

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-616-2021 (O&M)
Date of Decision:-18.10.2022

Harjinder @ Gora

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. Impender Singh Dhaliwal, Advocate
for the applicant/petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

KARAMJIT SINGH, J.

The present revision petition has been filed by the petitioner/accused challenging the order dated 19.3.2021 whereby time to present the challan was extended and the order dated 29.03.2021 passed by the Trial Court whereby the application filed by the petitioner for grant of default bail under Section 167(2) CrPC in a criminal case having FIR No.216 dated 22.09.2020 under Sections 22(c), 27A/61/85 NDPS Act Police Station Tohana District Fatehabad has been dismissed.

The counsel for the petitioner has submitted that in the aforesaid criminal case the petitioner was arrested on 22.09.2020 and as per the allegations appearing on record commercial quantity of medical intoxicants were recovered from his possession. The counsel for the petitioner has further contended that the petitioner was produced before the court concerned on 23.09.2020 and the Court sent him to judicial custody. The counsel for the petitioner further contended that in the present case, the investigation was to be completed within 180 days and the said period expired on 22.03.2021. The counsel for the petitioner further contended that the police failed to present the challan against the petitioner till 22.03.2021 and in the meantime an application (Annexure P-1) was moved by the incharge of the concerned police post under Section 36A of NDPS Act on 19.03.2021 seeking extension of time for presentation of challan on the ground that the report of FSL was still awaited. The counsel for the petitioner further contended that the aforesaid application (Annexure P-1) was simply forwarded by the concerned public prosecutor, but was not supported by the report of public prosecutor indicating the progress of investigation. The counsel for the petitioner has further contended that the said application moved under Section 36A NDPS Act was allowed by the trial Court vide order dated 19.03.2021, without issuing its prior notice to the petitioner/accused and two months more time was granted to the police to submit the challan against the petitioner. The counsel for the petitioner further contended that as no prior notice of the aforesaid application was issued to the petitioner, the order dated 19.03.2021 passed by the learned trial Court whereby the application moved by the prosecution under Section

36A NDPS Act was allowed, is totally illegal being in violation of the law laid down by Hon'ble Supreme Court in *Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau and another* (2009) 17 SCC 631. The counsel for the petitioner further contended that consequently the impugned order dated 29.03.2021 whereby the application filed by the petitioner under Section 167(2) CrPC for grant of default bail was dismissed, is also liable to be set aside being not sustainable under the law.

The present petition is contested by the State counsel who has argued that there is no illegality or perversity in the orders dated 19.03.2021 and 29.03.2021. The State counsel further contended that commercial quantity of contraband was recovered from the possession of petitioner by the police on 22.09.2020 and the petitioner was arrested at the spot and he was remanded to judicial custody by the court concerned on 23.09.2020 and the challan was to be presented within statutory period of 180 days which were going to expire on 22.03.2021. The State counsel further argued that the report of FSL was still awaited and as such it was not possible for the police to present the challan against the petitioner within aforesaid statutory period of 180 days and consequently, the public prosecutor forwarded an application moved by incharge of the concerned police post under Section 36A NDPS Act seeking extension of time for presentation of challan and the same was allowed by the trial Court vide order dated 19.03.2021 and another two months time was given to the investigating agency to submit its final report against the petitioner under Section 173 CrPC. The State counsel further contended that in view of the above the trial Court rightly declined

the prayer made by the petitioner for grant of default bail vide order dated 29.03.2021. The State counsel further urged that the present petition deserves to be dismissed being devoid of merits.

I have considered the submissions made by the counsel for the parties.

The allegations in nutshell are to the effect that petitioner was arrested by the police on 22.09.2020 and commercial quantity of medical intoxicants were recovered from his possession and thereafter, the petitioner was produced before the court concerned on 23.09.2020 and he was sent to judicial custody by the said Court. Both the counsel for the parties have admitted the fact that the investigation was to be completed by the police within 180 days which had expired on 22.03.2021.

Admittedly, the public prosecutor forwarded the application moved by the incharge of the concerned police post dated 19.03.2021 seeking extension of time to file the challan against the petitioner, on the ground that the report of FSL was still awaited. The said application was disposed of by the learned trial Court on the same very day i.e. 19.03.2021 and the copy of said order is available on record. From the perusal of the same, it transpires that the notice of said application was not issued to the petitioner before the same was decided by the trial Court. This fact has not been disputed by the State counsel during the arguments. So it is evident that in the present case the application moved by the prosecution under Section 36A NDPS Act was allowed by the trial Court, at the back of the petitioner. Also in this case the aforesaid application moved by the prosecution was not supported by report of the public prosecutor indicating the progress of investigation.

The Hon'ble Supreme Court in *Sanjay Kumar Kedia @ Sanjay Kedia's case* supra has clearly held that whenever any such application under Section 36A NDPS Act is filed, its notice has to be issued to the accused, before the said application is finally disposed of. Further the Hon'ble Supreme Court has also held that the said application should be supported by the report of public prosecutor, which indicates the progress of investigation.

Adverting back to the facts of present case, the application submitted by the investigating agency under Section 36A of NDPS Act seeking extension of time had cited only one ground i.e. report of chemical examiner having not been furnished.

The record of the present case reveals that order dated 19.03.2021 was passed by the trial Court without complying with the mandatory conditions as provided under Section 36A of NDPS Act and enumerated by the Hon'ble Supreme Court in *Sanjay Kumar Kedia's case* (supra). So the order dated 19.03.2021 passed by the Trial Court deserves to be set aside and thus is quashed.

Admittedly, in this case the investigating agency has failed to file the challan against the petitioner within stipulated period of 180 days and in the meantime the petitioner filed application for grant of default bail under Section 167(2) CrPC. Due to non-filing of challan within statutory period of 180 days, an indefeasible right has accrued for grant of default bail to the petitioner. Consequently, the impugned order dated 29.03.2021 passed by the trial Court cannot be sustained in the eyes of law and is hereby set aside.

Accordingly, the present petition is allowed. The petitioner is ordered to be released on bail subject to his furnishing bail bonds to the satisfaction of trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

18.10.2022

Gaurav Sorot/P.Chawla

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No