

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1142-2022 (O&M)
Date of Decision: 27.02.2023

Amrit Pal Singh

... Petitioner

V/s.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Mr. Navkiran Singh, Advocate
for the applicant-petitioner.

Mr. Karan Garg, AAG, Haryana.

DEEPAK MANCHANDA, J.(Oral)

CRM-6300-2023

The instant application has been filed for placing on record the copy of vernacular application dated 22.03.2022 as Annexure P-2.

For the reasons mentioned therein, the application is allowed.

Document as Annexure P-2 is taken on record subject to all just exceptions.

CRR-1142-2022

The present revision petition has been filed against the impugned order dated 08.04.2022 passed by the Additional Sessions Judge, Special Court, Karnal whereby the application filed by the petitioner seeking default bail under Section 167 (2) Cr.P.C. has been dismissed.

The FIR was registered on the basis of statement of SI Ram Kumar that the petitioner along with other co-accused are indulged in the business of selling of Opium and they are transporting huge quantity of Opium from Jharkhand Bihar. Accordingly, a Nakabandi was planned and during raid, the petitioner was intercepted by the police party, who was carrying two polythene bags containing 09 kg 280 grams of Opium in each bag with the total weight of 18 kgs 560 grams. The petitioner was arrested and FIR No. 929 dated 01.10.2021 under Section 18 of NDPS Act was registered with Police Station Sadar, Karnal.

Learned counsel for the petitioner has submitted that in the present case the petitioner was arrested on 01.10.2021 and was produced before the learned Judicial Magistrate but the challan could not be filed within a period of 180 days as the FSL report was not ready. Thereafter, just 07 days before the completion of 180 days i.e. on 22.03.2022, an application (Annexure P-2) was filed by the State counsel seeking extension of time in filing of Challan under Section 36-A (4) of the NDPS Act, where period of one month was granted. Learned counsel submits that since the recovery falls under the ambit of commercial quantity, hence, as per Section 36(A)(4) NDPS Act, period of 180 days applies to revisionist for filing an application for the grant of default bail in case challan is not filed by the Investigating Agency. It is submitted that after the completion of 180 days, the petitioner filed an application dated 07.04.2022 seeking grant of default bail under Section 167(2) Cr.P.C. read with Section 36(A)(4) of NDPS Act for non-filing of challan within 180 days but vide Order dated 08.04.2022, the said application for grant of default bail was dismissed by the Additional

Sessions Judge, Special Court, Karnal.

Learned counsel for the petitioner has averred that after dismissal of the said application an incomplete challan without FSL report was prepared on 19.4.2022 and was filed on 21.4.2022 and submits that since order dated 22.03.2022 is illegal as it violates the mandate of Section 36(A)(4) NDPS Act, hence, Right of Default Bail accrued to petitioner on 07.04.2022, i.e. the date on which application under Section 167 (2) Cr.P.C. was filed and the order granting the extension to the Investigating Agency is illegal.

Learned counsel has further argued that order dated 22.03.2022 violates the mandate of Section 36(A)(4) of NDPS Act as report of Public Prosecutor had not been filed along with the application made by the police. Moreover, neither any report of Public Prosecutor to such an effect was received nor any endorsement to such an effect was made on the said application by the Public Prosecutor and also submits that the said application dated 22.03.2022 should have been dismissed by the Additional Sessions Judge outrightly on this very ground only. Learned counsel also submits that the co-accused Bunty Rai alias Vinay Kumar Rai has already been allowed interim bail by the Co-ordinate Bench vide order dated 18.02.2022 passed in CRM-M-6878-2022 and to support his contention, he has relied upon the judgments passed by the Co-ordinate Benches on the similar issue, i.e. judgment passed in **CRM-M-48705-2021** titled as **Joginder Singh vs. State of Haryana** vide order **dated 11.02.2022, CRR-1291-2021** titled as **Saurabh alias Channa vs. State of Haryana** vide order **dated 17.11.2021, CRR-1334-2020** titled as **Pradeep vs. State of**

Haryana vide order *dated 17.08.2021, CRM-M-41673-2013* titled as *Jeevan Sharma alias Vicky vs, State of Punjab* vide order *dated 15.01.2014*. Learned counsel also referred to the law laid down in this regard by the Full Bench of the Apex Court in Criminal Appeal No. 667 of 2020 (SLP (Crl.) No. 2933-2020) titled as *Bikramjit Singh vs. State of Punjab*, and the law laid down by the Division Bench of this Court in *Ajit Singh @ Jeeta and another Vs. State of Punjab, Crl. Revision No.4659 of 2015*.

In compliance of order dated 02.02.2023, a fresh reply dated 16.02.2023 has been filed by the respondent-State and the same was taken on record. Learned State counsel does not dispute the contentions raised by learned counsel for the petitioner and admits that the police had prepared the challan on 19.04.2022 and same was filed on 21.04.2022 which was after expiry of 180 days and in reply it is also admitted that the Public Prosecutor did not submit the requisite form along with application dated 22.03.2022 seeking exemption under Section 36(A)(4) of the NDPS Act.

