

CRM-M-5704-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5704-2021
Reserved on: 22.08.2022
Pronounced on: 20.09.2022

State of Haryana ...Petitioner

Versus

Gora Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rajat Gautam, DAG, Haryana
for the petitioner.

Mr. Naresh Kumar Ganga, Advocate
for the respondent.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
66	25.04.2020	Odhan, Distt. Sirsa	22(c)/61/85 of NDPS Act and 188 IPC

1. Seeking cancellation of bail granted to the accused in the FIR captioned above, the State has come up before this Court under Section 439(2) of Code of Criminal Procedure, 1973 (CrPC).

2. Vide order dated 12.11.2020, trial court had granted bail to the accused and observed as under:-

“After hearing learned counsel for the petitioner as well as learned State counsel, this Court finds that the case of the petitioner is squarely covered by the Division Bench of Hon’ble Punjab and Haryana High Court in case *Ajit Singh @ Jeeta’s case* (supra), as the petitioner is in custody since 25.4.2020. As alleged, the petitioner was found in possession of commercial quantity of contraband measuring 805.67 grams. As per Section 167 CrPC read with Section 36 of NDPS Act, investigating agency was expected to file its report within 180 days. Although, the investigating agency filed its report on 10.07.2020 but the same is without FSL report. A Report under Section 173 CrPC without FSL is treated as no report as cognizance can not be taken on such report.”

3. The State seeks the bail’s cancellation primarily relying the judgement passed by Supreme Court in *Abdul Azeez P.V. v. NIA*, (SC) 2015 (1) RCR (Criminal) 239, decided on 14.11.2014; and *Narendra Kumar Amin v. CBI*, 2015 (1) R.C.R. (Criminal) 566, decided on 15.1.2015; and also, a couple of judgments passed by this court.

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4. In Abdul Azeez P.V. v. NIA, SLP (Criminal) 7733 of 2014, decided on 14.11.2014, a two-judge bench of Supreme Court holds,

[3]. The petitioners filed Criminal M.C. No. 100 of 2013 on 22.10.2013 before the learned Special Court, NIA Cases submitting that they were entitled to get statutory bail under section 167(2) of the Code of Criminal Procedure (for short " Cr.P.C.") inasmuch as the investigating agency had failed to file the final report within 180 days. It was further submitted that the bank account details and mobile phone call details of the petitioners, as stated in the charge-sheet itself, were yet to be verified and that the charge-sheet filed on 19.10.2013 was not a final report as contemplated under Section 173(2) Cr.P.C. The submissions were negated by the learned Special Court by its order dated 04.11.2013 holding that the petitioners were not entitled to statutory bail under Section 167(2) Cr.P.C., which view was challenged by filing Criminal Appeal No. 1711 of 2013 in the High Court of Kerala at Ernakulam. The High Court went through paragraph Nos. 17.1., 17.2, 17.3 and 17.8 of the charge-sheet and found that the materials so disclosed and adverted to in the charge-sheet did show that it was a final report. The High Court, thus, dismissed the appeal. The present special leave petition has been filed to challenge the view taken by the High Court.

[4]. Having gone through the charge-sheet, we are not persuaded to take a different view. The materials adverted to show that it was a final report on the facets investigated into by the investigating agency. Furthermore, the requisite sanctions as required under Sections 18 and 18A of the UAPA and so also under Section 7 of the Explosive Substances Act were also accorded by the concerned authorities. The charge-sheet so filed before the learned Special Court was complete in all respects so as to enable the learned Special Court to take cognizance in the matter. Merely because certain facets of the matter called for further investigation it does not deem such report anything other than a final report. In our opinion Section 167(2) of Cr.P.C. stood fully complied with and as such the petitioners are not entitled to statutory bail under Section 167(2) of Cr.P.C.

5. In Narendra Kumar Amin v. CBI, supra, Hon'ble Supreme Court holds as follows:

[14]. With reference to the aforesaid rival legal contentions we have examined the impugned order to find out the correctness of the findings and reasons recorded keeping in view the statutory provisions under Section 173 (2) and (5) read with Section 2 (r) of Cr.P.C. and with reference to the judgments on which both the learned senior counsel placed reliance upon. In our considered view, it is an undisputed fact that the charge sheet was filed on 3.7.2013 that is 90th day. Section 2 (r) of Cr.P.C. defines the expression "police report" as a report forwarded by a police officer to a magistrate under Section 173 (2) of Cr.P.C. The particulars to be furnished in the police report which are extracted as above are complied with in the instant case. Therefore, filing of the police report as required under Section 173 (2) is within 90 days in the instant case.

