

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

210

CRM-M-51267-2019

Date of decision: 29.10.2020

Radhika

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. C.S. Rana, Advocate, for the petitioner.

Mr. Ramdeep Partap Singh, DAG, Punjab
for the respondent-State.

SUVIR SEHGAL J. (ORAL)

The hearing of this petition has been taken up through video conferencing on account of outbreak of Covid-19 Pandemic.

Through the instant petition filed under Section 439 read with Section 167(2) of the Code of Criminal Procedure, 1973, the petitioner is seeking grant of bail in FIR No.64 dated 16.03.2019, registered under Section 20 (Act No.61 of 1985 dated 16.09.1985) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”) at Police Station Government Railway Police, District Ludhiana, during the pendency of the trial.

FIR in question was registered after contraband weighing 6 kg of charas was recovered from a bag which the petitioner was carrying in her right hand when she was apprehended at Railway Station Ludhiana.

She was arrested on 18.03.2019.

After the expiry of the period of 180 days as prescribed under Section 36-A(4) of the NDPS Act, for presentation of challan, the petitioner filed an application under Section 167(2) Cr.P.C. before the trial Court on 30.09.2019 at 12:01 p.m. On the same day, the challan was filed by the police at 2:58 a.m. Notice of the application was issued to the State, who appeared through the Public Prosecutor and contested the same. Taking into account the fact that the challan had been filed on the same day on which the application was presented, the trial Court dismissed the application by holding that the applicant does have any indefeasible right to be released on bail.

Learned counsel for the petitioner has argued that after the period prescribed for presenting the challan expires, a right vests in the accused to seek default bail, which was exercised by the petitioner by moving an application. This right cannot be defeated by the subsequent filing of the challan even though on the same day.

On the other hand, learned State counsel while opposing the petition has argued that with the presentation of the challan, the right to seek bail under Section 167(2) stands extinguished.

I have considered the rival submissions of the parties.

The position is well settled. Failure to file the final report under Section 173 Cr.P.C. within the stipulated period gives an indefeasible right to the accused to seek default/compulsive bail under Section 167(2) Cr.P.C.. The right can be exercised by the accused after the expiry of the period prescribed for presentation of challan but before its actual presentation. The right is exercised when an accused moves an

application for release on bail and offers to furnish bail, then an order releasing the accused deserves to be passed forthwith. Even if the chargesheet is filed on the day, when the application under Section 167(2) Cr.P.C. is moved, the right to seek bail cannot be defeated on the sole ground that the challan had been filed even though it was subsequent in time to the filing the application. What is relevant in such a situation is the time of the filing of the application and the challan when both are filed on the same day.

When the facts of the case in hand are examined, it is clear that the application had been instituted by the petitioner prior to the filing of the challan by the prosecution. In these circumstances, the accused will be entitled to be released on bail as the application was prior in time.

In a very recent decision, in a similar factual position, the Hon'ble Supreme Court in Criminal Appeal No.699 of 2020 (arising out of SLP (Criminal) No.2333 of 2020) ***M.Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence***, decided on 26.10.2020, held that the right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding the subsequent filing of charge sheet.

Reliance can further be placed upon the judgments of this Court in CRM-M-21243 of 2012, ***Deepa Singh vs. State of Punjab***, decided on 15.01.2013; CRM-M-32076 of 2015, ***Amit Sachdeva Vs. State of Punjab***, decided on 19.11.2015 and ***Master Bholu through his father and natural guardian Vinod Kumar Vs. Central Bureau of Investigation***, 2018(3) RCR (Criminal)357.

For the reasons given above, the petition is **allowed**, the petitioner is ordered to be enlarged on bail in view of the provisions of Section 167(2) Cr.P.C. on his furnishing bail bonds/heavy surety bonds to the satisfaction of the learned trial Court. It will be open to the trial Court to impose any other condition it deems appropriate considering the fact that the petitioner is a native of State of Bihar.

Before concluding, the Court cannot lose sight of the fact that heavy contraband, which falls in the category of commercial quantity under the provisions of the NDPS Act has been recovered from the petitioner, but because of the lapse on the part of the investigating agency resulting in the non-filing of the final report within the prescribed period, the accused got an opportunity to avail the benefit under Section 167(2) Cr.P.C. Such a lapse on the part of the police officials cannot be brushed aside and needs to be probed. The State is accordingly, directed to inquire into the reason as to why the challan was not filed within the stipulated period and to fix responsibility in case, any officer is found to be derelict in the performance of his duty. The inquiry into the episode be conducted by a senior officer and be completed within a period of three months and a report be submitted before this Court.

List this matter on 16.03.2021 to await report.

29.10.2020

pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No