

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

CRR-662-2023

Date of Decision: November 28, 2023

MAHENDER AND OTHERS

.....Petitioners

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kartar Singh, Advocate for the petitioners.
Mr. Vikas Bhardwaj, AAG, Haryana.
Mr. Rajiv Joshi, Advocate for complainant (Amicus Curiae).

HARPREET SINGH BRAR, J. (ORAL)

The petitioners have approached this Court by filing present revision petition challenging the impugned order dated 23.02.2023 passed by the Court of learned Special Judge, Fatehabad, declining the petition for grant of default bail under Section 167(2) of CrPC to the petitioners in case FIR No.143 dated 08.08.2022 under Section 20-C and 27-A of Narcotics Drug Psychotropic Substances Act (hereinafter referred to as 'NDPS Act') registered at Police Station Jakhal, District Fatehabad.

2. The petitioners have also challenged the order dated 01.02.2023 passed by the learned Special Judge, Fatehabad vide which the extension of time was granted for filing the final report under section 173 CrPC for two months.

3. Brief facts of the case are that on 07.08.2022, in the area of Police Station Jakhal, a police party headed by ASI Ved Pal, on the

basis of suspicion, apprehended applicants-accused Mahender and Ram, while travelling in Pick-up vehicle bearing registration No. HR-56A/3691 and after conducting legal proceedings, 3 plastic bags (kette) containing 14 kg., 12 kgs, and 12 kg, respectively (total 38 Kg.) Ganja were recovered from abovesaid Pick-up vehicle, in the presence of Karamjeet, Principal/BEO, Jakhal and case under Section 20 of NDPS Act was registered. On 08.08.2022, applicants-accused Mahender and Ram were arrested and they, on interrogation, suffered their respective disclosure statements admitting their guilt and disclosing that they had purchased recovered contraband jointly from applicant-accused Makhan Lal. During further investigation, on 09.08.2022, applicant-accused Makhan Lal was arrested and he, on interrogation, suffered his disclosure-statement admitting his guilt and disclosing that he had purchased 40 kg. of Ganja from co-accused Telu son of Ramji Lal.

4. Learned counsel for the petitioners inter alia contends that petitioners were arrested on 08.08.2022 and as such they were entitled to be released on default bail on the ground of non-submission of final report under section 173 CrPC on 04.02.2023 after elapsing of 180 days from the date of their arrest. The period of 180 days for completion of investigation was to expire on 04.02.2023. Before the expiry of the aforementioned period, the learned Public Prosecutor moved an application on 30.01.2023 (Annexure P-2). The reason for seeking extension of the time as mentioned in the head-note is non-receipt of

the report from Forensic Science Laboratory. Learned counsel for the petitioners contends that the reason assigned by the Public Prosecutor while seeking extension of time does not indicate that the conditions provided under Section 36-A(4) of NDPS Act are not complied with and the learned trial Court relied upon the report dated 30.01.2023 of the Public Prosecutor. Two reasons were provided in the report of Public Prosecutor dated 30.01.2023 (Annexure P-3) that the co-accused Telu Ram has not been apprehended and the Forensic Science Laboratory report has not been received till date. Learned counsel for the petitioners contends that the impugned order was passed without assigning any specific reason which requires further detention of the petitioners beyond the period of 180 days.

5. Learned counsel for the petitioners wishes to withdraw the petition on behalf of petitioner No.3 Makhan Lal as he has already been granted the concession of regular bail.

6. Per contra, learned State counsel seeks rejection of the present revision petition on the ground that the application was filed well before the target date i.e. 04.02.2023 before elapsing of 180 days and the application was allowed and the extension of two months' time was granted on 01.02.2023 i.e. also prior to the target date of 04.02.2023. He further submits that the petitioners are involved in a case in which huge quantity of 38 Kg of Ganja was recovered which falls within category of commercial quantity and co-accused Telu Ram is still absconding.

7. Learned Amicus has referred to judgment of **Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau, (2009) 17 SCC 631** to contend that issue involved in this case already stands settled by the aforementioned judgment. The facts of this case are somewhat similar as in **Sanjay Kumar Kedia (supra)**. The extension of time was sought on the ground of non-availability of the FSL. The Hon'ble Supreme Court has set aside the order of Special judge and the order passed by the Calcutta High Court and directed the appellant therein to be released on bail. The learned amicus curiae further referred to Judgment passed in **Hitendra Vinshu Thakur Vs. State of Maharashtra, 1994 AIR(Supreme Court) 2623** and submits that once the petitioners have already applied for default bail, the Public Prosecutor cannot defeat the enforcement of their indefensible right by subsequently filing the final report.

8. Having heard learned counsel for the parties and after perusing the records of the case it transpires that the reasons assigned by the Public Prosecutor for seeking extension of time in any manner would not be sufficient in any manner in terms of Section 36-A (4) of NDPS Act and the learned trial Court also fell in error while granting extension of time to complete the investigation by two months without assigning any reason which warrants further detention of the petitioners. The application for extension of time dated 30.01.2023 (Annexure P-2) as well as the report submitted by learned

Public Prosecutor on 30.01.2023 (Annexure P-3) has not referred to progress of investigation. No specific compelling reason is indicated in the aforementioned application as well as in the report filed by the Public Prosecutor justifying the detention of the petitioners beyond the period of 180 days. In **CRR-428-2023** titled as **Satpal Singh @ Sattu Vs. State of Haryana**, **CRR-1357-2022** titled as **Gurmej Singh and Others Vs. State of Haryana and Others**, **CRR-708-2021** titled as **Satpal Singh Alias Satpala and Another Vs. State of Haryana**, **CRR-1334-2020** titled as **Pardeep Vs. State of Haryana** and **CRM-M-3339-2014** titled as '**Nardev Inder Singh Vs. State of Punjab**', findings recorded by the Coordinate Benches of this Court would show that extension of time granted on non-receipt of FSL report would not be sufficient inasmuch as the same was in violation of provisions of Section 36-A(4) of the NDPS Act. The grounds on which the application for extension dated 30.01.2023 (Annexure P-2) was filed do not conform to the reasons as specified in Section 36-A(4) of the NDPS Act.

9. The trial Court is empowered to authorize detention of the accused up to one year provided the following conditions are fulfilled:-

- (i) The progress of the investigation indicating the reason for non-completion of the investigation within the stipulated period.
- (ii) There must exist the specific-compelling reasons before seeking the detention of the accused beyond the period of 180 days.

(iii) Any order granting extension of time to investigating agency beyond the stipulated period must be passed after issuance of notice to the accused.

10 Once this Court finds that ground for seeking extension of time being non-receipt of FSL report is not sustainable in the eyes of law. No specific or compelling reason was indicated for seeking extension of time, accordingly, the order granting extension based on the same ground would also not sustain as it suffers from incurable illegality.

11. In view of the above, the impugned orders dated 23.02.2023 and 01.02.2023 are set aside. The application filed by petitioners No.1 and 2 namely Mahender and Ram respectively under Section 167(2) of CrPC for default bail is allowed and petitioners are ordered to be released on default bail on their furnishing bail bonds/surety bonds to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate.

28.11.2023
tejwinder

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

