

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1533-2021 (O&M)
Date of Decision: 01.04.2022

(I)

Krishan Kumar

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CRM-M-28816-2021

(II)

Krishan Kumar

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Aditya Sanghi, Advocate, for the petitioner.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana.

JASGURPREET SINGH PURI, J.

These two petitions are taken up together for final disposal since both the petitions arise from the same FIR and pertaining to the same petitioner.

CRM-M-28816-2021 has been filed by the petitioner

Krishan Kumar seeking grant of regular bail under Section 439 of the Code of Criminal Procedure and Criminal Revision No. 1533-2021 has been filed by the same petitioner i.e. Krishan Kumar impugning the orders passed by the learned Additional Sessions Judge, Sirsa by which his application under Section 167(2) Cr.P.C was dismissed.

Facts of the case

FIR No. 127 dated 06.05.2021 was registered against the petitioner under Section 17 of the NDPS Act and the petitioner was arrested on 06.05.2021 allegedly with 5 kg. 40 grams of opium. He filed a regular bail application before this Court on 12.07.2021 and on 23.08.2021 he was released on interim bail since the FSL report had not come. The period of 180 days expired on 03.11.2021 and challan was presented alongwith FSL report on 16.12.2021. On 06.11.2021 he filed an application before learned Additional Sessions Judge, Sirsa under Section 167 (2) Cr.P.C for grant of default bail since 180 days had expired and no challan was presented. The said application was dismissed on 09.11.2021 on the ground that the petitioner was already on interim bail. As per instructions received by the learned Additional Advocate General, Haryana from the I.O, the petitioner surrendered on 09.02.2022.

The issue involved in the regular bail is with regard to consideration for grant of regular bail under Section 439 of the Code of Criminal Procedure and the issue involved in the Criminal Revision is for consideration of right of the petitioner for default bail under Section 167(2) Cr.P.C. This Court would proceed to consider the Criminal Revision wherein the prayer of the petitioner is for the grant of default

bail.

CRR-1533-2021

The petitioner has been arrested on 06.05.2021 and 180 days expired on 03.11.2021 but no challan was presented. Challan alongwith FSL report has been presented on 16.12.2021 which was beyond 180 days. However, on 26.08.2021 the petitioner was released on interim bail by this Court and he surrendered back on 09.02.2022. In this way, the petitioner remained on interim bail after 26.08.2021 till the time of the presentation of challan with FSL report. The issue which arises for consideration is as to whether the period during which the petitioner was on interim bail should be excluded from the total period of 180 days or not.

The learned counsel for the petitioner has submitted that although the petitioner was released on interim bail but the same cannot be excluded from the total period of 180 days and once the period of 180 days had expired, then he had a right of default bail under Section 167(2) of the Code of Criminal Procedure. He further submitted that the petitioner would be deemed to be in custody even when he was on interim bail and, therefore the right conferred upon the petitioner under the Code could not be denied to him. He referred to the judgment of Orissa High Court in ***Niranjan Pradhan Versus State of Orissa [2014(46) RCR (Criminal) 864]*** in support of his contentions.

However, on the other hand, Mr. Ranvir Singh Arya, learned Additional Advocate General, Haryana has submitted that the period in which the petitioner was on interim bail should be excluded while

calculating the period of 180 days since there was no physical custody of the petitioner and as per the language used in Section 167 of the Code of Criminal Procedure, the expression used is detention or custody and since the petitioner was already on interim bail, he was neither under detention nor under custody. He further submitted that the period on which the petitioner was on interim bail cannot be termed to be a deemed custody for the purpose of under Section 167 of the Code of Criminal Procedure and, therefore, the petitioner was not entitled for the grant of default bail. He has referred to a judgment passed by this Court in ***Subhash Chander Versus State of Haryana [2020(3) RCR (Criminal) 136]*** and submitted that it has been held by this Court that Section 167(2) of the Code of Criminal Procedure is meant to ensure that the investigation of the case is concluded promptly and challan is filed in the Court thereafter at the earliest so that an accused in a criminal case is not made to languish in the jail for a very long time and this provision is meant to ensure that the investigating agency does not show callousness and lethargy in doing the investigation making them aware of the fact that in case investigation is not completed and challan is not filed within 90 days or 60 days of arrest of the accused, then the accused would become entitled to be released on bail and then the Investigating Officer at fault would be made to explain his acts and omissions in carrying out the investigation within that time frame. It was further observed that the petitioner cannot have the dual benefit of enjoying the interim and also the concession of bail under Section 167(2) of the Code of Criminal Procedure.

I have heard the submissions made by the learned counsels for

the parties.