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[15]. The High Court while dealing with this aspect has carefully considered the aforesaid relevant aspects of the case and stated its reasons at para 10.1 which reads thus:

"10.1 From the above, it was seen that the contents of the charge-sheet set-out in its prefatory details, showed the revelations in the investigation. The Investigating Officer mentioned the role played by the accused persons. The Investigating Officer opined on the basis of the material collected by him during the investigation that the prima-facie commission of offence in his view was made out. It was evidently clear that the charge sheet as presented incorporated all the necessary details required under Section 173 (2) including that whether offence was committed and by whom, which was in terms of clause (d) of Section 173 (2) What is described as bare and empty format, in fact disclosed the contents necessary in law to be mentioned. It could not be viewed as a format hollow in its contents not to enable the Magistrate to take the cognizance."

Therefore, the High Court is right in rejecting the prayer of default bail under Section 167 (2) of Cr.P.C. Upon the filing of the police report, cognizance was taken by the learned ACJM on 3.7.2013 which is evident from the order passed by him which is extracted above. It is pertinent to point out that the said order remains unchallenged by the appellant. Therefore, it is not open for him to turn around and contend that cognizance was not taken by the learned ACJM on 3.7.2013. On this count, the contentions urged by the learned senior counsel Mr. Ram Jethmalani appearing for the appellant are wholly untenable and liable to be rejected.

[16]. The observation made at para 76 of the constitution Bench judgment of this Court in the case of K. Veeraswamy (supra) that the report is complete if it is accompanied by all documents and statement of witnesses as required under Section 173 (5) of Cr.P.C. cannot be construed as the statement of law, since it was not made in the context of the police report under Section 2 (r) read with Section 173 (2) (5) and (8) of Cr.P.C. On the contrary, the three Judge Bench of this Court in the decision in **Central Bureau of Investigation v. R.S. Pai's case** (supra), after referring to the earlier judgment of the coordinate Bench in Narayan Rao's case (supra) categorically held that the word "shall" used in sub-Section (5) cannot be interpreted as mandatory, but directory. The said statement of law is made after considering the provisions of Section 2(r) read with Section 173 (5) and (8) of Cr.P.C. Therefore, filing of police report containing the particulars as mentioned under Section 173 (2) amounted to completion of filing of the report before the learned ACJM, cognizance is taken and registered the same. The contention of the appellant that the police report filed in this case is not as per the legal requirement under Section 173 (2) & (5) of Cr.P.C. which entitled him for default bail is rightly rejected by the High Court and does not call for any interference by this Court.

6. A reading of the above judgments reveals that the Hon'ble Supreme Court was not dealing with the proposition that if the police report filed under section 173 CrPC does not contain the report of the laboratory which after testing the substance defines it, and later on, the prosecution demonstrates that such substance falls in the category

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of a prohibited substance mentioned in the Narcotics Drugs and Psychotropic Substances act, 1985; still the challan would be treated as complete, which resultantly would defeat the accused's right of a statutory default bail under section 167 (II) of the code of Criminal Procedure, 1973.

7. In Ajit Singh v. State of Punjab, CRR-4659-2015, decided on 30.11.2018, a division bench of this court, while answering the reference, holds,

[2]. We have been called upon to answer the question set out below:-

"Whether the presentation of report under Section 173(2) Cr.P.C., 1973 by the police without the report of Chemical examiner/Forensic Science Laboratory amounts to incomplete challan and in the absence of any extension of time under Section 36-A(4) of the N.D.P.S. Act, the accused is entitled to bail under Section 167(2) Cr.P.C., 1973 ?"

[27]. It is for this reason that we would unhesitatingly conclude that the Chemical Examiner's report is an essential ; integral and inherent part of the investigation under the N.D.P.S. Act as it would lay the foundation of an accused's culpability without which a Magistrate would not be enabled to form an opinion and take cognizance of the accused's involvement in the commission of offence under the Act.

8. Thus, there is no illegality in the impugned judgment. Given above, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, no grounds exist to cancel the bail.

9. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

Petition dismissed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

20.09.2022
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Whether speaking/reasoned: Yes
Whether reportable: **NO**