

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR-1291-2021 (O&M)

Saurabh @ Channa

...Petitioner

Versus

State of Haryana

...Respondent

CRR-1386-2021(O&M)

Saurabh @ Channa

...Petitioner

Versus

State of Haryana

...Respondent

Date of Decision : 17.11.2021

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Laghuinder Singh Sekhon, Advocate for the petitione.

Mr. Karan Garg, AAG, Haryana.

Harsimran Singh Sethi, J. (Oral)

As in both the above mentioned criminal revision petitions, order dated 20.10.2022 passed by the Additional Sessions Judge, Fatehabad is under challenge, hence, both the petitions are being decided together.

In CRR No.1291 of 2021, challenge is to order dated 20.10.2020 passed by the Additional Sessions Judge, Fatehabad, by which the bail application filed by the petitioner under Section 36-A of the Narcotic Drugs and Psychotropic Substances Act, read with Section 167(2) of the Cr.P.C has been declined on the ground that vide another order of the

same date i.e. 20.10.2020, the Investigating Agency has been granted more time of 60 days to complete the investigation.

In CRR-1386-2021 also order dated 20.10.2020 passed by the Additional Sessions Judge, Fatehabad vide which Investigating Agency was allowed extension of time to complete investigation and file report is under challenge on the ground that the extension of time as granted by the trial Court to the Investigation Agency is without due application of mind and the said application was filed only to defeat the right of the petitioner to seek benefit of default bail under Section 167 (2) of the Cr.P.C.

Learned counsel for the petitioner argues that in fact, these petitions are already covered in favour of the petitioner by order dated 17.08.2021 passed by a Coordinate Bench of this Court in CRR-1334-2020 in a case related to the co-accused of the petitioner namely, Pardeep in which order dated 20.10.2020 passed by the trial Court, by which the Investigating Agency was granted extension of period by 60 days to complete the investigation was under challenge and the said grant of extension of time to the Investigating Agency so as to complete investigation and file report has been set aside by a Coordinate Bench of this Court and the default bail has already been granted in favour of the co-accused-Pardeep, who is similarly situated as the petitioner herein.

Learned State counsel does not dispute the factum that the grant of extension of time to the Investigating Agency by the trial Court vide order dated 20.10.2020 has been held to be bad by a Coordinate Bench of this Court while passing order in CRR-1334-2020 and the same has been set aside and co-accused of the petitioner has been extended the benefit of

default bail under Section 167(2) of the Cr.P.C.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, the allegations alleged against the petitioner and the co-accused-Pardeep were that they were bringing the contraband from Delhi and were travelling in a car bearing registration No.HR10Y-4131. The said car was intercepted by the police and three persons were found present in the said car namely Saurabh @ Channa, i.e. present petitioner, co-accused Pardeep and one Vijay Chaudhry. They were arrested on 21.04.2020 with the allegations that the banned drug was found from the possession of the occupants of the car. The period of 180 days was to expire on 19.10.2020 but, prior to the said date, the prosecution moved an application on 16.10.2020 for extension of time by another 60 days as permissible under the law. Notice of the same was given to the defence and meanwhile the petitioner herein as well as co-accused-Pardeep filed an application for the grant of benefit of default bail on 19.10.2020 on the ground that the period of 180 days had already expired and, therefore, under Section 167(2) of the Cr.P.C, the petitioner and the co-accused Pardeep have become entitled for the grant of benefit of default bail. Learned trial Court decided both the applications on 20.10.2020 i.e. one filed by the Investigating Agency for extension of time to complete investigation as well as the application filed by the accused for the grant of default bail. The application filed by the prosecution for extension of time was accepted and the time was extended by another period of 60 days whereas, application filed by the accused for the grant of default bail was dismissed on the

ground that as the investigating Agency has already been granted extension of time, benefit of default bail is not available to the accused.

Orders dated 20.10.2020 passed by the Additional Sessions Judge, Fatehabad were challenged by the co-accused Pardeep by filing CRR No.1334-2020 to submit that extension of time by the trial Court, keeping in view the reasons given in the application by the Investigating Agency is not at all warranted and therefore, consequent rejection of the prayer of the accused for the grant of default bail by the trial Court vide order dated 20.10.2020 is also against the law. The said revision petition, wherein both the orders dated 20.10.2020 passed by the trial Court were challenged by the co-accused Pardeep, was allowed by a Coordinate Bench of this Court vide order dated 17.08.2021, wherein a Coordinate Bench has come to the conclusion that the extension of time to the Investigating Agency by the trial Court vide order dated 20.10.2020 was not at all warranted in the facts and circumstances of this case and, hence, order granting extension of time to the investigating Agency is not as per law and the said was set aside and consequently, as the co-accused, Pardeep had filed an application for the grant of benefit of default bail as challan had not been submitted by the Investigating Agency within the time frame required, the said prayer was allowed. Relevant para of the order is as under:-

“Having considered the respective arguments of the counsel for the parties, this Court is of the view that the revision petition deserves to be and the impugned orders deserves to be set aside.

