

223
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-33497-2022
Date of Decision: 23.11.2022

State of Punjab

....Petitioner(s)

Versus

Gursahib Singh

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amit Rana, Senior Deputy Advocate General, Punjab.

Mr. Shivender Pal Singh, Advocate for
Mr. B.S. Bhalla, Advocate, for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439(2) of the Code of Criminal Procedure seeking cancellation of bail granted to the respondent namely Gursahib Singh under Section 167(2) of the Code of Criminal Procedure in FIR No.323 dated 09.11.2020, under Sections 22-C/29 of NDPS Act, registered at Police Station Kathunangal, District Amritsar.

Mr. Amit Rana, learned Senior Deputy Advocate General, Punjab has submitted that the respondent was granted default bail under Section 167(2) of the Code of Criminal Procedure vide Annexure P-1 on 10.05.2021. He submitted that the respondent was arrested on 09.11.2020 under the aforesaid provisions of NDPS Act and the quantity involved in the present case was falling in the category of commercial quantity and the

challan was required to be presented within a period of 180 days as per Section 36A (4) of the NDPS Act. He submitted that since the petitioner was arrested on 09.11.2020, the statutory period of 180 days for presentation of report under Section 173 Cr.P.C was to expire on 08.05.2021 but the bail application was moved by the respondent on 04.05.2021 at about 10.55 a.m. He submitted that on 08.05.2021 and 09.05.2021 no Duty Judge was assigned, even though it was a holiday and the Investigating Officer presented the report before the learned Judicial Magistrate Ist Class, Amritsar on 08.05.2021 wherein even an endorsement was also made by the aforesaid JMIC that the concerned Ahlmad to check and report on 10.05.2021 and in this way, the challan stood presented on 08.05.2021 well within time whereas the bail under Section 167(2) of the Code of Criminal Procedure was granted by the learned Special Judge on 10.05.2021 which could not have been granted since challan was already presented before the Judicial Magistrate Ist Class on 08.05.2021.

On the other hand, Mr. Shivender Pal Singh, Advocate appearing on behalf of Mr. B.S. Bhalla, Advocate, for the respondent has submitted that by way of impugned order the learned Special Judge has rightly granted default bail under Section 167(2) Cr.P.C since the challan was presented before the Special Court on 10.05.2021 which was beyond the period of 180 days and the mere fact that the challan was sent to the learned Judicial Magistrate Ist Class on 08.05.2021 is inconsequential because the learned Magistrate was not even competent to entertain the challan and the filing of report under Section 173 Cr.P.C under the NDPS

Act before a learned Magistrate was without any sanction of law. He submitted that a cognizance can be taken only by a Special Judge under the NDPS Act which has been so taken on 10.05.2021 which was beyond the period of 180 days and there had been no application for grant of extension of time and therefore, a statutory right had vested in the respondent immediately on the expiry of 180 days. He further submitted that the respondent had also filed a separate application for grant of regular bail which is also listed alongwith the present petition.

This Court on 15.11.2022 while taking up both the petitions in order to ascertain the factual position especially with regard to the objection taken by the learned counsel for the respondent with regard to the competence of the Judicial Magistrate Ist Class, Amritsar to entertain the challan, had directed the learned Sessions Judge, Amritsar to file a report before this Court on the basis of the entire factual position.

A report dated 21.11.2022 has been received from the learned District & Sessions Judge, Amritsar on the basis of the report submitted by the concerned Special Court that bail under Section 167(2) Cr.P.C was granted to the respondent Gursahib Singh on 10.05.2021 on the ground that the challan in the said case was not presented despite the fact that period of 180 days had elapsed and there was no application given by the prosecution to extend the period for filing the challan. The bail was granted on 10.05.2021 at 11.10 a.m. However, later on at about 12.10 p.m, the Ahlmad of the said Special Court received the challan from the Court of Ms..Sukhpreet Kaur, Duty Magistrate, Amritsar which was presented in

that Court on 08.05.2021 and that day was a holiday on account of 2nd Saturday. There was not Special Court on duty on 08.05.2021 being a holiday. As per the instructions contained in the High Court letter dated 19.09.1995, a Special Court or a Duty Judge is to be deputed only during holiday spell of four or more holidays including Saturday and Sunday. The challan in the case of commercial quantity is to be presented directly in the Special Court and not in the Court of a Illaqa Magistrate or a Duty Magistrate. It has been further stated in the report filed by the learned Sessions Judge, Amritsar that even as per the provisions of Section 36A (1) (d) of the NDPS Act, the cognizance is to be taken by the Special Court and not by the Court of a Duty Magistrate. However, the prosecution had presented challan in the Court of Duty Magistrate on 08.05.2021 whereas it was required to be presented before the Special Court. It has been further stated in the report that as per comments of the learned Judge of Special Court, he was having no knowledge that the challan in the said case has been presented before a Duty Magistrate on 08.05.2021 and therefore, he granted bail to the accused on 10.05.2021 at about 11.10 a.m under Section 167(2) Cr.P.C. In the report the learned Sessions Judge has further stated that it is also apparent from the comments/report submitted by the Judge, Special Court as well as from the zimni order dated 10.05.2021 that it was found by the Special Court that even the challan before a Duty Magistrate on 08.05.2021 was not complete as the copies of the challan were not supplied by the Investigating Officer for supplying to the accused free of costs and the list of documents attached with the

challan was also not filed by the Investigating Officer as per law and therefore, the picture which emerges from the said situation is that the prosecution was required to present the challan in the Special Court as it was a case of a commercial quantity and not in the Court of Duty Magistrate and secondly, the challan presented before a Duty Magistrate was also not complete as per record.

A perusal of the report submitted by the learned Sessions Judge, Amritsar would show that a challan was presented before the learned Judicial Magistrate Ist Class even without complying with the procedure since the copies of the challan were not supplied by the Investigating Officer to the accused free of costs and the list of documents attached with the challan were not filed by the Investigating Officer as per law. As per report, it was a holiday being 2nd Saturday on 08.05.2021 and there was no requirement for assigning duty to any other Special Judge in accordance with the instructions issued by the High Court. A perusal of Section 36A(1) (d) shows that a Special Court may upon a perusal of police report of the facts constituting an offence under the Act or upon complaint made by an officer of the Central Government or a State Government authorized on his behalf, take cognizance of that offence without the accused being committed to it for trial. In other words, competence to take cognizance lies with the Special Court and not with the learned Magistrate/Illaqa Magistrate/Duty Magistrate. Therefore, the cognizance has been taken by the learned Special Court on the receipt of the challan by him only on 10.05.2021 which was beyond the period of

180 days and there had been no application for extension of time by the prosecution.

In view of the aforesaid facts and circumstances, this Court is of the view that a right accrued in favour of the respondent under Section 167(2) Cr.P.C read with Section 36A(1) (d) of the NDPS Act for grant of default bail on the expiry of period of 180 days.

Consequently, the present petition is hereby dismissed.

23.11.2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No