already been over-ruled in *Uday Mohanlal Acharya Vs. State of Maharashtra (SC) : 2001(2) R.C.R. (Criminal) 452* which fact was not brought to the notice of Hon'ble Supreme Court. The impugned order suffers from material illegality. The same can be challenged by filing the revision petition. Learned Counsel for the petitioner has accordingly prayer that the impugned order may be set aside and the petitioner may be granted default bail under Section 167(2) of the Cr.P.C.

8. On the other hand, Mr. Balbir Singh Sewak, learned Addl. A.G., Punjab has contended that in view of the judgments of Hon'ble Supreme Court in *State of M.P. Vs. Rustam and another : 1995 Supreme Court Cases (Criminal) 830*; *Ravi Prakash Singh @ Arvind Singh Vs. State of Bihar : (2015) 8 Supreme Court Cases 340* and

S.L.P. (Criminal) No.699 of 2020 titled as 'M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence' decided on 26.10.2020 in computing the stipulated period of 180 days, the date of first remand of the petitioner to custody i.e. 08.01.2020 has to be excluded and when so computed the stipulated period expired on 06.07.2020. The report under Section 173(2) of the Cr.P.C. presented on 06.07.2020 was filed before expiry of the stipulated period of 180 days. The petitioner did not acquire any right to grant of default bail under Section 167(2) of the Cr.P.C. and his application for grant of default bail has been rightly dismissed. The impugned order does not suffer from any illegality and is not liable to be set aside. Therefore, the petition may be dismissed.

9. In ***Ranjit Singh @ Rana Vs. State of Punjab, CRR No.2087 of 2014 decided on 08.11.2016*** it was held by Division Bench of this Court that the final order passed under Section 167(2) of the Cr.P.C. read with Section 36-A(4) of the NDPS Act can be challenged only by way of revision and not by filing a petition under Section 439 of the Cr.P.C. or under Section 482 of the Cr.P.C. The present revision petition has been filed by the petitioner under Section 401 read with Section 167(2) of the Cr.P.C. in conformity with the law laid down by this Court.

10. For adjudging the contentions raised by learned Counsel for the petitioner and learned State Counsel, it will be apposite to first refer to the relevant statutory provisions.

11. Section 167 of the Cr.P.C. lays down the procedure to be followed when investigation cannot be completed in twenty-four

hours. Relevant part of Section 167(2) of the Cr.P.C. reads as under:-

"(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;*

12. Section 36-A(4) of the NDPS Act which extends the stipulated period of 90 days provides as under:-

“36-A(4) In respect of persons accused of an offence punishable under Section 19 of Section 24 or Section 27-A 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 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 up to 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.”

13. In the present case, the petitioner was apprehended on suspicion on 07.01.2020 and 650 tablets of Clovidol-100 SR falling in the category of commercial quantity were allegedly recovered from the conscious possession of the petitioner attracting penal provisions of Section 22 (c) of the NDPS Act providing for punishment of rigorous imprisonment of not less than 10 years which may extend to 20 years and fine of not less than one lakh rupees which may extend to two lakh rupees. In view of the applicability of above-referred penal provision and the punishment provided thereunder, provisions of Section 167(2)(a)(i) of the Cr.P.C. which stipulate the period of ninety days for filing of report under Section 173(2) of the Cr.P.C. and Section 36-A (4) of the NDPS Act which extend the period of ninety days to one hundred and eighty days are applicable to the present case. Admittedly, in the present case report under Section 173(2) of the Cr.P.C. was filed on 06.07.2020 and the question which arises is as to whether the same was filed within the stipulated period of 180 days.

14. In ***Chaganti Satyanarayana and others Vs. State of A.P. (SC) : 1987(1) R.C.R.(Criminal) 40*** the appellants were arrested in the forenoon of 19.07.1985 and were produced before the IIIrd Additional Munsif Magistrate, Chirala on the next day, i.e. 20.07.1985 and were remanded to judicial custody and their remand to custody was extended from time to time till 18.10.1985. The investigating officer filed charger-sheet in the case at 10.30 a.m. on 17.10.1985. Hon'ble Supreme Court while holding that in computing the stipulated period under Section 167(2) of the Cr.P.C. the date of arrest has to be excluded

observed in para 23 of its judgment as under:-

“23. Thus in any view of the matter i.e. construing proviso (a) either in conjunction with sub section (2) of Section 167 or as an independent paragraph, we find that the total period of 90 days under clause (i) and the total period of 60 days under clause (ii) has to be calculated only from the date of remand and not from the date of arrest.”

In that case High Court order canceling default bail was upheld by Hon'ble Supreme Court as the charge-sheet had been filed within 90 days and default bail had been granted before expiry of the period of 90 days. However, in that case the question as to whether the date of first remand has to be excluded in computation of the stipulated period under Section 167(2) of the Cr.P.C. did not arise and was not considered by Hon'ble Supreme Court.