Hon’ble Supreme Court in ***Sanjay Kumar Kedia*** (Supra) has held as under:

“10. The maximum period of 90 days fixed under

Section 167 (2) of the Code has been increased to 180 days for several categories of offences under the Act but the proviso authorizes a yet further period of detention which may in total go upto one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are : (1) a report of the public prosecutor, (2) which indicates the progress of the investigation, and (3) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and (4) after notice to the accused.”

In the back drop of the above observations of the Hon’ble Supreme Court, the application filed by the Investigating Agency (Annexure P-1), which was forwarded to the Court by the Public Prosecutor, deserves to be noticed and is reproduced as under:-

“It is humbly submitted that in the above said FIR the accused Vijay Choudhary who is constable in the Uttar Pradesh Police, his posting, verification is pending, accused Pardeep and Vijay Choudhary both were in police uniform. Verification of the uniform of the accused a pending. Apart from that the car swift Dezire number HR-10Y-4131 his RC and verification from registering authority is pending. In FIR investigation is pending therefore it is humbly request before this Hon'ble Court that time for conducting the investigation in the FIR may kindly be given.”

From a perusal of the application and affidavit filed by the respondent-State, there is nothing to show that the application (Annexure P- 1) was accompanied by a report of the Public Prosecutor indicating the progress of the investigation and specifying the compelling reasons for seeking the detention of the accused beyond the period permitted under Section 167

of the Code. Mere forwarding of the application by the Public Prosecutor without application of mind, will not satisfy the statutory requirement. A Public Prosecutor is required to apply his mind to the material placed before him by the Investigating Officer and submit a report to the Court mentioning progress of investigation and specific and compelling reasons seeking detention of accused beyond 180 days. However, this is lacking in the present case. Even if an objection regarding non-compliance of Section 36-A(4) has not been raised by the accused in reply to the application seeking extension of time or the fact that this aspect was not argued before the Special Court, is immaterial as the fulfillment of these conditions is a mandate of the statute and it is for the Court to ensure that the statutory requirement is satisfied before extension of time is granted. Still further, it may be noticed, though merely for the purposes of the rejection, the argument raised by the State counsel that the challan has now been presented. The mere presentation of the challan after the accused had exercised his right to seek compulsive bail will not defeat the indefeasible right of the accused, which vests in him on the failure of the prosecution to file the challan/police report within the time frame permitted under the Cr.P.C.

For the reasons recorded above, the impugned orders dated 20.10.2020 and 22.10.2020 are set aside. The accused-petitioner, namely, Pardeep S/o Mange Ram is entitled to be released on default bail on his furnishing heavy bail/surety bonds to the satisfaction of the trial Court. The petitioner shall also furnish an undertaking to the effect that he shall appear before the trial Court on each and every date when his presence is required and he shall intimate his mobile number as well as his residential address to the SHO of the Police Station concerned.

Petition is allowed.”

There is no difference in the facts and circumstances of the present case as it is conceded by the learned State counsel that the petitioner herein already filed an application for the grant of benefit of default bail on 19.10.2021 and the order dated 20.10.2020 of the trial Court granting extension of time to the Investigating Agency for completing the investigation has already been set aside by a Coordinate Bench of this Court vide order dated 17.08.2021. That being so, on the ground of parity, the claim of the petitioner is covered by the said decision of a Coordinate Bench of this Court passed in the case of co-accused Pardeep. Hence, the present petitions are allowed.

Order dated 20.10.2020 passed by the Additional Sessions Judge, Fatehabad declining the benefit of default bail to the petitioner is set aside and the petitioner is extended the benefit of default bail as extended to the co-accused Pardeep by a Coordinate Bench of this Court dated 17.08.2021 passed in CRR-1334-2020. As the order dated 20.10.2020 passed by the Additional Sessions Judge, Fatehabad by which, the prayer of the Investigating Agency for extension of time for completing the investigation already stands quashed by a Coordinate Bench of this Court vide order dated 17.08.2021, no further order for setting aside the same needs to be passed in the present proceeding again.

Keeping in view the above, the petitioner namely Saurabh @ Channa is directed to be released on default bail to the satisfaction of the trial Court/Illaqa Magistrate.

**CRM-35601-2021 in CRR-1291-2021 &
CRM-37488-2021 in CRR-1386-2021**

In view of the order passed in the main criminal revisions petitions, the present applications stand disposed of .

November 17, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

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