

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.223

CRR-428-2023 (O&M)

Date of decision : 18.04.2023

Satpal Singh @ Sattu

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Kartar Singh, Advocate, for the petitioner.

Mr. Deepak Grewal, DAG, Haryana

SUDHIR MITTAL, J. (Oral)

The car being driven by the petitioner was signaled to stop at a police naka. One other person was also seated therein. They appeared to be nervous and could not give any satisfactory reply to the police official. Suspecting that some narcotic substance was being carried in the car, notices under Section 50 of the NDPS Act, 1985 (hereinafter referred to the Act) were issued and search was conducted in the presence of a Magistrate which resulted in recovery of 02 kilograms 600 gram opium. This resulted in registration of FIR No.298 dated 04.07.2022, at Police Station City Tohana, under Sections 18 (c) of the Act. The petitioner was arrested on the spot.

2. He filed an application on 13.01.2023 for grant of default bail as challan had not been presented within the statutory period of 180 days. The said application was rejected vide order dated 17.01.2023 on the ground that time for filing challan having been extended upto 21.02.2023, the application for grant of default bail was not maintainable.

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3. Prior thereto, an application dated 20.12.2022 was filed through the Public Prosecutor for extension of period for submission of challan by two months as period of 180 days was due to expire on 31.12.2022. It was stated therein that investigation was still not complete as co-accused, namely, Nirbhai Ram had not been arrested and report from the FSL had not been received. On the said application, the Public Prosecutor submitted a report that FSL report had not yet been received despite reminders having been sent and accordingly, the request of the investigating officer for extension of time may be accepted. Vide order dated 22.12.2022, the said application was allowed and the period for filing the challan was extended for two months i.e. 21.02.2022. Challan was presented thereafter on 08.02.2023. Meanwhile, the application filed for grant of default bail had been rejected on 17.01.2023 as is evident from the aforestated narration.

4. Order dated 22.12.2022 extending the period for filing of challan and order dated 17.01.2023 rejecting the application for grant of default bail have been impugned in the present revision petition.

5. Learned counsel for the petitioner has submitted that proviso to Section 36A (4) of the Act makes it necessary for the Public Prosecutor to submit an independent report on an application filed by the prosecution for extension of time. The same should disclose independent application of mind that the investigation had progressed satisfactorily and that there was no delay caused by the investigating agency. It should also mention reasons for detention of the accused beyond the statutory period of 180 days. Order dated 22.12.2022 does not disclose independent application of mind by the

20.12.2022, in which, nothing has been stated regarding his satisfaction with the progress of the investigation. Extension of time had been sought only on the ground of non-receipt of the report of the FSL. Thus, the order is illegal and deserves to be set aside. Since, statutory period of 180 days had elapsed on the date of filing of bail application, the petitioner was entitled to grant of default bail as a matter of right and not as a matter of discretion. Thus, order dated 17.01.2023 rejecting the bail application is also illegal. In this regard, reliance has been placed upon Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau and another, 2009 (17) SCC 631 and some Single Bench judgments of this Court.

6. In response, learned State counsel has submitted that question, whether, challan submitted without report of the FSL is complete or not, has been referred to a Division Bench in CRR-1125-2020 titled as Julfkar Vs. State of Haryana. Thus, decision of this case be deferred.

7. Section 167(2) Cr.P.C. contains a legislative command to release an accused on bail, if the investigation is not completed within 90 days, where, the offence is punishable with death, imprisonment for life, imprisonment of a term not less than 10 years and 60 days in the case of any other offence. This period has been extended upto 180 days by Section 36A (4) of the Act. Completion of investigation implies submission of challan. If, challan is not presented within the said period, a statutory right vests in an accused to be released on bail. It has been so held in Sanjay Kumar Kedia (supra).

8. Proviso to Section 36A(4) of the Act stipulates that period of 180 days may be extended upto one year on the report of the Public

Prosecutor. The said report must indicate the progress of the investigation and the specific reasons for extended detention of the accused. This stipulation has been interpreted by the Supreme Court in Sanjay Kumar Kedia (supra) to mean that the Public Prosecutor must apply his independent mind before he records a conclusion that the investigation has progressed satisfactorily and that extended custody of the accused is required. This independent application of mind is not there in this case as is evident from the report dated 20.12.2022 submitted by the Public Prosecutor, a copy of which is on record as Annexure P5. He has only re-stated whatever has been submitted in the application filed by the prosecution. The trial Court has completely ignored this aspect of the matter while granting extension by two months and thus, the order dated 22.12.2022 cannot withstand judicial scrutiny. It is, accordingly, set aside.

9. The result of the setting aside of order dated 22.12.2022 is that there is no extension in time for submitting the challan. The challan has infact been presented on 08.02.2022, whereas, the same should have been presented on or before 31.12.2022. Thus, on 13.01.2023, when the petitioner filed an application for grant of default bail, a right had accrued in his favour w.e.f. 01.01.2023. He was, thus, entitled to grant of default bail. The same having not been granted, order dated 17.01.2023 is also unsustainable. It is also set aside.

10. The submission of the learned State counsel regarding pendency of reference to a Division Bench does not deserve consideration being irrelevant.

11. The revision petition is allowed. It is directed that the petitioner be released on bail on furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

(SUDHIR MITTAL)
JUDGE

18.04.2023
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes
No