

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-741-2021 (O&M)

DATE OF DECISION: 18.11.2021

DEVENDER SINGH @ FOJI

... Petitioner(s)

Versus

STATE OF HARYANA

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Amit Chaudhary, Advocate for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner has challenged the order dated 16.06.2021 whereby his application for default bail under Section 167(2) read with Section 36-A(4) of the NDPS Act has been dismissed.

Learned counsel for the petitioner contends that the petitioner was arrested on 22.09.2020 in FIR No.358 dated 22.09.2020 under Section 22 –C, 61/85 of the NDPS Act, 1985 and Sections 27-A, 61/85 of the NDPS Act and Section 420 IPC were added subsequently, registered at Police Station Sadar Fatehabad, District Fatehabad.

Learned counsel for the petitioner contends that 1000 tablets of Tramadol with a total weight of 585 grams were allegedly recovered from him. The prosecution had preferred an application for extension of time for completing investigation on 08.03.2021 which was allowed on the same date without issuance of notice to the petitioner. Another application was preferred by the prosecution for extension of time on 18.05.2021 which was also allowed the very same day without issuance of any notice to the petitioner.

Learned counsel, therefore, contends that as the challan was not filed within stipulated period of 180 days which expired on 21.03.2021 as per Section 36A (4) of the NDPS Act, the petitioner would be entitled to default bail. The orders extending the time for completion of investigation are erroneous as they were passed without 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 issuance of notice to accused on an application for extension of time is necessary.

The applications 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 applications 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. The perusal of orders, 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) 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. read with Section 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** 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 in the present case 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. Even otherwise, 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 while relying upon judgments of several Single Benches of this court. A contrary view had also been taken by the coordinate benches 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 but bail had been granted to the petitioner therein.

In the case at hand, the applications for extension of time were 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 of Section 36-A (4) of the NDPS Act 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 orders extending time for completion of investigation. Custody certificate dated 08.11.2021 has been filed which indicates that the petitioner is in custody for 1 year, 1 month and 15 days as on 08.11.2021.

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

SwarnjitS

(ANUPINDER SINGH GREWAL)
JUDGE

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