

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227-A

CRR-507 of 2021 (O&M)
Date of Decision: 07.12.2022

Rajender

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Mr. S. K. Dagar, DAG, Haryana

JASGURPREET SINGH PURI, J. (Oral)

The present revision petition has been filed challenging the orders 08.03.2021 and 17.03.2021 passed by the learned Addl. Sessions Judge, Fatehabad. Vide order dated 08.03.2021 the application filed by the police for extension of time for submitting the challan under Section 173 of the Code of Criminal Procedure was allowed after taking report from the learned Public Prosecutor on the ground that the FSL report had not been received. Thereafter, vide order dated 17.03.2021 the learned Addl. Sessions Judge dismissed the application of the petitioner under Section 167 (2) of the Code of Criminal Procedure for grant of default bail on the ground that the time has already been extended vide order dated 08.03.2021. The factual matrix of the present case for

the purpose of considering the prayer of the petitioner is as under:-

The petitioner was arrested on 12.09.2020 and he was produced before the Court 13.09.2020, the period of 180 days expired on 12.03.2021 since it was a case of a commercial quantity under the NDPS Act. Before expiry of the aforesaid period of 180 days, the SHO moved an application for grant of extension of time of 180 days on the ground that the FSL report was not received.

The learned Addl. Sessions Judge noted in its impugned order dated 08.03.2021 that the learned Public Prosecutor has submitted his report and mentioned regarding the progress of the investigation and specific reason for the detention of the accused persons beyond the period of 180 days in his report which shows that FSL report has not been prepared. Therefore, while allowing the application for grant of extension beyond the period of 180 days two months more time was granted to the investigating agency to submit final report under Section 173 of the Code of Criminal Procedure. Thereafter, on 17.03.2021 the application which was moved by the petitioner for grant of default bail under Section 167 (2) of the Code of Criminal Procedure was declined since the period of 180 days already stood extended for another period of two months vide order dated 08.03.2021.

Learned counsel for the petitioner has submitted that it is a case where the application was submitted by the SHO, Police Station Tohana on 08.03.2021 itself which is attached with the present petition at page No.12 and on the same date, i.e. 08.03.2021 the learned Addl. Sessions Judge allowed the application by mentioning that the report has been obtained from the learned Public Prosecutor but no notice was given to the petitioner and on the same day the application was

allowed. He submitted that a perusal of the order would show that the petitioner was never given any notice in this regard for the purpose of considering the extension of time and he submitted that although there is no specific provision under Section 36-A of the NDPS Act but the aforesaid order dated 08.03.2021 whereby the extension was granted without giving notice to the accused was contrary to the law laid down by the Hon'ble Supreme Court in **Sanjay Kumar Kedia @ Sanjay Kedia versus Intelligence Officer, Narcotic Control Bureau and another** 2009 (17) SCC 631. He submitted that the Hon'ble Supreme Court while referring to the earlier judgments had observed that notice to the accused was also required which is also a condition for extension of time. He also referred to two judgments of a co-ordinate Bench of this Court in **Gurpyar Singh @ Toti versus State of Haryana** (CRR-65-2021, date of decision 18.11.2021) and **Devender Singh @ Foji versus State of Haryana** (CRR-741-2021, date of decision 18.11.2021) wherein while relying upon the aforesaid judgment of the Hon'ble Supreme Court in ***Sanjay Kumar Kedia*** (supra) the default bail was granted under Section 167(2) of the Code of Criminal Procedure and has submitted that both the orders dated 08.03.2021 and 17.03.2021 are liable to be set aside and the petitioner is entitled for the grant of default bail which is his statutory right.

On the other hand, Mr. S. K. Dagar, learned DAG, Haryana has stated that it is correct that on 08.03.2021 the SHO had moved an application before the learned Addl. Sessions Judge and on the same date the period was extended for another period of two months after seeking report of the Public Prosecutor but no notice was given to the petitioner. The factual position with regard to non giving of notice has not been disputed by him. He has however argued that there is no

express provision under Section 36-A of the NDPS Act in this regard.

I have heard the learned counsel for the parties.

From the facts as stated by the learned counsel for the parties, it is undisputed that the SHO moved an application on 08.03.2021 before the expiry of period of 180 days and the learned Addl. Sessions Judge on the same date sought report from the learned Public Prosecutor and on the same date allowed the application for grant of extension of time for a further period of two months but without giving any notice to the petitioner in this regard. The petitioner as of now being in custody for about two years and two months. The Hon'ble Supreme Court in ***Sanjay Kumar Kedia*** (supra) observed that the condition of giving notice to the accused has to be satisfied. Paragraph 10 of the aforesaid judgment is reproduced 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 ***Gurpyar Singh @ Toti versus State of Haryana*** and ***Devender Singh @ Foji versus State of Haryana*** (both supra), the co-ordinate Bench of this Court has also relied upon the judgment of the Hon'ble Supreme Court in ***Sanjay***

Kumar Kedia (supra) and granted bail under Section 167 (2) of the Code of Criminal Procedure. It is the freedom of the person which is involved in the present case whereby he has faced incarceration for more than two years. The learned Addl. Sessions Judge while dismissing the application for grant of default bail although referred to the aforesaid judgment in *Sanjay Kumar Kedia* (supra) but has not followed the judgment in true perspective.

In view of the aforesaid facts and circumstances, this Court is of the view that the present petition deserves to succeed and consequently the orders dated 08.03.2021 and 17.03.2021 are set aside being perverse and contrary to the law laid down by the Hon'ble Supreme Court in *Sanjay Kumar Kedia* (supra).

Consequently, the present revision petition is allowed and the petitioner shall be released on default bail under Section 167(2) of the Code of Criminal Procedure subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

(JASGURPREET SINGH PURI)
JUDGE

December 07, 2022

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