

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRR-1006-2023 (O&M)

Reserved on 9.5.2023

Date of Decision: 16.5.2023

Madan Lal

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Amit Choudhary, Advocate,
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

KARAMJIT SINGH, J.

Present revision petition has been filed by the petitioner against the order dated 13.1.2023 whereby the application moved by the prosecution under Section 36A(4) of NDPS Act was allowed and order dated 9.2.2023 whereby the application moved by the petitioner for grant of default bail under Section 167(2) of Cr.P.C. was dismissed by the Court of Additional Sessions Judge, Fatehabad in criminal case having FIR No.366 dated 17.7.2022 registered under Sections 22(c), 27-A of NDPS Act at Police Station Sadar, Fatehabad.

2. The facts in brief are that the police recovered commercial quantity of medical intoxicants from the residential house of the petitioner on 17.7.2022 and the petitioner was arrested at the spot and was produced in the Court concerned on 18.7.2022 and as per the provisions of Section 36-A of NDPS Act, challan was to be filed by 13.1.2023. In the meantime, the prosecution filed an application under Section 36A(4) of NDPS Act seeking

extension of time to complete the investigation. Thereafter, the petitioner filed an application dated 4.2.2023 seeking grant of default bail under Section 167(2) of Cr.P.C. Learned trial Court allowed the application under Section 36A(4) of NDPS Act moved by SHO, Police Station Sadar Fatehabad through public prosecutor vide order dated 13.1.2023 while the application moved by the petitioner under Section 167(2) of Cr.P.C. was dismissed by the said Court vide order dated 9.2.2023.

3. Counsel for the petitioner has contended that the petitioner was arrested on 17.7.2022 and produced before the Court concerned on 18.7.2022. It is further contended that the police failed to present the challan within the stipulated period of 180 days as per provisions of Section 36A of NDPS Act. Counsel for the petitioner has further submitted that actually, no such request for extension of time to complete the investigation was filed by the public prosecutor and rather, the public prosecutor simply forwarded the request made in this regard by SHO of the Police Station concerned and as such the requisite application dated 7.1.2023 (Annexure P-2) was not in conformity with the provisions of Section 36A(4) of NDPS Act. He has further submitted that the said application was not supported by any report of the public prosecutor indicating progress of investigation and specific reasons for detention of the accused beyond the period of 180 days. He has further submitted that the impugned order dated 13.1.2023 is totally illegal, as no such request for extension of period to complete the investigation was made by the public prosecutor indicating progress of investigation. Counsel for the petitioner in this context referred to the judgment passed by this Court in **Baljinder Singh @ Kala v. State of Punjab**, 2016(5) RCR

Herald 1472.

4. Counsel for the petitioner has further contended that admittedly in the instant case, no challan was presented by the police against the petitioner within the stipulated period of 180 days as per provisions of Section 36A of NDPS Act and as the period of investigation was wrongly extended by the learned trial Court vide order dated 13.1.2023, indefeasible right accrued to the petitioner for grant of default bail and consequently, the petitioner filed application under Section 167 (2) of Cr.P.C. dated 4.2.2023. Even by that time, no challan was presented. Counsel for the petitioner has further submitted that in the given circumstances, impugned order dated 9.2.2023 passed by the learned trial Court whereby the application moved by the petitioner for grant of default bail was dismissed, is also not sustainable in the eyes of law.

5. Present petition is contested by the State counsel who has contended that there is no illegality or infirmity in the impugned orders. State counsel has further submitted that the prosecution failed to submit challan under Section 173 of Cr.P.C. against the petitioner within the stipulated period of 180 days; that however before the expiry of the said period, an application under Section 36A(4) of NDPS Act was filed by the public prosecutor on 7.1.2023 seeking extension of time to complete the investigation, as by that time, report of FSL was not received. State counsel has further submitted that the said application was contested by the petitioner and after hearing both the parties, was allowed by the learned trial Court vide order dated 13.1.2023. State counsel has further submitted that as the prosecution was given another 60 days to complete the investigation vide impugned order dated 13.1.2023, there was no occasion for the

petitioner to seek default bail by filing an application on 4.2.2023. State counsel has further submitted that in the given circumstances, the learned trial Court rightly dismissed the aforesaid bail application moved by the petitioner under Section 167(2) of Cr.P.C.

6. I have considered the submissions made by the counsel for the parties.

7. Admittedly, in the present case, challan was not presented by the prosecution within the stipulated period of 180 days as per provision of Section 36A of NDPS Act and prior to the expiry of the said period, the prosecution filed an application under Section 36A (4) of the NDPS Act on 7.1.2023 (Annexure P-2). From the perusal of the said application, it appears that the same was moved by SHO, Police Station Sadar, Fatehabad and was simply forwarded by the concerned public prosecutor.

8. Before proceeding further in this matter, relevant provisions of Section 36A (4) of NDPS Act need to be gone into and it reads as under : -

36A(1)	X	X	X
(2)	X	X	X
(3)	X	X	X

(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.

9. The aforesaid provision of NDPS Act clearly shows that there are 3 conditions, to be specified for the Court before granting extension of time to the prosecution for filing final report under Section 173 of Cr.P.C. Merely filing an application in this regard does not *ipso facto* empowers the Court to extend the stipulated period for filing challan. As per Section 36A (4) of NDPS Act, the public prosecutor is under duty to submit his report indicating progress of investigation and the specific reasons for detention of the accused beyond period of 180 days. So, it is apparent that a public prosecutor has to apply his mind before making any request under Section 36A(4) of NDPS Act for extension of period to investigate the matter and is further required to make a report to the Court indicating therein the progress of the investigation and disclosing justification for extending custody of the accused beyond statutory period.

10. In the instant case, the application for extension of time signed by the investigating officer and forwarded by the concerned public prosecutor cannot be construed as a report of the public prosecutor as per the provisions of Section 36A (4) of NDPS Act for the reason that the public prosecutor had only appended his signatures at the bottom of the said request without application of mind and without assigning any reason. It is settled law that provision of Section 36A(4) of NDPS Act is not a mere formality but requires due application of mind as to the ground for delay in filing challan and the reason for further detention of the accused. This Court is of the view that the application/report (Annexure P-2) filed by the prosecution did not meet the aforesaid requirements envisaged under

Section 36A(4) of NDPS Act as the extension of time was simply sought on the ground that the report of FSL was still awaited. In this context, reference is made to **Sanjay Kumar Kedia v. Narcotic Control Bureau** (2009) 17 SCC 631.

11. The record clearly shows that the impugned order dated 13.1.2023 lack satisfaction of the aforesaid mandatory conditions of Section 36A(4) of NDPS Act and consequently, deserves to be set aside.

12. Admittedly, on 4.2.2023, when the petitioner filed an application under Section 167(2) of Cr.P.C. for grant of default bail, challan and report of FSL was still awaited. The report of FSL goes to the root of the case and is a material document. Further, as has been discussed above, as order dated 13.1.2023 passed by the learned trial Court is not sustainable in the eyes of law, there was no ground for the learned trial Court to decline grant of default bail to the petitioner who was having indefeasible right to get bail under Section 167(2) of Cr.P.C. read with Section 36A(4) of NDPS Act on the expiry of the statutory period of 180 days.

13. Consequently, the present petition is allowed and orders dated 13.1.2023 and 9.2.2023 are set aside. The petitioner is ordered to be released on bail on his furnishing requisite bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

May 16, 2023
Paritosh Kumar

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