15. In ***State of M.P. Vs. Rustam (SC) : 1995 Supreme Court Cases (Criminal) 830*** accused were sent by the Magistrate concerned to judicial custody on 03.09.1993. The challan was submitted in the court on 02.12.1993. The accused applied for default bail contending that the period of 90 days expired on 01.12.1993. While rejecting the said contention and setting aside High Court order granting default bail, Hon'ble Supreme Court observed as under:-

“The prescribed period of 90 days, in our view, would instantly commence either from 4-9-1993 (excluding from it 3-9-1993) or 3-12-1993 (including in it 2-12-1993). Clear 90 days have to expire before the right begins. Plainly put, one of the days on either side has to be excluded in computing the prescribed period of 90 days. Sections 9 and 10 of the General Clauses Act warrant such an interpretation in computing the prescribed period of 90 days. The period of limitation thus computed on reckoning 27 days of September, 31 days of October and 30 days of November would leave two clear days in December to compute 90 days and on which date the challan was filed, when the day running was the 90th day.

The High Court was, thus, obviously in error in assuming that on 2-12-1993 when the challan was filed, period of 90 days had expired.”

In that case the accused claiming expiry of the stipulated period on 01.12.1993 sought default bail on the premise that their right to default bail survived even after the challan was filed on 02.12.1993. While holding that the right to grant of default bail did not survive filing of challan Hon'ble Supreme Court observed as under:-

*“4. We may also observe that the High Court's view in entertaining the bail petition after the challan was filed was erroneous. The matter now stands settled in **Sanjay Dutt v. State, (1994) 5 SCC 410** in which case **Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602** has aptly been explained away. The court is required to examine the availability of the right of compulsive bail on the date it is considering the question of bail and not barely on the date of the presentation of the petition for bail. This well-settled principle has been noticed in **Sanjay Dutt case, (1994) 5 SCC 410** on the strength of three Constitution Bench cases **Naranjan Singh Nathawan v. State of Punjab, 1952 SCR 395 : AIR 1952 Supreme Court 106 : 1952 Cri LJ 656**, **Ram Narayan Singh v. State of Delhi, 1953 SCR 652 : AIR 1953 Supreme Court 277 : 1953 Cri LJ 1113**, and **A.K. Gopalan v. Govt. of India, (1966) 2 SCR 427 : AIR 1966 Supreme Court 816 : 1966 Cri LJ 602**. On the dates when the High Court entertained the petition for bail and granted it to the accused-respondents, undeniably the challan stood filed in court, and then the right as such was not available.”*

16. In **Uday Mohanlal Acharya Vs. State of Maharashtra (SC) : 2001(2) R.C.R. (Criminal) 452** Hon'ble Supreme Court on detailed analysis of its earlier pronouncements on the subject observed in para 12 of its judgment as under:-

*“.....Two-Judge Bench decisions of this Court in State of M.P. v. Rustom and others (supra) setting aside the order of grant of bail by the High Court on a conclusion that on the date of the order the *prosecution* had already submitted a police report and, therefore, the right stood extinguished, in our considered opinion, does not express the correct position in law of the expression 'if already not*

availed of, used by the Constitution Bench in Sanjay Dutt (supra).....”

In that case Hon'ble Supreme Court concluded in sub-para 6 of para 12 as under:-

“6. The expression 'if not already availed of' used by this Court in Sanjay Dutt's case (supra) must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in paragraph (a) of proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.”

17. However, it may be observed here that in ***Uday Mohanlal Acharya Vs. State of Maharashtra (SC) : 2001(2) R.C.R. (Criminal) 452*** only the conclusion of the Hon'ble two Judge Bench of the Supreme Court in para No.4 of its judgment in ***State of M.P. Vs. Rustam (SC) : 1995 Supreme Court Cases (Criminal) 830*** that on the date of the order the prosecution had already submitted a police report and, therefore, the right to grant of default bail under Section 167(2) of the Cr.P.C. stood extinguished was over-ruled and the observations made by Hon'ble two Judge Bench of the Supreme Court in para No.3 of its judgment as to the mode of calculation of the stipulated period under Section 167(2) of the Cr.P.C. were not over-ruled.

18. In ***Ravi Prakash Singh @ Arvind Singh Vs. State of Bihar (SC) 2015 (2) RCR (Criminal) 89*** the accused surrendered before the Magistrate on 5.7.2013 and was remanded to judicial custody till 19.7.2013 and from time to time thereafter. On 3.10.2013, the accused moved an application under Section 167(2) of the Cr.P.C.

for his release on the ground that the charge sheet has not been filed. On the same day, i.e., 3.10.2013, it was endorsed in the order sheet by the Chief Judicial Magistrate that as per report of the clerk of the Court, charge sheet has already been received. While upholding rejection of the application for grant of default bail Hon'ble Supreme Court observed as under:-

*“11. In **Chaganti Satyanarayana and others v. State of Andhra Pradesh, 1987(1) RCR (Criminal) 40 : (1986)3 SCC 141**, it has been held by this Court that period of ninety days under Section 167(2) of the Code shall be computed from the date of remand of the accused and not from the date of his arrest under Section 57 of the Code. However, in the present case, we have to see the relevant date as the date when the accused surrendered and remanded by the court.*

