

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

273

CRR-1498-2023
Date of Decision: 27.09.2023

Sher Singh @ Kaku

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Gaurav Vir Singh Behl, Advocate
for the petitioner.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 401 read with Section 397 Cr.P.C. against the order dated 31.05.2023 passed by the Court of Additional Sessions Judge, Ambala, in case arising out of FIR No. 353 dated 20.11.2022 under Sections 22 (c) of the NDPS Act (Section 29 of the NDPS Act added later on), registered at Police Station Barara, whereby, the application filed by the present petitioner under Section 167(2) Cr.P.C. was ordered to be dismissed.

2. The FIR in the present case was registered on the basis of the statement made by ASI Yashpal, CIA-II, Ambala Cantt. Since, the petitioner had filed the present application under Section 167(2) Cr.P.C. before the trial Court for grant of concession of bail to him, only on the ground that the complete challan was not presented by the

prosecution within a period of 180 days, so there is no need to reproduce the detail of the case in the present order.

3. Learned counsel for the petitioner submitted that the petitioner was ordered to be arrested in the present case on 20th November, 2022 and the incomplete challan, i.e., without the FSL report was filed on 02.02.2023. As per the learned counsel, the petitioner had completed the period of 180 days in custody on 19.05.2023 and he filed an application under Section 167(2) Cr.P.C. before the learned Special Court, Ambala, for grant of concession of bail to him as the complete challan had not been filed by the police. On 20.05.2023 itself, the report was called from the Ahlmad of the Court and according to the report of the Ahlmad, the challan was presented without FSL report and the FSL report had not been received till that day. However, in the meantime, on 22.05.2023, an application was moved by the police for extension of time for filing the FSL report and the said application filed by the prosecution was ordered to be allowed by the Special Court, Ambala. Learned counsel submitted that in the present case, the investigation had not been completed within a period of 180 days and just to frustrate the right of the petitioner, incomplete challan without the report of FSL was presented by the prosecution on 02.02.2023. Consequently, after the completion of 180 days in custody, the petitioner had moved an application under Section 167(2) Cr.P.C., for grant of bail, on 20.05.2023 and the petitioner was liable to be released on bail,

without any delay. Learned counsel further submitted that an indefeasible right had accrued in favour of the petitioner in view of the provisions contained in Section 167(2) Cr.P.C. and the said right would not be extinguished by the subsequent filing of an application for extension of time, by the Investigating Agency. Learned counsel further submitted that subsequent presentation of FSL report or any application for extension of time for submission of the final report/FSL report will have no effect on the case of the petitioner. In fact, on 20.05.2023, the petitioner had already moved an application under Section 167(2) Cr.P.C. for default bail and the prosecution had moved an application for extension of time for presentation of FSL report, complete challan on 22.05.2023, which would be meaningless. In such circumstances, the petitioner would be entitled to be released on bail.

4. On the other hand, learned State counsel had vehemently opposed the prayer made by the learned counsel for the petitioner on the ground that the petitioner was arrested in the present case on 20.11.2022. Thereafter, the final report under Section 173 Cr.P.C. was prepared and presented before the Court on 02.02.2022. Thus, the report submitted under Section 173 Cr.P.C. without the FSL report can never be termed as incomplete challan.

5. It has been held by the Hon'ble Supreme Court in the matter of **M. Ravindran Vs. The Intelligence Officer, Directorate**

of Revenue Intelligence, 2021(2) SCC 485; 2020(4) R.C.R.

(Criminal) 800 as follows:-

“13.1 However, the expression ‘the accused does furnish bail’ in Section 167(2) and Explanation I thereto cannot be interpreted to mean that if the accused, in spite of being ready and willing, could not furnish bail on account of the pendency of the bail application before the Magistrate, or because the challenge to the rejection of his bail application was pending before a higher forum, his continued detention in custody is authorized. If such an interpretation is accepted, the application of the Proviso to Section 167(2) would be narrowly confined only to those cases where the Magistrate is able to instantaneously decide the bail application as soon as it is preferred before the Court, which may sometimes not be logistically possible given the pendency of the docket across courts or for other reasons. Moreover, the application for bail has to be decided only after notice to the public prosecutor. Such a strict interpretation of the Proviso would defeat the rights of the accused. Hence his right to be released on bail cannot be defeated merely because the prosecution files the chargesheet prior to furnishing of bail and fulfil the conditions of bail of furnishing bonds, etc., so long as he furnishes the bail within the time stipulated by the Court”.

Still further, it was held as follows:-

18.1 Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have ‘availed of’ or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for

bail under Section 167(2), Cr.P.C. read with Section 36A (4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.

18.2 The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.

6. Still further, this court, in CRM M-25600-2021 decided on 15.07.2021 titled as “**State of Haryana Vs. Dildar Ram @ Dari**” has held that challan filed without FSL report would not be regarded as a complete challan and the accused would be entitled to default bail in terms of Section 167(2) Cr.P.C.

7. In the present case also, the petitioner was ordered to be arrested on 20.11.2022 and the challan without FSL report was filed on 02.02.2023. After the completion of 180 days in custody, the petitioner had filed the application under Section 167(2) Cr.P.C. on 20.05.2023. However, the prosecution moved an application for extension of time for filing of the FSL report on 22.05.2023 and the

same was allowed on the same day. However, such a move by the prosecution, would not defeat indefeasible right of the accused to claim bail under Section 167(2) Cr.P.C. First of all, a challan filed without FSL report can never be regarded as a complete challan. Secondly, the Hon'ble Supreme Court has also held that the right to be released on default bail continues to be in force if the accused has applied for such bail and the bail application remains pending for a long period and subsequent extension of time by the Court will have no effect on the right of the accused to default bail.

8. Consequently, in view of the above discussion and the law laid down by this Court as well as Hon'ble Supreme Court, the present petition is ordered to be allowed and the impugned order dated 31.05.2023 passed by the Additional Sessions Judge, Ambala, is set-aside. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned.

27.09.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

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