

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.769 of 2020 (O&M)

Date of Decision: 22.02.2021

Saleem Khan

..... Petitioner

V/s.

State of Punjab

.....Respondent

CRR No. 893 of 2020 (O&M)

Shambhu

..... Petitioner

V/s.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.K. Singla, Advocate for the petitioner.

Mr. J.P. Ratra, DAG, Punjab.

Arvind Singh Sangwan, J.(Oral)

Prayer in these petitions are to set aside the order dated 06.03.2020 passed by the Judge, Special Court vide which the application filed by the petitioners under section 167(2) of the Cr.P.C. was dismissed.

Brief facts of the case are that FIR No. 115 dated 20.08.2019 was registered under sections 22/25/29 of the NDPS Act, on a complaint made by S.I. Shivji Ram, Police Station Bhikhi, Mansa that while on patrol duty, he alongwith his other officials stopped a car on suspicion. One person sitting on the back seat of the car succeeded in running away and he was identified by ASI Harpal Singh as Jagga Singh. However, the driver and person sitting on the conductor seat were apprehended. On enquiry, the driver told his name as Saleem Khan (petitioner) and the person on the conductor seat told his name as Shambhu Singh (petitioner).

Thereafter, on suspicion a notice under section 50 of the NDPS Act, was given to

them for giving them the option to be searched before a Gazetted Officer or a Magistrate. Upon this, the accused gave the option to be searched before the Gazetted Officer and Sh. Gurmeet Singh Brar, PCS, DSP, (S.D.), Mansa was called at the spot. In the presence of the DSP, the bag lying in between the feet of Shambhu Singh was opened and 50 boxes of intoxicant tablets totalling 25000 intoxicant tablets were recovered. Upon checking the other bag on the back seat, again 25000 intoxicant tablets were recovered. Thereafter, upon checking the diggy of the car, a bag was found in which 25,000 intoxicant tablets i.e. total 75,000 intoxicant tablets were recovered from the possession of both the petitioners. Each bag and strip was having a mark "Tramadol Hydrochloride". After completing the formalities, the petitioners were arrested.

The counsel for the petitioner submits that the petitioner-Saleem Khan was granted the concession of interim bail vide order dated 23.10.2019 passed in CRM-M No. 44044 of 2019 awaiting the FSL report, in view of Division Bench judgment of this Court in **Inderjeet Singh @ Laddi Vs. State of Punjab** reported as 2014(3) RCR(Criminal)953. While granting the interim bail, it was further directed that on releasing on bail the petitioner will furnish an undertaking before the trial Court within a period of 07 days that he will surrender before the Court on receiving the FSL report.

Similar order was passed on 01.10.2019 regarding the petitioner-Shambhu Singh @ Shambhu in CRM-M No. 41149 of 2019 and both the petitioners were released from the custody on furnishing bail/surety bond.

The counsel for the petitioner submits that before the challan or the FSL report could be received, the petitioners filed a joint application under section 167(2) of Cr.P.C. read with section 36(A) of NDPS Act to grant them the default bail. The counsel submits that it is pleaded in the application that the petitioners

were arrested on 20.08.2019 and were produced before the Magistrate on 21.08.2019 and a period of 180 days had lapsed on 19.02.2020 when the application was moved. However, the challan alongwith Chemical Examiner report were not submitted by that date and therefore, they be granted default bail as they are already on interim bail.

The counsel for the petitioners submits that the application was moved on 182th day. However, the same was dismissed by the Trial Court vide impugned order dated 06.03.2020.

