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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1410-2022

Date of decision : 13.03.2023

DHRUV KUMAR @ ALOK AND ORS

... Petitioners

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Arpandeeep Narula, Advocate with
Mr. Raj Mohan Singh, Advocate and
Ms. Upsana Gandhi, Advocate
for the petitioner(s).

Mr. Neeraj Poswal, Asst. A.G., Haryana.

JASJIT SINGH BEDI, J.

The present revision petition has been preferred against the order dated 10.06.2022 passed by the Additional Sessions Judge, Fatehabad whereby the application for grant of default regular bail preferred by the petitioners under Section 167(2) Cr.P.C. in case FIR No.447 dated 07.12.2021 registered under Sections 21(c) and 27-A of the NDPS, Act, 1985 at Police Station Sadar Fatehabad, District Fatehabad has been dismissed.

2. The brief facts of the case are that FIR No.447 dated 07.12.2021 registered under Sections 21(c) and 27-A of the NDPS, Act, 1985 at Police Station Sadar Fatehabad, District Fatehabad came to be registered against the petitioners when they were found in possession of

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400 grams of heroin. The copy of the FIR is attached as Annexure P-1 to the petition.

3. Thereafter, on the arrest of the petitioners on 17.12.2021, an application was moved by the Investigating Officer seeking extension of time for presentation of a report under Section 173 Cr.P.C. The copy of the said application dated 25.05.2022 is attached as Annexure P-2 to the petition. The period of 180 days to present the report under Section 173 Cr.P.C. was to be completed on 04.06.2022.

4. The accused/petitioners moved an application under Section 167(2) Cr.P.C. for the grant of default bail on 06.06.2022. However, with respect to the application for extension of time to submit a report under Section 173(2) Cr.P.C., the period of completion of investigation was extended by 90 days vide order dated 10.06.2022. Consequently, the application under Section 167(2) Cr.P.C. for the grant of default bail was dismissed on 10.06.2022.

It is this order which is impugned in the present case.

5. The learned counsel for the petitioners states that since the application under Section 167(2) Cr.P.C. for the grant of default bail had been declined only on account of the fact that the period for the presentation of challan was extended by 90 days, the petitioner was now entitled to the grant of default bail as the said order extending the period for the presentation of challan by 90 days has been set aside by this Court in CRR-933-2022, decided on 01.06.2022.

6. The learned State counsel does not dispute the fact that as the order granting extension for presentation of challan has been set

aside, the petitioner was entitled to the grant of bail in terms of Section 167(2) Cr.P.C.

7. I have heard the learned counsel for the parties.

8. Before proceeding further, it would be apposite to refer to the relevant provisions of law. The same are enumerated hereinbelow:-

Section 36A (4) of the NDPS Act, reads as under:-

[36A. Offences triable by Special Courts.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers-

(i) when such person is forwarded to him as aforesaid; or

- (ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;*
- (c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;*
- (d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.*
- (2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.*
- (3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.*
- (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.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.]

Section 167(2) of the Cr.P.C., reads as under:-

167. Procedure when investigation cannot be completed in twenty four hours.- (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub- inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(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 sub- section 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 in any custody under 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.”

9. This Court in the case of **Joginder Singh Versus State of Haryana, CRR-1314-2021, decided on 11.02.2022**, held as under:-

“As regards Section 167(2) Cr.P.C., it creates an indefeasible right in an accused person, on account of the 'default' by the investigating agency in the completion of the investigation within the maximum period prescribed or extended, as the case may be, to seek an order for his release on bail. It is for this reason that an order for release on bail under proviso (a) of Section 167(2) Cr.P.C. is generally termed as an “order-on-default” as it is granted on account of the default of the prosecution to complete the investigation and file the challan within the prescribed period. As a consequence of amendment, an accused after the expiry of 180 days from the date of his arrest becomes entitled to bail irrespective of the nature of the offence with which he is charges, where the prosecution fails to put up challan against him on completion of the investigation. Thus, in the considered view of this Court, as per Section 167(2) Cr.P.C., an indefeasible right to be enlarged on bail accrues in favour of the accused, if the police fails to complete the investigation and put up a challan against him in accordance with law under Section 173 Cr.P.C. An obligation, in such a case, is cast upon the Court, when after the expiry of the maximum period during which an accused could be kept in custody, to decline the police request for further remand. There is yet another obligation also which is cast on the court and that is to inform the accused of his right of being released on bail and enable him to make

an application in that behalf. This legal position has been very ably stated in Aslam Babalal Desai Vs. State of Maharashtra, 1993 (1) Recent Criminal Reports 600, where speaking for the majority, the Hon^{ble} Supreme Court referred the law laid down in Rajnikant Jivanlal Patel & another Vs. Intelligence Officer, Narcotic Control Bureau, New Delhi, AIR 1990 Supreme Court 71, wherein it was held that:-

“The right to bail under Section 167(2) proviso (a) thereto is absolute. It is a legislative command and not court's discretion. If the investigating agency fails to file chargesheet before the expiry of 90/96 days, as the case may be, the accused in custody should be released on bail. But at that stage, merits of the case are not to be examined. Not at all. In fact, the magistrate has no power to remand a person beyond the stipulated period of 90/96 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bond.”

[Emphasis supplied]

10. For a proper appreciation of the facts, a tabulated chart of the relevant dates is reproduced hereinbelow:-

1.	Date of FIR/arrest	07.12.2021	Annexure P-1
2.	Application for extension	25.05.2022	Annexure P-2
3.	180 Days completion	04.06.2022	--
4.	Application U/s 167(2) Cr.P.C.	06.06.2022	--
5.	Order whereby extension of 90 days granted.	10.06.2022	Annexure P-3
6.	Order of dismissal of bail application U/s 167 (2) Cr.P.C.).	10.06.2022	Impugned order
7.	Challan presented	10.08.2022	--

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11. A perusal of Section 36A (4) of the NDPS Act and Section 167(2) proviso (a) Cr.P.C. along with the judgments in Joginder Singh (supra) would show that an accused gets an indefeasible right to the grant of bail on account of the default by the Investigating Agency in not presenting the report under Section 173 Cr.P.C. within the stipulated period. In the instant case, an application for extension was moved by the Investigating Agency seeking additional time for presentation of the report under Section 173 Cr.P.C. in the absence of the report of the FSL. An extension of 90 days was granted vide order dated 10.06.2022. However, vide order dated 01.06.2022 passed in CRR-933-2022, the said order has been set aside by this Court. Therefore, once this Court has held that the grant of extension of 90 days in presentation of the challan itself is bad in the eyes of law, the further detention of the petitioners would be in violation of Section 167(2) Cr.P.C. read with Section 36A (4) of the NDPS Act.

12. Keeping in view the aforementioned discussion, the present revision petition is allowed and the impugned order dated 10.06.2022 passed by the Additional Sessions Judge, Fatehabad is set aside and the petitioners are ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

13. The petitioners shall appear before the police station concerned on the first Monday of every month and inform in writing each time that they are not involved in any other crime other than the cases mentioned in this order.

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14. The petitioners (or someone on their behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioners from Trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

13.03.2023
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No