

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

CRR-691-2021 (O&M)
Reserved on: 20.07.2022
Date of decision: 27.07.2022

KULDEEP SINGH @ NANNU AND ANOTHER ...Petitioners

Versus

STATE OF HARYANA ...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Amit Choudhary, Advocate
for the petitioners.

Mr. Pradeep Prakash Chahar, DAG, Haryana

SURESHWAR THAKUR, J.

1. The instant petition is directed against the impugned order, as made by the learned Additional and Sessions Judge, Fatehabad, on 27.05.2021, wherethrough, he declined to grant the craved for indulgence of de-fault bail, to the petitioners herein.

2. From the alleged conscious, and, exclusive possession of the petitioners, 15000 tablets of Tramadol Hydrochloride 100 mg. SR Tablets Radol-100 bearing batch no.830820 MFG-08/2020, EXP-01/2022, total weighing 4 kilograms 920 grams, hence became recovered. The weight of the recovered contraband, makes it fall within the ambit of commercial quantity thereof, but yet the investigating officer concerned, had initially presented a purportedly incomplete challan against the accused, before the learned trial Judge concerned, inasmuch as, his not appending therewith, the report of FSL concerned. However, along with the presentation of challan (supra), by the investigating officer concerned, before the learned trial Judge concerned, he also moved an application seeking extension of time for the presentation of the report

of the FSL concerned, and, thereons an affirmative order was pronounced, on 22.03.2021. The above extension of time, as claimed by the investigating officer concerned, did fall within the purview, and, ambit of Section 36A(4) of the NDPS Act, provisions whereof stands extracted hereinafter.

“Section 36A (4) of NDPS Act

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to “ninety days”, where they occur, shall be construed as reference to “one hundred and eighty days”:

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.”

3. The latest judgment, as, made by the Delhi High Court in case titled as '**Mohd. Arbaz Vs State of NCT of Delhi**', **CRL. REV. P.1219/2019** decided on 03.11.2020, does cover the legal conundrum besetting this Court, and, appertaining to whether the above initially filed purportedly deficit challan hence bestowed leverage to the accused, to claim default bail. The hereinafter extracted questions became formulated, for answers being rendered thereons.

“(i) Whether in a case of commission of an offence punishable under the provisions of the NDPS Act, which is founded on recovery of narcotic drugs and/or psychotropic substance, a police report under Section 173(2) of the Cr.PC can be considered as such it it is not accompanied by a Chemical Examiner's Report with regard to the substance recovered, and,;

(ii) Whether an accused would be entitled to bail in default under Section 167(2) of the Cr.PC where his application for such

bail has been filed prior to the submission of the report under Section 173(8) of the Cr.PC but is taken up for consideration simultaneously with the said report being filed.”

4. Amongst the duo of the above formulated questions by the Delhi High Court, for makings of answer(s) thereon, only question No.(i), and, also the rendering of an answer thereon, rather is relevant to the instant case. Since, as above stated, the investigating officer concerned, did not, at the time of his filing a report under Section 173 Cr.P.C., before the learned trial Judge concerned, rather annex there along with, the report of the FSL concerned, but yet was granted leave to complete the investigations, inasmuch as, his collecting, and, appending with a supplementary challan, hence the report of the FSL concerned.

5. Be that as it may, since the offence in the petition FIR, and, as constituted against the petitioners, is the one embodied in Section 27A of the NDPS Act, thereupon the above statutory provision, falls within the purview, and, ambit of sub-Section 4 of 36A of NDPS Act, and, also made it incumbent, upon the investigating officer concerned, to within 180 days from the registration of the FIR, to hence present a report before the learned trial Judge concerned. However, the proviso thereunderneath also empowers the jurisdictionally empowered Court to, if on good, and, valid grounds, the investigations into the petition offences, are incomplete, and, thereupon, the investigating officer concerned, becoming precluded, to file a challan, before the learned trial Judge concerned, to hence proceed, to seek from the jurisdictionally empowered Court, an extension in respect thereof, but only upto a period of one year, rather reckonable from the date of commencement of the investigations. The granting of extension of time, on the prosecutor's application, though was required to be made only with a prior notice qua the prosecutor's application

being served upon the accused, but yet if prior to the leave for extension being granted by the learned trial Judge concerned, no notice upon the prosecutor's application became served, upon the accused, thereupon, if so, breach was made to the expostulations of law, as cast in case titled as '**Sanjay Kumar Kedia @ Sanjay Kedia V. Intelligence Officer, Narcotic Control Bureau and another**', decided on 20.08.2009, whereto Criminal Appeal Nos.2008-2009 of 2000, becomes assigned, wherein in paragraph 10 thereof, which becomes extracted hereinafter, a mandate is cast qua the necessity of serving of a prior notice, to the accused, upon, the prosecutor's application seeking extension of time.

