

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(233)

CRR-368 of 2023
DATE OF DECISION:-20.02.2023

Bablu Ram @ Babblu Ram

...Petitioner

vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. R. S. Waraich, Advocate, for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

HARKESH MANUJA, J.

Present revision petition has been filed challenging the order dated 27.08.2021 passed by the Judge, Special Court, Ludhiana, granting extension of time in favour of prosecution in exercise of powers under Section 36-A(4) of the NDPS Act, 1985, for the purpose of filing of *challan*.

In the present case, the petitioner was nominated as an accused in FIR No.42 dated 27.02.2021 under Sections 22 and 25 of the NDPS Act, Police Station City-2, Khanna, wherein, he was arrested on the same day. *Challan* in the present case could not be filed within 180 days, therefore, an application came to be filed before the Judge Special Court, Ludhiana, at the instance of prosecution seeking extension of time by invoking Sub-Section 4 to Section 36-A of the NDPS Act, 1985 (hereinafter referred to as “the Act”), while submitting that there was some delay in preparation of inventory which resulted into non-filing of the *challan* within the prescribed period. The trial Court vide order dated 27.08.2021, allowed the application filed at the instance of prosecution while granting 10 days extended period for the purpose of filing of *challan*.

Challenging the aforesaid order dated 27.08.2021, learned counsel for the petitioner submits that Special Judge, Ludhiana, while passing the same failed to record specific reasons for detention of petitioner beyond the period of 180 days as enjoined under proviso of Sub-Section 4 to Section 36A of the Act and thus, submits that impugned order being in violation thereof was liable to be set aside.

On the other hand, learned State counsel submits that impugned order has been passed by the Special Court on due appreciation of facts while exercising statutory power provided under Sub-Section 4 to Section 36A of the Act and thus, warrants no interference in the revisional jurisdiction of this Court.

I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

For the purpose of adjudication of the case in hand, Sub-Section 4 of the Section 36A of the NDPS Act is relevant for consideration and the same is thus reproduced hereunder:

“(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. ”

From a bare reading of proviso to Sub-Section 4 to Section 36A of the Act it becomes clear that for the purpose of exercising powers as regards extension of time in favour of prosecution so as to complete the investigation, the Special Judge, has to consider and comply with two relevant factors; firstly the report submitted by the public prosecutor indicating the progress of investigation and secondly recording of specific reasons for detention of the accused beyond the period of one hundred and eighty days. In the present case, from bare perusal of the impugned order one can easily trace out that the Special Judge granted extension of 10 days time in favour of prosecution so as to file *challan* without recording any specific reasons for further detention of the petitioner/accused beyond the period of 180 days. Thus, Special Court while passing the impugned order failed to comply with the mandatory requisites as prescribed under Sub-Section 4 to Section 36A of the Act, which in fact regulates the right of an accused nominated under the Act as regards his right of default bail and thus, without doubt the same being stemming from Article 21 of the Constitution of India, regulating the right to life and personal liberty of an individual, therefore, has to be treated as mandatory being inviolable. The aforesaid view can also be derived from a decision passed by this Court in CRR No. 1356 of 2022 and CRR No.1357 of 2022 titled as **Gurmej Singh Vs. State of Haryana** decided on 19.09.2022. Relevant paragraph 11 is reproduced hereunder for reference:

11. This Court, after considering the facts and circumstances of the present two petitions as well as the law laid down in the above-said judgments, is of the considered opinion that both the impugned orders deserve to be set aside and the revision petitions deserve to be allowed on the following grounds:-

(i) In the order dated 18.06.2022, which has reproduced herein above, no specific, much less compelling, reason has been spelled out to substantiate as to why the detention of the petitioner beyond the period

of 180 days is necessary. The impugned order has not taken into consideration, one of the essential ingredients of Section 36A(4) of the NDPS Act, which was required to be complied with for the extension to be granted for keeping the petitioner in further detention.

(ii) The reasons which have been given in the impugned order i.e., non-receipt of the FSL report and pending arrest of the co-accused Raju @ Diwan Aacharya, have been repeatedly held by various Co-ordinate Benches of this Court in various judgments referred to herienabove, to be invalid reasons for granting extension & thereby keeping the petitioner in

further detention and further nothing has been stated in the impugned order to show as to how the detention of the petitioner would facilitate the arrest of the said co-accused or the receipt of the FSL.

(iii) A perusal of the impugned order would also show that several judgments, including the judgments which have been cited before this Court, have been referred to by the Special Court, but none of the said judgments have been considered before passing the order dated 18.06.2022 and the said order is thus cryptic and non-speaking.

(iv) A perusal of the application dated 15.06.2022 filed by the public prosecutor under Section 36A(4) of the NDPS Act for extension of time would also show that no specific reasons have been stated therein for keeping the petitioner in further detention, beyond the stipulated period of 180 days and thus, the application does not meet the parameters as laid down under Section 36A(4) of the NDPS Act and also the law laid down by a Co-ordinate Bench of this Court in Joginder Singh's case (supra).

(v) It is not in dispute that the period of 180 days had already elapsed on the date on which the application under Section 167(2) Cr.P.C. read with Section 173(5) was filed. Since this court has come to the conclusion that the extension of time granted, vide order dated 18.06.2022, was not granted in accordance with law and thus the said order dated 18.06.2022 is liable to be set aside and accordingly, the application of the petitioner filed under Section 167(2) Cr.P.C. read with Section 173(5) Cr.P.C., which creates an indefeasible right in an accused person on account of the default by the investigating agency, deserves to be allowed and thus, the order dated 22.06.2022 also deserves to be set aside.”

In view of the discussion made hereinabove as well as the law laid down by this Court in the case of **Gurmej Singh (supra)**, the present revision petition is allowed. Impugned order dated 27.08.2021, passed by the Judge, Special Court, Ludhiana, is hereby set aside.

20.02.2023
anil

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No