

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

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**CRR-3294-2019 (O&M)
Date of decision: 27.02.2020**

Raju Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

Mr. Arun Kaundal, DAG, Punjab
for the respondent.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed present petition under Section 401 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') read with Section 167(2) of the Cr.P.C. for setting aside the order dated 28.11.2019 along with application CRM-38575-2019 under Section 482 of the Cr.P.C read with Section 167(2) of the Cr.P.C. for grant of default bail to the petitioner in case FIR No.175 dated 26.09.2019 registered under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station City Dhuri, District Sangrur.

2. Briefly stated the facts giving rise to the filing of the present revision petition are that on 26.09.2019 ASI Amritpal Singh along with ASI Jarnail Singh, HC Pardeep Singh and PHG Darshan Singh were present in private vehicle bearing No. PB28E-9977 at Kakkarwal Chowk Dhuri for patrolling duty. At about 6:25 P.M. secret information was received that accused-Raju Singh (present petitioner)

was indulging in selling of intoxicant tablets and is already involved in other cases. He has also brought tablets from Laddi Singh and is present under the overbridge near Barnala-Dhuri Railway line in the area of city Dhuri and if raid were conducted he could be apprehended. The above said FIR was registered on the basis of written communication sent to SHO, PS City Dhuri. Raid was accordingly conducted and on search as per the prescribed procedure 10 intoxicant tablets of Alprazolam and 150 loose intoxicant tablets were recovered from conscious possession of the petitioner.

3. Since the Police did not file report under Section 173(2) of the Cr.P.C. despite expiry of 60 days, the petitioner filed application under Section 167(2) of the Cr.P.C for grant of default bail. The above said application was dismissed by learned Judge, Special Court, Sangrur vide order dated 28.11.2019 on the grounds that the FSL report had not been received and without the same it could not be ascertained whether the contraband recovered fell in the category of commercial or non-commercial quantity and that the petitioner is habitual offender involved in six other cases under the NDPS Act and two cases under the Punjab Excise Act, 1914 and his application for regular bail had already been dismissed.

4. Feeling aggrieved the petitioner has filed present revision petition along with the application as referred to above.

5. Notice of the petition was given to the State vide order dated 07.12.2019. The petition has been opposed by the learned State Counsel. However, no written reply has been filed by the State.

6. I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

7. Learned counsel for the petitioner has contended that the petitioner was arrested on 26.09.2019 for alleged recovery of 160 tablets of alprozolam which fell in the category of non-commercial quantity and on expiry of period of sixty days 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 which was wrongly dismissed by the learned Judge, Special Court, Sangrur. In view of the indefeasible right accruing to the petitioner, the petitioner is entitled to grant of default bail and could not be denied bail on the ground of merits of the case not warranting the same. Right of the petitioner to grant of default bail was not even defeated by filing of report under Section 173 (2) of the Cr.P.C. subsequently on 25.02.2020. The impugned order suffers from material illegality. The same could be challenged by filing the revision petition. Therefore, the same may be set aside and the petitioner may be granted default bail under Section 167(2) of the Cr.P.C. In support his arguments, learned counsel for the petitioner has placed reliance on the judgments rendered in the case of ***Rakesh Kumar Paul Vs. State of Assam : 2017(3) R.C.C. (Criminal) 996*** and ***Ranjit Singh @ Rana Vs. State of Punjab, CRR No.2087 of 2014 decided on 08.11.2016*** by this Court.

8. On the other hand, learned State counsel has contended that the application filed by the petitioner for grant of regular bail had been dismissed. The remedy available to the petitioner was to approach this Court for grant of interim bail till receipt of FSL report. Due to the

petitioner being habitual offender on account of his involvement in thirteen cases, he is not entitled to grant of default bail. The right to grant of default bail also stood extinguished on filing of report under Section 173(2) of the Cr.P.C. on 25.02.2020. 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. and the petitioner has accordingly filed present revision petition filed under Section 401 read with Section 167(2) of the Cr.P.C. along with application under Section 482 read with Section 167(2) of the Cr.P.C. for grant of default bail.

