

CRR-1144 of 2023

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

CRR-1144 of 2023
Reserved on: 02.09.2023
Pronounced on: 14.09.2023

Satnam @ Sonu @ Soni

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

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

Mr. Rajbir Singh, DAG, Haryana.

NAMIT KUMAR, J.

1. Present revision petition has been filed by the petitioner against the order dated 23.03.2023 passed by the Court of learned Additional Sessions Judge-cum-Judge, Special Court for Heinous Crime against Women, Hisar, whereby application of the prosecution for extension of time of 60 days to present the challan has been allowed and the order dated 20.04.2023 whereby learned Additional Sessions Judge-cum-Judge, Special Court for Heinous Crime against Women, Hisar, has dismissed the application filed by the petitioner under Section 167(2) Cr.P.C.

2. The brief facts of the case are that FIR No.1204 dated 01.10.2022 under Sections 21C and 29 of the Narcotic Drugs and

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Psychotropic Substances Act, 1985 (in short 'the NDPS Act') was registered at Police Station Sadar Hisar against co-accused of the petitioner, namely, Anil Kumar as he was found in conscious possession of 255 grams of heroin. During investigation, co-accused Anil Kumar suffered a disclosure statement that petitioner was the supplier of the recovered contraband. Thus, petitioner was arrested in this Court on 04.10.2022. On 20.03.2023 investigating agency moved an application for extension of time for presentation of challan. The period for presentation of challan was extended by two months vide order dated 23.03.2023. Thereafter, on 19.04.2023, petitioner moved an application under Section 167(2) Cr.P.C. for grant of default bail, which has been dismissed vide impugned order dated 20.04.2023.

3. Learned counsel for the petitioner contended that petitioner was arrested on 04.10.2022 and was produced before the Court concerned on the same day. It is further contended that police has failed to present the challan within the stipulated period of 180 days as per provisions of Section 36-A of the NDPS Act. He further submitted that no request for extension of time to complete the investigation was filed by the public prosecutor and the public prosecutor simply forwarded the request made in this regard by the SHO of the police station concerned and as such the application dated 20.03.2023 was not in conformity with the provisions of Section 36-A(4) of the NDPS Act. He further submitted that said application was not supported by any report of the public prosecutor indicating progress of investigation and specific reasons for detention of the accused

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beyond the period of 180 days. He further submitted that impugned order dated 20.04.2023 passed by learned Additional Sessions Judge-cum-Judge Special Court, Hisar, whereby default bail of the petitioner has been rejected is erroneous and perverse. In support of his contentions, learned counsel for the petitioner has relied upon the judgment of the Co-ordinate Bench of this Court in ***CRR-1006 of 2023 – Madan Lal v. State of Haryana – decided on 16.05.2023.***

4. *Per contra* learned State counsel has referred to the order dated 23.03.2023 passed by the Judge, Special Court, Hisar, whereby application for extension of time has been accepted, which reads as under: -

“Reply to the application for extension of time of the statutory period to file the complete charge alongwith the FSL report, have been filed today by all the accused through their respective Counsels. Arguments have been advanced. Heard.

2. *The SHO concerned submitted in the application that 255 gram heroin was found in the possession of accused and the samples of 10 gram each had been sent to the FSL for chemical analysis. The report of the same has still not been received. The statutory period of 180 days is going to expire in the matter in hand on 28.03.2023 and therefore, the request for extension of time has been made.*

3. *The accused have contested this application and submitted that the instant application is not maintainable and no reason has been given for not completing the investigation within the statutory period of 180 days. The learned counsel Sh. M.R. Mehta, representing one of the accused Satnam @ Sonu submitted the right of life and*

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personal liberty is a fundamental right of the accused which may not be defeated due to careless investigation.

4. *The application moved by the SHO concerned has also been supported with the report made by the learned Public Prosecutor indicating the status of investigation. The learned Public Prosecutor also submitted that non-filing of complete charge-sheet in the matter in hand is not attributable to the police officials.*

5. *The Superintendent of Police, Hisar has written a letter dated 22.12.2022 to the FSL, seeking the expert report which is still awaited. Even another letters dated 25.01.2023 and 17.03.2023 have also been written to the FSL, seeking the expert report. All these letters suggest that the Investigating Officer has made bonafide efforts to obtain the report of FSL which is still awaited and such a lapse is not attributable to the police officials. The report made by the learned Public Prosecutor in this regard has also been perused. Hence, this application is hereby allowed. The period of two months is further granted to the Investigating Officer to place the complete chargesheet on record and this period of two months will start to run on the completion of the period of 180 days i.e. on 28.03.2023.*

6. *Now, to come up on 28.03.2023, the date already fixed in this case.”*

He further submitted that since the challan in the present case along with FSL report has already been presented on 26.05.2023 i.e. within the extended period, the petitioner is not entitled for default bail under Section 167(2) Cr.P.C. He has placed reliance upon the judgment of the Hon’ble Supreme Court in ***Qamar Ghani Usmani v. The State of Gujarat, 2023(2) R.C.R.(Criminal) 850.***

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5. I have heard learned counsel for the parties and perused the record.

6. Admittedly, the challan in the present case was not presented by the prosecution within the stipulated period of 180 days as per provisions of Section 36-A of the NDPS Act and prior to the expiry of the said period the prosecution filed an application on 20.03.2023 under Section 36-A(4) of the NDPS Act. After seeking reply to the said application for extension of time, the time was extended for presenting the challan along with FSL report vide order dated 23.03.2023 and further time of two months was granted to the investigating agency to file the complete chargesheet on record and the extended period of two months was to start on completion of the period of 180 days i.e. 28.03.2023, meaning thereby the time was extended upto 28.05.2023 and the challan in the present case along with FSL report was filed on 26.05.2023 i.e. within the extended period and as per FSL report substance recovered was indicated as 'heroin'. Petitioner is involved in one more case under Sections 21(b) and 27-A of the NDPS Act.

7. Hon'ble Supreme Court in ***Qamar Ghani Usmani's*** case (supra) has held that when the chargesheet is filed within the time of extension, the accused is not entitled for the default bail under Section 167(2) Cr.P.C. So far as the reliance placed by learned counsel for the petitioner in ***Madan Lal's*** case (supra) is concerned, the facts of the present case are distinguishable from the said case as in the said case the application for extension of time was simply forwarded by the

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concerned public prosecutor as is clear from para 7 of the said judgment but in the present case the situation is not the same as the application moved by the investigating officer has been considered by the public prosecutor and after being satisfied with the averments made in the application by investigating officer, public prosecutor made his separate statement and then moved the application to Court.

8. This Court while exercising its revisional powers has very limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

9. Learned counsel for the petitioner has not been able to show any such infirmities in the impugned orders.

10. Finding no merit in the present revision petition, the same is dismissed.

11. However, it will be open to the petitioner to file an application seeking regular bail which will be considered on merit and in accordance with law.

14.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No