

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(224)

CRR-19-2021

Date of decision: 12.08.2021

Palwinder Singh alias Laddi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Arshdeep Singh Brar, Advocate
for the petitioner.

Mr. Sandeep Singh Deol, DAG, Punjab.

...

SUVIR SEHGAL, J. (Oral)

Heard through Video Conferencing.

Vide instant revision petition, the petitioner has assailed order dated 15.12.2020 passed by Special Court, Moga whereby application filed under Section 167 (2) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") claiming default bail has been dismissed.

As per the case of the prosecution, during the course of investigation of FIR No.58 dated 30.03.2020 registered under Section 307, 323, 186, 353, 188, 269, 270, 341, 148, 149 and 120-B of the Indian Penal Code, 1860, statement of Palwinder Singh @ Laddi, present petitioner, was recorded wherein he stated that he had kept Heroin in his *Verna* Car, which was parked at his residence. On the basis of information received from him,

recovery of 260 grams of heroin was made and FIR No.123 dated 17.06.2020 was registered for offence under Section 21 (Section 29 was added later on) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity hereinafter called “the NDPS Act”) at Police Station Dharamkot, District Moga. The petitioner was arrested on 17.06.2020.

Counsel for the petitioner has contended that in terms of the provisions of Section 167(2), Cr.P.C. read with Section 36-A (4) of the NDPS Act, the period prescribed for presentation of the police report was available to the investigation till 14.12.2021. Though the challan was presented with the Ahlmad on 12.12.2020, yet it was not registered till the filing of the application by e-mail seeking default bail on 15.12.2020 and the petitioner deserves to be released on compulsive bail. The factual aspect has been controverted by the State counsel, who on the basis of an affidavit of Deputy Superintendent of Police, Dharamkot, District Moga, filed by way of reply, has asserted, that the presentation of the challan was done before the Court within the prescribed period.

Counsel for the parties have been heard.

In order to ascertain the factual position, vide order dated 12.07.2021, this Court called for a report from the trial Court, which has been received vide No. 213 dated 10.08.2021. Its relevant extract is reproduced as under:-

“I have the honour to submit that bail application under Section 167 (2) Cr.P.C. in the above noted case was filed through e-mail on 15.12.2020 as is reflected in order

dated 15.12.2020 passed by Ld. Predecessor of this Court. As per judicial file, the challan in the case was presented before the Learned Judge, Special Court, Moga on 12.12.2020 at 12:05 P.M. As per endorsement made over the challan by Learned Predecessor of this Court, report of Ahlmad was called for 15.12.2020, who made the report with regard to correctness of challan on 15.12.2020 and it was verified and entered in the CIS System at 10:41:50 A.M. and was allocated on the same date at 10:56:42 A.M. and thereafter was registered at 10:57:41 A.M. as is reflected in database entry on CIS. The bail application under Section 167(2) of Cr.P.C., as per acknowledgment slip, was filed on 15.12.2020 at 10:12:15 A.M. The challan was presented on 12.12.2020 before the Court and was registered on 15.12.2020 at 10:41:50 A.M. The copy of database entries and copy of index of report under Section 173 Cr.P.C. as well as acknowledgment slip of bail application are enclosed herewith for kind perusal.

Report is submitted accordingly.”

As is evident from the above, the police report/challan has been presented by the Investigating Agency within the time frame as stipulated under Section 167 of the Cr.P.C. The indefeasible right of the accused to be released on bail under Section 167(2) Cr.P.C. in default of completion of

the investigation and filing of challan within the specified time, is a right, which accrues to, and can be enforceable by the accused only from the time of the default till the filing of the charge-sheet. This right does not survive and cannot be enforced after the presentation of the challan.

In view of the above, there is no illegality or infirmity in the order passed by the Special Judge, Moga. Consequently the instant petition is dismissed.

It is clarified that nothing stated hereinabove, shall be construed to be an expression on the merits of the case.

(SUVIR SEHGAL)
JUDGE

12.08.2021
Kamal

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