I have considered the submissions made by the counsel for the parties and to proceed further, it is relevant to note the provision of [Section 167\(2\), Cr.P.C](#):

“Section 167. Procedure when investigation cannot be completed in twentyfour hours.— (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I. For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II. If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution."

It is also relevant to note [Section 36A](#) (4) of the [NDPS Act](#) for the purpose of this matter:

[Section 36A. Offences triable by Special Courts.](#)— (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 reason for the

detention of the accused beyond the said period of one hundred and eighty days.” (emphasis supplied)

As per prosecution, the present case is with regard to recovery of commercial quantity of contraband and the petitioner was sent to custody on 01.10.2021. The police prepared the challan against the petitioner on 19.04.2022, without report of FSL and presented the same on 21.04.2022. The statutory period of 180 days wherein complete challan was to be filed, expired on 29.03.2022 Admittedly, even by that date the report of FSL was still awaited and on 07.04.2022, the petitioner filed an application for grant of default bail and the challan was presented on 21.04.2022 only and that too after filing of the application under Section 167(2) Cr.P.C. It is not disputed by the State counsel that by 21.03.2022, no application was filed by the public prosecutor seeking extension of time for the purpose of investigation of the case. Even no report of public prosecutor was filed as per the requirements of Section 36(A)(4) of NDPS Act.

Since neither any report report of Public Prosecutor was received nor any endorsement to such an effect was made on the said application by the Public Prosecutor. The said 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 instances and satisfy him about the

progress on 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. Thus for seeking extension of time, 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 and must attach the request of the Investigating Officer along with his request or application and report and the same 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.

In the case in hand, the application for extension signed by the Investigating Officer cannot be construed as a report of the Public Prosecutor as envisaged in Proviso to sub section (4) of Section 36 A of the NDPS Act for the reason that Public Prosecutor had only appended his signatures at the bottom of the page and marked as 'Forwarded' and that too, without even making an endorsement that he had perused the grounds and that, he was satisfied about the progress of investigation and reasons set

out for extension of time to complete the investigation. It is a settled proposition of law that report is not merely a formality but requires due application of mind of filing challan and reasons for further detention of accused. In the present case, the application filed by the prosecution did not meet the aforesaid requirements envisaged in Proviso to Section 36 A(4) of the NDPS Act, through which it can be safely presumed that the application for seeking extension of time was nothing but a transmission of request of an Investigating Officer, which was filed without any report of Public Prosecutor and the same was essentially required for seeking extension of time. Even as per reply, this is the undisputed position by the State that application filed under Section 36 A(4) of NPDS Act dated 22.03.2022 seeking extension of time was filed without requisite form which was duly forwarded by the Public Prosecutor and even no reference of any report has been made which was supposed to be attached while seeking extension of time and the said aspect is missing.

Thus the impugned order dated 08.04.2022 lack satisfaction of mandatory conditions of Section 36 A (4) of the NDPS Act and in the absence of an appropriate report, the Court below should not have deprived the petitioner for his indefeasible right to be released on bail on account of the default of the prosecution to file the challan within a prescribed time. Moreover, no extension should have been granted to keep the petitioner in custody on the prescribed period except to enable the investigation to be completed. Accordingly this Court is of considered view that as per Section 167 (2) Cr.P.C., the indefeasible right had been accrued in favour of the petitioner when police failed to complete the investigation and put up the

challan against him in accordance with law and the said right to bail under Section 167 (2) Cr.P.C., is absolute, which is a legislative command and not a Court's discretion.

A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 180 days before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167 (2), kicks in and must be granted.

However, the question of personal liberty of an accused, under a statute which imposes drastic punishments is involved. The right to default bail, as has been held by the judgments of the Apex Court as well as of this Court, is not only the statutory right under the first proviso to Section 167 (2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled. This being the case, the petitioner whose right had been curtailed will now be entitled to be released on 'default bail' under Section 167(2) of the Code. However, it is made clear that this does not prohibit or otherwise prevent the arrest or re-arrest of the petitioner on cogent grounds, and upon arrest or re-arrest, the petitioner

is entitled to the petition for the grant of regular bail which application should be considered on its own merit and this judgment will have no impact on the arrest of the petitioner in any other case.

In the light of the above, the impugned order dated 08.04.2022 passed by the Additional Sessions Judge, Special Court, Karnal rejecting the default bail to the petitioner is hereby set aside and the petitioner is ordered to be released on default bail on furnishing requisite bail bonds to the satisfaction of concerned trial Court/Special Judge (Duty).

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

(DEEPAK MANCHANDA)
JUDGE

27.02.2023
seema/sumit gulati

Whether speaking/reasoned	Yes
Whether Reportable	Yes