The petitioner was arrested on 06.05.2021 and on 26.08.2021 he was released on interim bail and, therefore, he remained in physical custody for about 3½ months which was less than 180 days as he thereafter surrendered on 09.02.2022. The challan stood presented on 16.12.2021 alongwith FSL report. Therefore, in case the period after he was released on bail is to be excluded, then the petitioner is not entitled for the grant of default bail under Section 167(2) of the Code of Criminal Procedure and in case it is to be included, he will be certainly entitled for the grant of default bail under Section 167(2) of the Code of Criminal Procedure. The petitioner was physically not in the custody after he was granted interim bail. This Court is in agreement with the reasoning given in ***Subhash Chander Versus State of Haryana (Supra)*** that rationale and objective behind grant of default bail is that when the police does not present the challan within time, then the accused should not languish in jail for long time. Apart from the same, when the accused enjoys the benefit of interim bail and he again asks for default bail, then that will amount to dual benefit. The relevant paragraphs of the aforesaid judgment are reproduced as under:-

“8. *Section 167(2) Cr.P.C,1973 is meant to ensure that the investigation in the case is concluded promptly and challan is filed in the Court thereafter at the earliest so that an accused in a criminal case is not made to languish in the jail for a very long time. This provision is meant to ensure that the investigating agency does not show callousness and lethargy in doing the investigation making them aware of the fact that in case investigation is not completed and challan is not filed within 90 days of arrest of the accused, where the investigation*

relates to an offence punishable with death imprisonment for life or imprisonment for a term of not less than 10 years and within a period of 60 days, where the investigation relates to any other offence, then the accused would become entitled to be released on bail and then the Investigating Officer at fault would be made to explain his acts and omissions in carrying out the investigation within that time frame.

9. *Now in the instant case after being arrested on 19.3.2020, the petitioner on account of outbreak of COVID-19 had been granted interim bail vide order dated 31.3.2020, which stood extended from time to time and he is still on bail, now required to surrender in jail on 4.9.2020. The petitioner remaining behind bars for a period of less than two weeks till date cannot cry foul and ask for bail in terms of [Section 167\(2\) Cr.P.C, 1973](#) The petitioner just want to have dual benefit enjoying interim bail, at the same time asking for concession of bail under [Section 167\(2\) Cr.P.C, 1973](#) He is certainly not entitled to such concession. Learned Additional Sessions Judge, Karnal has passed a detailed and well reasoned order, which does not suffer from any illegality or infirmity.*

10. *The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse and not otherwise”.*

Therefore, this Court is of the considered opinion that when the petitioner was released on interim bail prior to the expiry of the period of 180 days and he has surrendered after the presentation of the challan with FSL report, the period of interim bail is liable to be excluded and, therefore, the petitioner is not entitled for the default bail under Section 167(2) of the Code of Criminal Procedure.

Therefore, there is no illegality or perversity in the impugned

order passed by the learned Sessions Judge, Sirsa.

Consequently, the present revision petition is hereby dismissed.

CRM-M-28816-2021

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.127 dated 06.05.2021, under Section 17 of the NDPS Act, registered at Police Station Civil Lines, Sirsa, District Sirsa, Haryana.

As per the allegations, the petitioner was caught by way of a chance recovery alongwith 5 kg. 40 grams of opium.

The learned counsel for the petitioner has submitted that there was a violation of Section 50 of the NDPS Act and, therefore, the provisions of Section 37 of the NDPS Act would not apply to the petitioner even if the recovered quantity was a commercial quantity under the NDPS Act. He submitted that BDPO, Sirsa is not an officer notified by the State of Haryana and therefore he is not competent to conduct search.

However, learned Additional Advocate General, Haryana has submitted that in the present case when the police party was on patrolling, then they had seen a vehicle coming and looking at the police party standing in front, the vehicle driver immediately stopped his vehicle and tried to turn back but the vehicle was stopped and as per the FIR the accompanied officials captured the vehicle driver and asked his name and address and he told his name as Krishan Kumar (Petitioner) and when the number of the vehicle was checked it was found to be HR-22P-5277 make Honda City in grey colour. Thereafter notice under Section 50 of

the NDPS Act was given to him and a gazetted officer who is a BDPO was called and search was made in the presence of the gazetted officer and, therefore, there was no violation of Section 50 of the NDPS Act. The learned Additional Advocate General, Haryana submitted that so far as argument raised by learned counsel for the petitioner that BDPO, Sirsa was not competent to conduct search is concerned, the same is ill-founded and misconceived. In fact as per order passed by Deputy Commissioner, Sirsa vide endorsement No. 1255 dated 13.04.2021, Sh. Ravi Kumar, BDPO, Sirsa has been authorized to perform the duty for the purpose of Section 50 of NDPS Act. He further submitted that the prayer of the petitioner for grant of regular bail is barred by Section 37 of the NDPS Act since the confiscated quantity of opium was commercial quantity.

After hearing the learned counsel for the parties, this Court is of the considered view that there was a confiscation of 5 kg. 40 grams of opium from the petitioner on the spot and the said quantity falls in the commercial quantity under the NDPS Act and, therefore, the bar contained under Section 37 of the NDPS Act will be applicable. As per the FIR it was a case of chance recovery and still provisions of Section 50 of the NDPS Act was complied with by calling the gazetted officer and the search was made in his presence as per the learned State counsel. No ground has been made out for making any departure from the aforesaid bar contained under Section 37 of the NDPS Act.

Consequently, finding no merit in the present petition, the same is hereby dismissed.

However, anything observed hereinabove shall not be treated

as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

01.04.2022

rakesh

**(JASGURPREET SINGH PURI)
JUDGE**

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No