

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1334-2020

DATE OF DECISION:- 17.08.2021

PARDEEP

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Amit Choudhary, Advocate
for the petitioner.

Mr. Kuldeep Tiwari, Additional Advocate General, Haryana for
the respondent-State.

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SUVIR SEHGAL, J.

The hearing of the petition has been taken up through video
conferencing on account of outbreak of Covid-19 Pandemic.

Instant Revision Petition has been filed under Section 401 of the
Code of Criminal Procedure (for short "the Cr.P.C.") assailing orders dated
20.10.2020 and 22.10.2020 passed by the Additional Sessions Judge,
Fatehabad, whereby application for extension of time for submission of
challan filed by the Investigating Agency and an application seeking default
bail filed by the accused-petitioner, have been dismissed.

As per the prosecution case, on the basis of secret information, a
Swift car with three occupants was intercepted. Upon enquiry, the
occupants of the front seats, who were in police uniforms, disclosed their
names as Pardeep (present petitioner) and Vijay Chaudhary, claiming to be

posted as a Constable with Uttar Pradesh police and occupant of rear seat was a young boy, named, Saurab @ Channa. The vehicle was searched and 938 grams of heroin and a carbine were recovered. FIR No.169 dated 21.04.2020 was registered for offences under Section 25 of Arms Act, 1959, Sections 188 and 269 of the Indian Penal Code, 1860 and Section 21(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), at Police Station, City Tohana, District Fatehabad. The accused were arrested at the spot. In terms of the provisions of Section 167(2) of Cr.P.C. read with Section 36-A(4) of NDPS Act, the period prescribed for presentation of the challan by the Investigating Agency was available upto 19.10.2020. SHO, Crime Investigation, Tohana filed an application on 16.10.2020 (Annexure P-1) seeking extension of time, which after notice to the accused and his reply dated 20.10.2020 (Annexure P-2), was declined vide impugned order dated 20.10.2020. On the same date, an application seeking compulsive bail (Annexure P-3) was submitted by the petitioner, which was dismissed, vide impugned order dated 22.10.2020 by the learned Additional Sessions Judge, Fatehabad.

Counsel for the petitioner has contended that the application seeking extension of time did not meet the mandatory requirement of Section 36-A(4) of the NDPS Act and as the same having been accepted violation thereof, the petitioner was entitled to be released on account of the default of the prosecution in presenting the police report within the permissible time. He has placed reliance upon the judgment of the Hon’ble Supreme Court in *Sanjay Kumar Kedia @ Sanjay Kedia Versus*

Intelligence Officer, Narcotic Control Bureau and another 2009 (17) SCC 631, which has been followed by the High Court of Bombay in *Nayantara Gupta Versus The State of Maharashtra*, decided on 10.08.2020 (Annexure P-4). On the other hand, State counsel has referred to the reply filed by way of affidavit of Deputy Superintendent of Police, Tohana and submitted that the explanation for seeking extension has been given in the application in as much as the two persons travelling in the car were employed as Constables with the Uttar Pradesh Police and verification of their appointment and of the Registration Certificate of the vehicle was yet to be done and the investigation was pending. Still further, he submits that the challan has now been presented on 14.12.2020 on completion of the investigation, therefore, the right to seek default bail stands extinguished.

Having considered the respective arguments of the counsel for the parties, this Court is of the view that the revision petition deserves to be allowed 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.

(SUVIR SEHGAL)
JUDGE

17.08.2021
Pardeep

Whether speaking/ reasoned	Yes
Whether Reportable	Yes