

CRR-347-2023 (O&M)

233 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR-347-2023 (O&M)

Date of Decision: 29.11.2023

PARVEEN KUMAR

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Singh Jattan, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. The present revision petition has been preferred against the order dated 19.01.2023 passed by learned Additional Sessions Judge, Ambala, vide which an application for grant of default bail under Section 167(2) of Cr.P.C. on the ground of incomplete challan without FSL report, has been dismissed in case bearing FIR No. 419 dated 11.07.2022 registered under Sections 20, 21, 21-C and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short NDPS Act) registered at Police Station Ambala Cantt. District Ambala.

2. On 21.03.2023, the following order was passed:

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Learned counsel contends that though challan was presented within the prescribed period of 180 days, but, the same was incomplete as no FSL report had been filed along therewith. The application under Section 167(2) CrPC was filed by the petitioner on 17.01.2023, however, the application filed by the investigating agency seeking extension of time to file the FSL report

was allowed on 19.01.2023. As per Section 36-A of the NDPS Act, there is no provision for seeking extension, on the ground that FSL report is awaited but it is only for concluding the investigation. He submits that the learned Court has wrongly declined the application of the petitioner filed under Section 167(2) CrPC on account of the fact that application filed by the prosecution seeking extension of time to submit FSL report was allowed. Reliance is placed on the judgment of Himachal Pradesh High Court in the case of Krishna @ Kiran Vs. State of Himachal Pradesh, Criminal Revision No.168 of 2020 decided on 28.09.2020.

Notice of motion.

XXX”

3. Learned counsel for the petitioner contends that the impugned order suffers from incurable illegality and a contrary view to the settled law has been taken by learned Additional Sessions Judge, Ambala by infringing his indefeasible statutory right for default bail under Section 167(2) of the Cr.P.C. Learned counsel has further contended that the Co-ordinate Benches of this Court in **CRR-708-2021** titled as **Satpal Singh @ Satpala and Another Vs. State of Haryana**, **CRR-1326 of 2023** titled as **Chander Prakash Vs. State of Haryana**, **CRR-2100-2023** titled as **Ravinder @ Bhola Vs. State of Haryana**, **CRR-933 of 2022** titled as **Rohtash @ Raju Vs. State of Haryana** and **CRR-1498-2023** titled as **Sher Singh @ Kaku Vs. State of Haryana** has taken a view that the statutory provisions under Section 167(2) of Cr.P.C. cannot be extinguished by filing an incomplete challan within the prescribed period of 180 days.

4. A perusal of the record indicates that the Investigating Agency has filed an incomplete challan and the petitioner has approached the learned trial Court by filing an application for default bail under Section

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167(2) of Cr.P.C. on 17.01.2023. However, the application filed by the Investigating Agency seeking extension of time to file the FSL Report was allowed on 19.01.2023.

5. Per contra, learned State counsel opposes the prayer made by the petitioner on the ground that the prescribed period of 180 days for conclusion of the investigation had not lapsed and the learned trial Court has extended it on 19.01.2023 and as such the arguments made by learned counsel for the petitioner are liable to be rejected.

6. Learned State counsel submits that in case of **CRR-1125-2020** titled as **Julfkar Vs. State of Haryana** decided on 16.09.2020, the matter has been referred to the Full Bench for considering the correctness of the judgment passed by the Division Bench in **CRR No. 4659 of 2015** titled as **Ajit Singh @ Jeeta and Another Vs. State of Punjab, decided on 30.11.2018** and contrary view has been taken by the Co-ordinate Benches of this Court against the arguments made by the petitioner.

7. It is a settled law that mere reference to a Larger Bench will not dislodge the ratio of law as decided by a Division Bench in **Ajit Singh @ Jeeta and Anr. (Supra)**. In **Ashok Sadarangani Vs. Union of India (2012) 11 SCC 321** another two Judges Bench of the Hon'ble Supreme Court speaking through Justice Altamas Kabir has held as under:

“29. As was indicated in Harbhajan Singh case [Harbhajan Singh Vs. State of Punjab, (2009) 13 SCC 608: (2010) 1 SCC (Cri) 1135], the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh case (2010) 15 SCC 118, need not, therefore, detain us. Till

such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.”

7. The controversy involved in the present case has been settled by the Division Bench in **Ajeet Singh @ Jeeta and Another (supra)** by holding that the challan/final report under Section 173 of Cr.P.C. filed without the FSL report would be an incomplete challan entitling the accused to seek default bail under Section 167(2) of NDPS Act. The Hon’ble Supreme Court in **Hitendra Vishnu Thakur Vs. State of Maharashtra (1994) 4 SCC 602** has held as under:

“22. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is In tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the

investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before Submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "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" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the

legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release hi on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the Justification, from the report of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes indefeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier

part of this judgment. We are unable to agree with Mr Madhava Reddy or the Additional Solicitor General Mr Tulsi that even if the public prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the report of the public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution of any expression in it. We have already dealt with the importance of the report of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (bb) of sub-section (4) of Section 20. Since the law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid report falls in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether the public prosecutor labels his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (bb) (supra). Even the mere reproduction of the application or request of the

investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report to seek extension of time. In the absence of an appropriate report the Designated Court would have no jurisdiction to deny to an accused his Indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. Moreover, no extension can be granted to keep an accused in custody beyond the prescribed period except to enable the investigation to be completed and as already stated before any extension is granted under clause (bb), the accused must be put on notice and permitted to have his say so as to be able to object to the grant of extension.”

8. It is a matter of record that no report as required under the provisions of Section 36-A of NDPS Act, was submitted by learned public prosecutor and the extension has been granted in a mechanical manner on non-existent grounds. No specific reason is given in the impugned order which warrants further detention of the petitioner beyond the prescribed period. Section 36 A(4) of NDPS obligates the trial Court to record specific reasons for detention of the accused beyond the said period of 180 days. Moreover, in the absence of FSL report, the learned trial Court would not be in a position to take cognizance of the offence as it is only the basis of FSL report, it becomes clear as to whether the seized contraband actually falls within the ambit of NDPS Act. The procedural safeguards provided under the Act are in furtherance of the Article 21 of the Constitution of India which ensures free and fair investigation to every accused. The trial Court is

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bound to follow the drill of these procedural safeguards and cannot extend the period of investigation in the absence of report of Public Prosecutor and without assigning the specific reasons for keeping the accused in further detention beyond the stipulated period of 180 days.

9. In view of the above, the present revision petition is allowed and the impugned order dated 19.01.2023 passed by learned Additional Sessions Judge, Ambala is hereby set aside. The petitioner is ordered to be released on bail on his furnishing requisite bail bonds/surety to the satisfaction of the trial Court/Chief Judicial Magistrate concerned.

29.11.2023
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No