“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 after notice to the accused.”*

6. Nonetheless, for the reasons to be assigned hereinafter, the above flaw hence ingraining the impugned order granting extension of time upon the prosecutor's application, as cast, within the contours of the proviso underneath sub-Section 4 of Section 36A of NDPS Act, rather does not yet entitle the present bail petitioners for theirs becoming admitted to default bail.

7. Though, not only the investigating officer concerned, was statutorily obliged to within 90 days from date of initiation of the investigations, to complete them, through his presenting a report under Section 173 of Cr.P.C., before the learned trial Judge concerned, for hence his ensuring the assumptions

of valid jurisdictions, and, also the takings of valid cognizance(s) thereons, against the accused rather by the jurisdictionally empowered Court, but was *prima-facie* also required to be filing a complete report, inasmuch as, his appending therewith the report of the FSL concerned, stuff inside with candid echoings therein qua the examined stuff inside sample parcels carrying therein hence the prohibited ingredient. In coming to the above conclusion, this Court derives strength, from the answer meted, by the Delhi High Court in verdict (supra), to the above formulated question, especially when the above formulated relevant question, became answered against the prosecution, besides was made dependent, on a verdict drawn by this Court in case titled as '**Ajit Singh alias Jeeta and another V. State of Punjab**' **Criminal Revision No.4659 of 2015**, decided on 30.11.2018, wherein, this Court had expostulated qua there there being an imperative essentiality qua the report of the Chemical Examiner, becoming appended with the investigating officer's report, filed under Section 173 of Cr.P.C., and, had also expostulated therein, qua for want of its becoming affixed or appended hence with the report under Section 173 Cr.P.C., it would make the challan to become construable, to be an incomplete challan, and, the concomitant effect thereof being that, the learned trial Judge concerned, would become dis-empowered, to either take cognizance or assume jurisdictions qua the FIR concerned, and, obviously also was dis-empowered to enter, upon trial against the accused, in respect of the petition offences concerned. Resultantly, the accused would become entitled to claim the benefit of default bail.

8. However, the mandate as recorded by the Delhi High Court in case (supra), and, appertaining to the necessity of the investigating officer concerned, appending, the Chemical Examiner's report along with his report filed, under Section 173 of Cr.P.C., before the learned trial Judge concerned, is yet *subjudice*

before the Hon'ble Apex Court, as the above verdict has been appealed before the Hon'ble Apex Court, and, thereupon, at this stage, upto the above meted answer by the Delhi High Court in verdict (supra), qua question No.(i) (supra) does not acquire any binding, and, conclusive effect, upon, it becoming affirmed, by the Hon'ble Apex Court, and/or, if yet the above question remains yet open for an conclusive answer becoming meted thereto, by the Hon'ble Apex Court, thereupon the above expostulations of law are rather to be construed to be yet *res integra*.

9. Be that as it may, in so far as the factual strata, appertaining to the revisionist's claim for default bail is concerned, and, which becomes espoused to be their indefeasible, and, legally enforceable right, and, which they contend to arise from, not only the initial challan being purportedly defective, inasmuch as, therewith remaining unappended hence the report of the FSL, besides becomes rested, upon a purportedly invalid extension of time being granted, on the prosecutor's apposite application, inasmuch as prior thereto, no notice being served, upon the petitioners, despite the above necessity becoming expostulated in Kedia's case (supra), to be rather a dire necessity, hence for validating an order, made within the ambit of the proviso to sub-Section 4 of 36A of the NDPS Act.

10. Therefore, the validity of the above submission(s) also requires being tested, and, also determined.

11. The prime reason for declining the above submission, though become well rested, upon the decision made by the Hon'ble Supreme Court in Kedia's case (supra), but since the order of extension of time, as made by the learned trial Judge concerned, upon the learned Public Prosecutor's application has not been challenged and, nor exist on record. Therefore, for want of any

challenge being cast thereto thereupon the above order, if made, cannot become interfered with or nor it can become quashed, and, set aside.

12. Furthermore, since the investigations commenced on 30.09.2020, and, when within the ambit of the proviso, the investigating officer concerned, could *prima-facie*, upto an year therefrom hence ending on 30.09.2021, file a supplementary challan, and, append therewith a report of the FSL, which however he has not done.

13. However, the *proviso* underneath sub-Section 4 of Section 36A of NDPS Act, as becomes extracted hereinabove, though does empower the jurisdictionally competent Court, to extend upto a period of one year, hence time for completing, the investigations, if within, the domain of the apposite substantive provision(s), the investigating officer concerned, rather for valid, and, weighty reasons, becomes evidently disabled to complete them, within 180 days, since the opening of investigations.