10. For dwelling upon the contentions raised by learned Counsel for the petitioner and learned State Counsel, it will be apposite to 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 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 overpowered on suspicion on 26.09.2019 and 160 tablets of alprazolam having total weight of 20 grams falling in the category of non-commercial quantity were allegedly recovered from the conscious possession of the petitioner attracting penal provisions of Clause (b) of Section 22 of the NDPS Act providing for punishment of rigorous imprisonment for a period of 10 years and fine which may extend to 1 lakh rupees. In view

of the applicability of above-referred penal provision and the punishment provided thereunder, provisions of Clause (ii) of Clause (a) of sub section (2) of Section 167 of the Cr.P.C. providing the period of sixty days is applicable to the present case and the provisions of Clause (i) of Clause (a) of sub section (2) of Section 167 of the Cr.P.C. providing the period of ninety days and sub section (4) of Section 36-A of the NDPS Act which extends the period of ninety days to one hundred and eighty days were not applicable to the present case.

14. Admittedly, the report under Section 173(2) of the Cr.P.C. was not filed by the police within the period of sixty days and the report under Section 173(2) of the Cr.P.C. was filed in the present case on 25.02.2020. On expiry of the period of sixty days indefeasible right to grant of default bail accrued to the petitioner. In ***Rakesh Kumar Paul Vs. State of Assam (SC) : 2017(3) RCR (Criminal) 996*** it was held that if an accused files an application for grant of default bail and is willing to furnish bail, he is deemed to have exercised his right to avail of bail and this right cannot be defeated by filing the charge-sheet thereafter. In the present case, the petitioner availed the right by filing application for grant of default bail and the right to grant of default bail could not be defeated by subsequent filing of the report under Section 173(2) of the Cr.P.C. on 25.02.2020.

15. The application filed by the petitioner was dismissed by learned Judge, Special Court, Sangrur on the grounds that in the absence of FSL report, it could not ascertained whether the contraband recovered from possession of the petitioner fell in the category of commercial quantity or non-commercial quantity and that the petitioner

was involved in eight cases including six cases under the NDPS Act and his application for grant of regular bail had already been dismissed. Since even the total quantity of the contraband recovered from possession of the accused did not fall in the category of commercial quantity, there was no justification to reject the application for grant of default bail on the ground of non-receipt of FSL report. In ***Hitender Vishu Thakur Vs. State of Maharashtra (SC) : 1994 (3) RCR (Criminal) 156*** it was held by Hon'ble Supreme Court that on expiry of the prescribed period without filing of report under Section 173(2) of the Cr.P.C., the Court shall release the accused on bail after notice to the Public Prosecutor uninfluenced by the gravity of the offence or the merits of the prosecution case. In view of this legal position, in considering the application for grant of default bail, the merits of the case could not be considered and the same could not be denied on the ground of rejection of his application for regular bail earlier and on the ground of the petitioner being habitual offender due to his involvement in other cases.

16. It follows from the above discussion that the impugned order dated 28.11.2019 passed by learned Judge, Special Court, Sangrur suffers from material illegality and is liable to be set aside and the petitioner is entitled to grant of default bail under Section 167 (2) of the Cr.P.C. on the ground of not filing of report under Section 173(2) of the Cr.P.C. by the police within the period of sixty days.

17. In these facts and circumstances of the case, petition is allowed and impugned order 28.11.2019 passed by learned Judge, Special Court, Sangrur is set aside with the consequence that

application filed under Section 482 read with Section 167(2) of the Cr.P.C. for grant of default bail to the petitioner under Section 167(2) of the Cr.P.C. is also allowed and the petitioner is ordered to be released on default bail on furnishing of bail bonds by him to the satisfaction of the learned Judge, Special Court, Sangrur.

27.02.2020

Vinay/kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No