The counsel for the petitioners submitted that the petitioner-Saleem Khan has, till date, not surrendered before the trial Court, however, on an order passed by the trial Court directing both the petitioners to surrender on or before 13.03.2020, the petitioner-Shambhu Singh has already surrendered. The counsel for the petitioners has referred to the order dated 20.02.2020 passed by the Judge, Special Court, Mansa wherein it is noticed that the challan was presented on that date and the co-accused Jagga Singh was present and was released on bail in terms of the order dated 19.10.2019 passed by this Court in CRM-M No.40628 of 2019. The trial Court issued notice to the petitioners for 29.02.2020 as they were not present though the challan was presented. The counsel for the petitioners has argued that since the petitioners were on interim bail, the period of custody while calculating the period of 180 days in terms of section 167(2) of Cr.P.C. read with section 36-A of NDPS Act, should be counted including the period when they were on interim bail as they are deemed to be in custody. The counsel for the petitioners relied upon the judgment 2014(2) RCR(Criminal)416 “**Sundeep Kumar Bafna Vs. State of Maharashtra**”; 2004(4)RCR(Criminal)376 “**Nirmal Jeet Kaur Vs. State of Madhya Pradesh**”, in support of his argument to submit that a person if on interim bail he will be deemed to be in custody.

On reply, the learned State counsel has opposed the prayer on the ground that the petitioner-Saleem Khan after availing the interim bail has absconded from the court proceedings and therefore, the proceedings against him to declare as Proclaimed Offender has been initiated. The counsel on the basis of the custody certificate of both the petitioners submits that after 24.10.2019 till 20.02.2020 when the challan was presented before the trial Court, both the petitioners were on interim bail and were not in custody. The counsel further submits that Saleem Khan has not surrendered till date and therefore, his petition deserves to be dismissed.

The counsel further submits that so far the petitioner-Shambhu Singh is concerned, he had already surrendered on 13.03.2020 i.e. after submission of the report under Section 173(2) Cr.P.C. after the trial Court issued a notice to surrender and therefore, in the intervening period the petitioner-Shambhu Singh was on interim bail from 06.10.2019 till 12.03.2020 and this period cannot be included as term for the period in custody. Learned State counsel has referred to section 167 Cr.P.C to submit that the same would apply where any person is arrested and detained in custody in terms of an order passed by a Magistrate or further detention is ordered by the Magistrate in terms of section 167(2).

Learned counsel further submits that as per section 36-A of the NDPS Act, again it is provided that where a person is detained in custody on an order passed by the Magistrate, if the period of 180 days lapsed and the report under section 173 Cr.P.C is not filed, only then he is entitled for default bail.

The counsel further submits that interim bail was granted to both the petitioners by this Court in exercise of power under section 439 of Cr.P.C which provides that any person/accused of an offence and in custody be released on bail.

Learned State counsel has laid much emphasis on the point that all the provisions relates to the detention of a person accused of an offence in custody under the order of the Magistrate and only in such eventuality when the report under section 173 Cr.P.C. is not submitted within the time prescribed under section 167(2) Cr.P.C. read with Section 36-A of the NDPS Act, the default bail can be granted. The counsel has submitted that both the petitioners were not detained in custody after grant of interim bail therefore, the period during which they were on interim bail cannot be counted while calculating 180 days and therefore, the trial Court has rightly dismissed the application.

After hearing the counsel for the parties, I find no dispute with the preposition of law laid down by the Hon'ble Supreme Court in Sundeep Kumar Bafna's case and Nirmal Jeet Kaur's case (*supra*), however, both the cases are distinguishable and these judgments do not deal with the circumstance where a person accused of an offence was on interim bail and was not detained in custody by a Magistrate in terms of the aforesaid provisions of law.

In the present case, both the petitioners were released from the custody on submission of the bail bonds to the satisfaction of the Special Judge in terms of the order passed by the competent Court granting them interim bail awaiting the FSL report. Therefore, the provisions of Section 167(2) Cr.P.C. will not come into play as none of the petitioners was detained in custody by the order of a Magistrate. Even otherwise, both the petitioners are arrested on the spot and by following the procedure, recovery of 75,000 intoxicant tablets (which were proved to be as such, as per the FSL report), was effected in the presence of a Gazetted Officer.

Finding no merit or ambiguity in the order dated 06.03.2020 passed by the Judge, Special Court, the present petition is dismissed.

22nd February, 2021
Sonia Puri

(Arvind Singh Sangwan)
JUDGE

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