14. Be that as it may, yet irrespective of the extension of time, as become invalidly granted by the learned trial Judge concerned, to the investigating officer concerned, to beyond the period of 180 days, hence complete the investigations, which earlier, were not completed, rather given the non receivings by him, of the report of the FSL concerned. Though, in respect of the above purported deficit report, rather the view as taken by the Delhi High Court in verdict (*supra*), inasmuch as it, construing the above deficit report, to completely disable the learned trial Judge concerned, to assume valid jurisdiction, and, cognizance, and/or, to enter upon trial in respect of the petition offences, rather conspicuously becomes the fine rubric for determining the claim for default bail, as, made by the petitioners. However, the above verdict has been appealed, before the Hon'ble Apex Court, and, therefore, the answer meted by

the Delhi High Court in verdict (*supra*), to the formulated relevant question of law, and, appertaining to the investigations being complete, only when with the apposite report rather the report of the FSL concerned, also becoming appended, does obviously, is neither conclusive nor binding, as, the answer meted thereto is yet *res intergra*. Therefore, in consequence, the legal effect thereof is that, the legal conundrum, qua the initially preferred report of the investigating officer concerned, being purportedly defective, on account of hence therewith not becoming appended the report of the SFL, cannot at this stage become construable, to be *prima-facie*, vitiated, and, nor it can be conclusively stated, that the learned trial Judge concerned, is hence completely disabled to enter upon the trial against the accused.

15. Be that as it may, since the Hon'ble Apex Court, has in the orders made on SLP Nos.8164-8166/2021, as arose from the verdict of the Delhi High Court, orders whereof become extracted hereinafter, rather has not yet affirmed the view taken by Delhi High Court, in the verdict (*supra*), but has bearing in mind, the length of the judicial incarceration, of the accused therein, accorded them, the indulgence of ad-interim bail, lasting for a period of 3 months, but subject to the terms, and, conditions as may become imposed, upon them, by the learned trial Court concerned. Therefore, though the custody of the petitioners herein is only for about 1 year 10 months, and, is not of a length co-equal, to the length of the custody of the accused, in the orders made by the Hon'ble Apex Court in SLP (*supra*), and, though *prima-facie*, the petitioners may not become entitled to become treated at par with the accused in the orders, made by the Hon'ble Apex Court in SLP (*supra*). However, in the larger interests of justice, this Court proceeds to yet accord to an them alike treatment, with the accused,

before the Hon'ble Apex Court, and, in respect whereof orders were made by the Hon'ble Apex Court in SLP (supra).

“xxx UPON hearing the counsel the Court made the following

O R D E R

The Court is convened through Video Conferencing.

SLP(CrL.)No(s).8164-8166/2021

The main relief sought by the petitioners in these petitions is that they are entitled to bail in default on account of the fact that the investigating agency has failed to file a police report under Section 173(2) of the Cr.P.C. within the stipulated period of one hundred and eighty days. Although, it is not disputed that a report was filed within the stipulated period, the petitioners contend that the said report was incomplete as it was not accompanied by the report of the Chemical Examiner.

Heard learned counsel for the parties and carefully perused the material placed on record.

Taking into consideration the fact that the petitioners have suffered incarceration for a period of more than 2 years and 11 months, we are inclined to grant interim bail to them for a period of three months from today subject to the terms and conditions to be imposed by the trial court.

The petitioners are, accordingly, directed to be enlarged on interim bail for a period of three months from today subject to the terms and conditions to be imposed by the trial court.

List these matters on 08.02.2022 for final disposal.

SLP(CrL) No. 8718/2021

The relief sought by the petitioner in this petition is that he is entitled for default bail as the complete and final challan has not been filed within 180 days and the final report was not accompanied with an FSL Report.

Heard learned counsel for the parties and carefully perused the material placed on record.

Taking into consideration the fact that the petitioner has suffered incarceration for a period of more than 1 year and 4 months, we are inclined to grant interim bail to the petitioner for a

period of three months from today subject to the terms and conditions to be imposed by the trial court.

The petitioner is, accordingly, directed to be enlarged on interim bail for a period of three months from today subject to the terms and conditions to be imposed by the trial court.

List the matter on 08.02.2022 for final disposal.

SLP(Crl) Nos. 8496-8497/2021

Heard learned counsel for the parties and carefully perused the record.

List these matters on 08.02.2022 for final disposal.”

16. In consequence, the petitioners are admitted to interim bail, for a period of 3 months, but subject to such terms and, conditions as may become imposed, upon them, by the learned trial Judge concerned.
17. Disposed of with above observations.
18. Pending miscellaneous application(s), if any, stand(s), disposed of.

27.07.2022

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**(SURESHWAR THAKUR)
JUDGE**

Whether speaking/reasoned:-	Yes/No
<i>Whether reportable:</i>	<i>Yes/No</i>