

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

CRM-M-47277-2021 (O&M)  
Date of Decision:- 6.4.2022

Narinder Kumar ...Petitioner

Versus

State of Punjab ...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

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

Mr. Luvinder Sofat, AAG, Punjab,  
assisted by SI Gursimran Singh.

\*\*\*\*\*

**GURVINDER SINGH GILL, J.**

1. The petitioner, who is arrayed as an accused in FIR No. 4 dated 13.4.2021 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station State Special Operations Cell, SAS Nagar, Mohali, District SAS Nagar seeks his release on bail in terms of provisions of Section 167(2) Cr.P.C.
2. Notice of motion had been issued and reply by way of affidavit of Shri Jaskirat Singh Ahir, Superintendent of Police, SAS Nagar has been filed on behalf of the respondent – State.
3. The allegations, in nutshell, are to the effect that the petitioner was found in possession of intoxicant tablets on 13.4.2021. Since the prosecution did not file any challan within the prescribed period of 180 days, the petitioner moved an application for his release on bail in term of Section 167(2)

Cr.P.C., which was declined by trial Court vide order dated 14.10.2021, leading to filing of the present petition.

4. It is apposite to briefly refer to a few of the relevant dates, which are stated hereinbelow :-

13.4.2021      Petitioner was arrested and    FIR No. 4    dated 13.4.2021, Police Station State Special Operations Cell, SAS Nagar, Mohali, District SAS Nagar, was lodged.

14.4.2021      Petitioner was produced before the Illaqa Magistrate.

7.10.2021      Since the period of 180 days prescribed under the NDPS Act for filing challan was to expire on 10.10.2021, an application dated 7.10.2021 was filed by prosecution in terms of Section 36-A of the NDPS Act seeking extension of time for investigating the case by another 90 days. The said application (Annexure R-1) was allowed on the same day itself vide order dated 7.10.2021 (Annexure P-3).

10.10.2021    Period of 180 days with effect from the date when the petitioner was first remanded expired.

14.10.2021    An application filed on behalf of the accused seeking his release on bail in terms of Section 167(2) Cr.P.C. which was dismissed vide impugned order on 14.10.2021 itself (Annexure P-2).

5. The learned counsel for the petitioner has submitted that the order passed by the trial Court granting extension of period of filing challan beyond 180 days vide order dated 7.10.2021 (Annexure P-3) cannot sustain inasmuch as

the same has been passed without giving any notice of the application to the accused. It has been submitted that even order dated 7.10.2021 (Annexure P-3) which was passed on the very day when application was filed shows that it is only the presence of the public prosecutor which has been recorded. Learned counsel in order to hammer forth his aforesaid submission places reliance upon a judgment of Hon'ble Supreme Court rendered in Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotics Control Bureau and another 2010(1) RCR (Criminal) 942. Learned counsel further submits that the aforesaid judgment has recently been followed by this Court rendered in 2022 (1) Crimes 319 - Joginder Singh Vs. State of Haryana. Learned counsel submits that since in view of the judgment of the Hon'ble Supreme Court, order dated 7.10.2021 granting extension cannot sustain, therefore, the challan which was presented on 7.1.2022 was apparently filed beyond the prescribed period of 180 days and as such, the petitioner deserves to be released on default bail and consequently, the impugned order dated 14.10.2021 cannot sustain and is liable to be set aside.

6. Though, the learned State counsel has not disputed the legal proposition of law as set forth in Sanjay Kumar Kedia's case but has vehemently argued that in the present case, it was for the Courts to have issued notice to the accused and that on account of omission of the same, the petitioner cannot be allowed to benefit in any manner and that the same is a procedural mistake. The learned State counsel has further submitted that in case the petitioner had any grievance as regards extension of time by another 90 days, as has been extended vide order dated 7.10.2021 (Annexure P-3), he ought to have challenged the same which he has not done till date and that in

these circumstances, he cannot turn around so as to draw any benefit on account of any procedural lapse while passing of order dated 7.10.2021 (Annexure P-3). The learned State counsel has, however, informed that the petitioner as on date has been behind bars since the last 11 months and 19 days.

7. I have considered rival submissions addressed before this Court.
8. In the instant case, it is admitted case that challan has been filed beyond the period of 180 days. Order dated 7.10.2021 (Annexure P-3) cannot be said to be a valid order on account of there being omission to furnish notice of the application to the accused. Hon'ble the Supreme Court in Sanjay Kumar Kedia @ Sanjay Kedia (supra) has clearly held that whenever any such application is to be filed a prior notice is required to be furnished to the accused. The same not having been done, the order pertaining to extension of time for completing investigation cannot be said to have been validly passed and cannot be acted upon.
9. As regards the contention of the State counsel that it is merely a case of procedural lapse either on part of public prosecutor or Court and that the accused can't be allowed to take any benefit of same, it has been held by Hon'ble Supreme Court in 2020(4) RCR (Criminal) 713 - Bikramjit Singh Versus State of Punjab that mere filing of an application for extension of time or its wrong disposal will not help the prosecution. The relevant extracts from Para 28 and 29 of the said judgment read as under :-

“28.....A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in

writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted.

29.....The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled.”

10. Bearing in mind the ratio of above cited judgments, the challan in the instant case having been filed beyond the statutory period of 180 days, a right came to be vested in the accused for his release on default bail upon expiry of period of 180 days. Consequently, the impugned order dated 14.10.2021 cannot sustain and is hereby set aside.
11. The petition, as such, is accepted and the impugned order dated 14.10.2021 is set aside. The petitioner is ordered to be released on bail subject to his furnishing bail bonds to the satisfaction of learned trial Court/Illaq Magistrate/Chief Judicial Magistrate/Duty Magistrate, concerned.

6.4.2022

kamal

**(Gurvinder Singh Gill)**  
**Judge**

Whether speaking /reasoned  
Whether Reportable

Yes / No  
Yes / No