

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

CRM-M No.25214 of 2021

Date of Decision: 26-10-2021.

Gurdas Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Munish Kumar Advocate,
for the petitioner.

Ms. Samina Dhir, Deputy Advocate
General, Punjab.

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MEENAKSHI I. MEHTA, J.

By way of the instant petition, the petitioner has sought the regular bail/statutory bail under Section 439 read with Section 167(2) Cr.P.C. in the criminal case registered at Police Station Sadar Fazilka, District Fazilka vide the FIR bearing No.130 dated 27.04.2020, under Section 22 of the NDPS Act, Section 188 IPC and Section 51(b) of the Disaster Management Act.

2. Bereft of unnecessary details, the allegations, as levelled in the subject FIR, are that on 27.04.2020, ASI Bhagat Singh received a secret information that the petitioner had been indulging in the sale of intoxicant tablets and on that day, he, along-with one more person, was coming to Fazilka in the Car bearing registration No.PB-30X-9121 to sell the drugs. Thereafter, the police party reached at the spot and 2000 tablets Clovidol-

-100SR were recovered from there.

3. Status-report has already been filed on behalf of the respondent-State.

4. I have heard learned counsel for the petitioner as well as learned State counsel in the instant petition and have also perused the file thoroughly.

5. At the very outset, it is worth-while to mention here that though, the petitioner has sought the regular/statutory bail under Section 439 read with Section 167(2) Cr.P.C but he has placed only Annexure P-2, i.e the copy of the order dated 03.06.2021, on the file whereby the application moved by him under Section 167(2) Cr.P.C. was dismissed by learned Judge, Special Court, Fazilka and he has not placed any document/material on the record to show that he had moved the application under Section 439 Cr.P.C in the Court below to seek the regular bail and the same had been dismissed and moreover, even in this petition also, he has restricted his averments only to his claim for default bail as provided under Section 167(2) Cr.P.C. and has addressed the arguments qua the same.

6. Learned counsel for the petitioner has contended that the petitioner was arrested in this case on 03.12.2020 and on 03.06.2021, he had moved an application under Section 167(2) Cr.P.C in the Court below for claiming the statutory bail on the ground that the Challan had not been presented in the Court within 180 days from the date of his arrest but the said bail application has, wrongly, been dismissed vide order Annexure P-2 and hence, the petitioner be granted the said relief.

7. Per-contra, learned State counsel has argued that before the

filing of the said bail application by the petitioner on 03.06.2021, the prosecution had already moved an application on 27.05.2021 for seeking extension of the time for concluding the investigation and presenting the Challan and the same stood adjourned to 10.06.2021 and during the pendency of the said application, the right of the petitioner to seek default bail was to remain suspended and therefore, his said application was rightly dismissed.

8. The factual position, as emerges out of the documents available on the record, is that the petitioner was arrested in connection with the subject FIR on 03.12.2020. Undisputedly, the prosecuting agency moved an application on 27.05.2021 for seeking extension of the time to complete the investigation and to present the Challan, as envisaged under Section 36A(4) of the NDPS Act, well before the expiry of the stipulated period of 180 days and during the pendency of the said application, the petitioner moved the application on 03.06.2021 for claiming the default/ statutory bail which was dismissed on the same day vide order Annexure P-2. Thereafter, the Challan /Charge-sheet was presented in the Court on 02.07.2021 and the above-said application, as moved by the prosecuting agency, was ordered to be dismissed, for having been withdrawn, on 10.07.2021, i.e after the filing of the Challan.

9. It has, categorically, been observed by a three Judges' Bench of Hon'ble the Supreme Court in **Rambeer Shokeen Vs. State of NCT of Delhi** **2018 AIR (SC) 688**, that “*where the application for seeking extension of time for filing the charge-sheet (Challan) had been filed by the Additional Public Prosecutor within time, before the expiry of 90 days and the same*

was pending on the date of filing of the fresh application by the appellant for statutory bail, the mere fact that the said period of 90 days from the date of initial arrest of the appellant in connection with the subject FIR had lapsed on that day, could not ineluctably entail in the grant of statutory bail to him and in law, only upon the rejection of the prayer for extension of time sought by the Additional Public Prosecutor, the right in favour of the appellant for grant of statutory bail could have ignited”. The present matter is squarely covered by the afore-cited observations and in the light of the same, it becomes quite explicit that the petitioner is not entitled to the default/statutory bail.

10. As a sequel to the fore-going discussion, it follows that the instant petition, being *sans* any merit, deserves dismissal. Resultantly, the same stands dismissed accordingly.

26th October, 2021.

(MEENAKSHI I. MEHTA)
JUDGE

seema

Whether speaking/reasoned?	Yes
Whether Reportable?	Yes