*12. In **State of M.P. v. Rustam and others, 1995 Supp (3) SCC 221**, this Court has laid down the law that while computing period of ninety days, the day on which the accused was remanded to the judicial custody should be excluded, and the day on which challan is filed in the court, should be included. That being so, in our opinion, in the present case, date 5.7.2013 is to be excluded and, as such, the charge sheet was filed on ninetieth day, i.e., 3.10.2013. Therefore, there is no infringement of Section 167(2) of the Code.”*

19. In **S.L.P. (Criminal) No.699 of 2020 titled as 'M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence'** decided on 26.10.2020, Hon'ble Supreme Court has observed as under:

*“7. This Court in a catena of judgments including **Ravi Prakash Singh @ Arvind Singh v. State of Bihar, (2015) 8 SCC 340**, has ruled that while computing the period under Section 167(2), the day on which accused was remanded to judicial custody has to be excluded and the day on which challan/chargesheet is filed in the court has to be included.”*

20. In **S.L.P. (Criminal) No.699 of 2020 titled as 'M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue**

Intelligence' decided on 26.10.2020, the accused was remanded to judicial custody on 04.08.2018 and the mandatory period of 180 days prescribed under Section 167(2) of the Cr.P.C. (excluding the date of remand) for filing of report under Section 173 (2) of the Cr.P.C. was held to have completed on 31.01.2019 by making calculation of days as per the Gregorian calendar as mentioned below:-

“August 2018 (from 05.08.2018 to 31.08.2018)	-27 days
September 2018	-30 days
October 2018	-31 days
November 2018	-30 days
December 2018	-31 days
January 2019	-31 days

Total	-180 days
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21. In ***Gurcharan Singh @ Mintu Vs. State of Haryana (PHHC) : 2016(1) Law Herald 679*** and ***Sarabjit Singh @ Sabi Vs. State of Punjab (PHHC) : 2014 (1) R.C.R. (Criminal) 341*** (relied upon by learned Counsel for the petitioner) the date of first remand of the accused was included in computation of the stipulated period under Section 167(2) of the Cr.P.C. but in view of the observations made by Hon'ble Supreme Court in ***State of M.P. Vs. Rustam and another : 1995 Supreme Court Cases (Criminal) 830; Ravi Prakash Singh @ Arvind Singh Vs. State of Bihar : (2015) 8 Supreme Court Cases 340*** and ***S.L.P. (Criminal) No.699 of 2020 titled as 'M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence' decided on 26.10.2020***, the judgments in ***Gurcharan Singh @ Mintu Vs. State of***

Haryana (PHHC) : 2016(1) Law Herald 679 and *Sarabjit Singh @ Sabi Vs. State of Punjab (PHHC) : 2014 (1) R.C.R. (Criminal) 341* (relied upon by learned Counsel for the petitioner) do not lay down the correct position of law.

22. In the present case the petitioner was arrested on 07.01.2020 and was remanded to judicial custody on 08.01.2020. In view of the observations in *State of M.P. Vs. Rustam and another : 1995 Supreme Court Cases (Criminal) 830; Ravi Prakash Singh @ Arvind Singh Vs. State of Bihar : (2015) 8 Supreme Court Cases 340* and *S.L.P. (Criminal) No.699 of 2020 titled as 'M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence' decided on 26.10.2020* in calculating the mandatory period of 180 days prescribed for filing of report under Section 173(2) of the Cr.P.C. the date of first remand of the petitioner to custody i.e. 08.01.2020 has to be excluded. When so calculated as per the Gregorian calendar the stipulated period of 180 days was completed on 06.07.2020 as shown below:

January 2020 (from 09.01.2020 to 31.01.2020)	23 days
February 2020	29 days
March 2020	31 days
April 2020	30 days
May 2020	31 days
June 2020	30 days
July (from 01.07.2020 to 06.07.2020)	06 days
Total	180 days

23. In the present case, the report under Section 173(2) of the Cr.P.C. was filed on 06.07.2020 on the last day of the mandatory period of 180 days and no right to grant of default bail under Section 167(2) accrued to the petitioner. As there was no default in filing of the report under Section 173(2) of the Cr.P.C. within the stipulated period and no right to grant of default bail accrued to the petitioner, the question of survival/non-extinguishment of any such right to grant of default bail due to availing of the same by the petitioner by filing of the application for grant of default bail before filing of the report under Section 173(2) of the Cr.P.C. did not arise at all and the observations in *Uday Mohanlal Acharya Vs. State of Maharashtra (SC) : 2001(2) R.C.R. (Criminal) 452* (relied upon by learned Counsel for the petitioner) are not applicable and are not of any help to the petitioner. Since the petitioner was not entitled to grant of default bail under Section 167(2) of the Cr.P.C. his application for grant of default bail was rightly dismissed by learned Judge, Special Court, Mansa vide impugned order dated 09.07.2020 and the impugned order does not suffer from any illegality and is not liable to be set aside.

24. In view of the above discussion, the present revision petition being devoid of any merit is hereby dismissed.

17.12.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes