

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-65-2021 (O&M)

DATE OF DECISION: 18.11.2021

GURPYAR SINGH @ TOTI

... Petitioner(s)

Versus

STATE OF HARYANA

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Aditya Sanghi, Advocate for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner is seeking default bail in FIR No.146 dated 08.07.2020, under Section 22 (c)/61/85 of the NDPS Act, registered at Police Station Sadar Tohana, District Fatehabad, Haryana.

Learned counsel for the petitioner contends that the petitioner was arrested on 08.07.2020 and he was produced before the Magistrate on 09.07.2020. He further contends that 1780 tablets of Tramadol with a total weight of 836.6 grams were allegedly recovered from him. The challan had been filed in the instant case on 15.04.2021 without the FSL report, and therefore, he would be entitled to default bail in terms of Section 167(2) Cr.P.C. He further contends that the prosecution had preferred an application for extension of time for completing investigation on 04.01.2021 which was allowed on the same date without issuance of notice to the petitioner. The application under Section 167(2) Cr.P.C. was moved on 06.01.2021 and the same was dismissed on 07.01.2021.

Learned counsel, therefore, contends that as the challan was not filed within stipulated period of 180 days, the petitioner would be entitled to

default bail. The order extending the time for completion of investigation is erroneous as it was passed without issuance of any notice to the petitioner. In support of his contentions, he has relied upon the judgment of the Supreme Court in the case of **Sanjay Kumar Kedia Vs. N.C.B. (2009) 17 SCC** wherein it has been held that it would be in consonance with the principles of natural justice that notice is issued to the accused before passing an order on an application seeking extension of time.

The FIR was registered on 08.07.2020 and the petitioner was arrested on the same date. The investigation had to be completed within a period of 180 days in terms of Section 36-A(4) of the NDPS Act. The period of 180 days expired on 04.01.2021 but the challan was not filed during this period.

The application for extension of time had undoubtedly been preferred by the prosecution. However, it is manifest from the perusal of the material on record that notice on these application had not been issued to the accused. It is stipulated in proviso to sub Section 4 of Section 36 (A) of the NDPS Act that in case it is not possible to complete the investigation within a period of 180 days, the time may be extended on the report of the Public Prosecutor indicating the progress of the investigation along with specific reasons for detention of the accused beyond that period. Perusal of material on record indicates that no notice was issued to the petitioner. The perusal of order, extending the time for investigation also indicates that no special reasons have been recorded as to why the detention of the petitioner beyond 180 days would be necessary. The only ground on which the extension of time has been granted is that the report of FSL is awaited.

It has been held by the Supreme Court in **Sanjay Kumar Kedia Vs. NCB** (Supra) that in view of Section 36-A (4) of the NDPS Act while granting extension of time the three conditions set out therein must be satisfied. These conditions include (i) a report of the Public Prosecutor, which indicates the progress in investigation (ii) specifying the compelling reasons for seeking extension of time of detention of the accused beyond the period of 180 days (iii) issuance of notice to the accused. In that case, notice to the accused had not been issued and the aforementioned conditions for extension of time were not fulfilled. The Supreme Court, in such circumstances, had directed the release of the petitioner therein on default bail under Section 167(2) Cr.P.C. and 36-A(4) of the NDPS Act.

Learned State counsel has cited judgment of the coordinate Bench of this court in the case of **Akash Kumar @ Sunny Vs. State of Haryana** in **CRR-1731-2019, decided on 16.10.2019** wherein it has been held that challan filed without FSL report would be considered to be a complete challan and the accused cannot seek default bail under Section 167(2) Cr.P.C. This judgment would not be applicable to the facts of the instant case inasmuch as the applications had been preferred for extension of time and the extension of time had also been allowed but the conditions stipulated under Section 36-A(4) of the NDPS Act were not satisfied. This court in the case of **State of Haryana Vs. Dildar Ram @ Dari, CRM-M-25600-2021**, decided on **15.07.2021**, has held that the FSL report is the very foundation of a charge under the NDPS Act and in case a challan is filed without FSL report, it would be an incomplete challan and the accused would be entitled to default bail in terms of Section 167(2) Cr.P.C. However, different view had been taken by the coordinate benches on this issue and a coordinate Bench of this court in the case titled **Julfkar Vs.**

State of Haryana, CRR-1125-2020 had referred the matter to the division bench.

In the case at hand, the application for extension of time was allowed without any notice to the petitioner. The principles of natural justice require that a notice be issued to the person who is likely to be adversely affected by the order. The liberty of the accused is at stake and it cannot be taken away in a casual manner without affording an opportunity of hearing. The other requirements were also not met inasmuch as specific reasons for extension of time, the progress of the investigation and compelling reasons for detention of the petitioner beyond the period of 180 days have not been spelt out in the order extending time for completion of investigation. Custody certificate dated 14.09.2021 has been filed which indicates that the petitioner is in custody for 1 year, 2 months and 06 days as on 14.09.2021.

In view of the above, the petition is allowed. The petitioner is ordered to be released on default bail on his furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

Criminal miscellaneous application, if any, also stands disposed of.

18.11.2021

(ANUPINDER SINGH GREWAL)

JUDGE

SwarnjitS

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