

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

CRR-1412-2022

Reserved on: 20.07.2022

Date of decision: 27.07.2022

SANDEEP KAUR ALIAS SHIPA

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Kuldeep Singh Siwach, Advocate
for the petitioner.

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 24.06.2022, wherethrough, he declined to grant the craved for indulgence of de-fault bail, to the petitioner herein.
2. FIR No.112 of 08.04.2022, registered at Police Station City Ratia, District Fatehabad, constitutes an offence embodied under Section 21(b) of the NDPS Act.
3. At the crime site, from the alleged conscious, and, exclusive possession of one Sandeep Kaur, recovery of 65 grams of heroin, became effected, on 08.04.2022. The weight of the above seizure makes it fall within the ambit of non-commercial quantity thereof, and, though the rigors of Section 37 of NDPS Act are not applicable thereons, and, in sequel though the present petitioner becomes entitled to hers becoming admitted to anticipatory or regular bail, but yet she filed the instant application, before the learned Special Judge concerned.

4. For determining the validity of the order (supra), as made by the learned Special Judge concerned, it becomes incumbent to extract, the mandate, as embodied in Section 36A(4) of the NDPS Act, provisions whereof stand extracted hereinafter. The hereafter extracted mandate, makes it incumbent, upon the investigating officer concerned, to within a period of 180 days, since the initiation of the investigations, rather complete them, through his filing a report under Section 173 of Cr.P.C., before the learned Special Judge concerned.

5. The learned Special Judge concerned, for the purpose(s) of remand police or judicial, is designated to be a Magistrate, and, also becomes fully empowered, to make orders either for police or judicial remand of the accused. Moreover, no commitment to trial of an offender, breaching the provisions of the statute (supra), is required to be made by the Committal Court concerned, to, hence the learned Committed to Court, as the learned Special Judge concerned, under statute (supra), becomes designated a Magistrate, and, concomitantly becomes empowered to make orders for apposite detentions of the accused, and, also becomes empowered, to in the absence of commitment to trial to him of the offender concerned, hence, assume valid jurisdiction, and, cognizance, qua an offence, constituted under the Act.

“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.”

6. 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 make the apposite extensions, but only upto a period of one year, hence reckonable from the date of initiation of investigations. However, the meteing of extensions beyond 180 days, by the jurisdictionally empowered Magistrate, and/or, upto a term lasting only one year, as, commencing from the date of initiation of the investigations, rather is to be founded, upon credible, and, weighty reasons.

7. Nonetheless, in the instant case, except for a bald averment, being made, in the petition that, the investigating officer concerned, despite, not completing the relevant investigations, within the initially ordained period of 180 days, has neither filed a complete challan, inasmuch as, his not appending therewith, the report of the FSL concerned, and, rather his asking for extensions of time, from the jurisdictionally empowered Court, and, which became granted, there occurs on the record, no such application nor any orders, as, made thereons. Conspicuously hence given there being no application in the above regard, on the records of this case, nor there being any order, as became made thereons, therefore, the above made argument is not creditworthy, and, is rejected.

8. As above stated, the initiation of investigations into the petition FIR commenced, on 08.04.2022, and, within the contours of the above extracted provisions, as, embodied in Section 36A(4) of the NDPS Act, the investigating officer concerned, became empowered to, not later than 180 days therefrom, excepting when he asked for an extension rather within the ambit of the proviso there underneath, rather to even without any leave of the Court, hence complete investigations. If so, since in the instant case, the initiation of investigations into

the petition FIR occurred on 08.04.2022, therefore, from the above date, the investigating officer concerned, became empowered to, within 180 days therefrom, complete investigations, and, also file a challan wherewith, he has been argued, to be necessarily appending the report of the FSL concerned, rather for the challan purportedly acquiring the tenor of a complete challan.

9. The above period of 180 days, to be reckonable from 08.04.2022 was to end on 05.10.2022, and, only if on or before 05.10.2022, the investigating officer concerned, had not filed a challan, which he did, but since for submission (supra), rather it was a purportedly defective challan, given his not appending therewith, the report of the FSL concerned, thereupon, the learned counsel for the petitioner, argues that, the petitioner becomes entitled to default bail.

10. Be that as it may, in the instant case, despite the period of 180 days rather not elapsing on 21.06.2022, yet the present petitioner moved an application claiming therein the relief of default bail. The apposite application is completely premature, and, warranted dismissal, as, aptly done.

11. As above stated, the investigating officer concerned, had filed a report, before the learned jurisdictionally empowered Court, hence much prior, to 180 days, elapsing from 08.04.2022, thereupon he was also empowered to without the leave of the Court, through his filing a supplementary challan append therewith, the report of the FSL concerned, but not later than 05.10.2022, which date has not yet reached.

12. The reckonable period of 180 days where within, the investigating officer concerned, can institute a valid report under Section 173 of Cr.P.C., did in the instant case, hence commence on 08.04.2022, and, ended on 05.10.2022.

Therefore, if the relevant period of 180 days, was yet to elapse, and, when yet

the relevant time from 08.04.2020, elapses on 05.10.2022, thereupon when the investigating officer, can still without the leave of the Court, append the report of the FSL concerned, with the supplementary challan, as may become instituted. Thereupon, the present bail petitioner has no valid right to contend that, the initially instituted challan, was purportedly defective, given therewith rather not becoming appended, the report of the FSL, nor can he contend that, any application for extension became filed, and, nor qua thereons any purported dis-affirmative order being made, and, it being purportedly untenable, given it being made without a prior notice being served on the petitioner, and, hence breach being caused to the mandate, as, made by the Hon'ble Apex Court 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.

13. The reason for making the above conclusion, does arise from, the above factum qua no application for extension of time, existing on the records nor any order, as, made thereons also existing on record. Contrarily when as above stated, the period for 180 days commencing from 08.04.2022, has obviously not yet arrived/ended thereupon, the investigating officer concerned, can along with a supplementary challan, append therewith the report of the FSL concerned.

“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.”*

14. Therefore, reiteratedly the institution of the apposite application by the petitioner before the learned Court concerned, was premature, and, was amenable to be dismissed, as aptly done.

15. However, liberty is reserved to the prosecution to, even upto 05.10.2022, where the period of 180 days ends, since the commencement of the investigation, and, within period whereof, a report under Section 173 Cr.P.C., can become validly filed, rather ensure qua the investigating officer concerned, files a complete challan, before the learned trial Judge concerned, but if, at that stage, the above, for pressing credible constraints, rather is not done, thereupon, within the ambit of the proviso underneath sub-Section 4 of Section 36A of NDPS Act, the public prosecutor may file an application for extension being granted, but before granting the apposite extension, upon the prosecutor's application, the learned trial Judge concerned, shall issue a prior notice, upon, the petitioner. However, the order, as may be made by the jurisdictionally empowered Court, upon the public prosecutor's application cast, under the proviso underneath sub-Section 36A of NDPS Act, rather be made, only upon, well founded good, and, credible reasons.

16. In consequence, there is no merit in the petition, and, the same is dismissed, and, the impugned order is upheld, and, maintained.

17. Irrespective of the above since, the weight of the seizure makes it fall within the ambit of non-commercial quantity thereof, thereupon, it is open to the petitioner to through an application cast under Section 439 of Cr.P.C., claim relief for hers, in accordance in law, becoming admitted to regular bail.

(SURESHWAR THAKUR)
JUDGE

27.07.2022

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ITHLESH KUMAR
2022.08.01 10:59
I attest to the accuracy and
authenticity of this order

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No