

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

CRR-1575-2023(O&M)

Date of Decision:12.12.2023

Narinder Kumar @ Narender Kumar @ Nandi

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.S. Sekhon, Advocate and
Mr. Rajdeep Singh Gill, Advocate, for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a revision petition filed impugning the order dated 18.05.2023 passed by the learned Special Judge, Fatehabad vide which the application for extension of time has been granted by the learned Special Judge and also an order dated 06.06.2023 passed by learned Special Judge vide which the application for grant of default bail under Section 167(2) Cr.P.C has been declined.

2. Learned counsel appearing on behalf of the petitioner argued that in the present case the petitioner was arrested on 03.12.2022 and he was produced before the learned Magistrate for the first time on 04.12.2022 and after excluding the aforesaid date, the period of 180 days expired on 02.06.2023 in terms of Section 36A of the NDPS Act since the quantity involved in the present case was a commercial quantity under the NPDS Act.

He submitted that before the expiry of the aforesaid 180 days the prosecution filed an application on 17.05.2023 for grant of extension of period since the FSL report was not received despite communication sent to the Forensic Science Laboratory. Thereafter, the learned Judge, Special Court allowed the aforesaid application for grant of extension of time vide impugned order dated 18.05.2023 and a period of 90 days was granted to the prosecution for filing of challan in pursuance of the provisions of Section 36A of the NDPS Act. He submitted that since time for presentation of challan was extended by way of the aforesaid order, the application for grant of default bail under Section 167(2) of the Code of Criminal Procedure was declined vide impugned order dated 06.06.2023 since the time already stood extended.

3. The learned counsel argued that while granting the extension of time there had been a violation of the provisions of Section 36A(4) of the NDPS Act. He submitted that the aforesaid extension can be granted only by giving cogent reasons and also when for reasons to be recorded it can be seen that the challan could not be presented but the mere fact that an FSL report has not been received despite communication to the Forensic Laboratory itself is not a ground for extension of time. He also submitted that the report of the Public Prosecutor which is also mandatory for the Court to receive has also been attached in the present petition as Annexure P-3 which would also show that no such reason has been given by the Public Prosecutor except that despite communication with the Forensic Laboratory, the report has not been received which itself cannot become a ground for extension of the period. He submitted that both the orders for grant of

extension of time and also the order by which the default bail has been declined are in violation of the aforesaid provisions and, therefore, the same are liable to be set aside.

4. On the other hand, Mr. Naveen Kumar Sheoran, learned DAG, Haryana has submitted that so far as the dates mentioned above are concerned, the same are correct and the period of 180 days would expire on 02.06.2023. He submitted that the challan has been presented on 28.08.2023 without FSL report during the extended period and, therefore, it cannot be said that the order is bad in law.

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

6. It is not in dispute that the challan was not presented within a period of 180 days nor the FSL report was received within 180 days. The only issue involved in the present case is as to whether the Judge, Special Court could have extended the period for another 90 days only on the ground that the FSL report was not received and whether in the absence of any specific reason for detention of the accused beyond the period of 180 days was justified in law or not. This Court earlier had an occasion to deal with this proposition of law in *CRR-2100-2023*, titled as '*Ravinder @ Bhola Versus State of Haryana*'. This Court held that a perusal of the proviso of Section 36A(4) of the NDPS Act would show that in exceptional circumstances where it is not possible to complete the investigation within the period of 180 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 detention of the accused beyond the period of 180 days. There are two essential ingredients for the purpose

of extension of period of 180 days. These ingredients envisaged in the proviso are rather conditions precedent and conditions *sine qua non* for invoking the provision of the aforesaid proviso in extreme circumstances where the investigation is not complete. First condition is that the report of the Public Prosecutor suggests or indicates regarding the progress of the investigation and the second condition which is also *sine qua non* and also condition precedent that specific reasons for the detention of the accused beyond the period of 180 days are to be specified. These two conditions are co-existent and non-satisfaction of even one condition will not give any entitlement to the prosecution for seeking an extension of 180 days. The language used in the proviso is absolutely unambiguous and clear and has to be given a literal construction. Otherwise also the grant or non-grant of a default bail is on a different pedestal as compared to grant or non-grant of regular bail under Section 439 of the Code of Criminal Procedure. So far as the grant of default bail is concerned, it is basically statutory in nature under Section 167(2) and is an indefeasible right. In the present case, the extension has been granted by way of an impugned order on the basis of the report of the Public Prosecutor which does not disclose any reason for detention beyond the period of 180 days nor any other such cogent reason has been provided except that the FSL report has not been received. The aforesaid report of the Public Prosecutor Annexure P-3 is reproduced as under:-

“Report U/s 36A of NDPS Act in case FIR No.651 dated 03.12.2022 under section 22C/27-A/29/61/85 NDPS Act, PS City Fatehabad.

In the above noted case, I have gone through the case file and revealed accused Narender @ Nandi was apprehended by the police party on 03.12.2022 and recovery of 2500 tablets tramadol was

recovered from him. During investigation, co-accused Kamaljit @ Kamal was arrested on 27.01.2023. Investigation of this case is complete and challan was prepared on 04.05.2023 and FSL report is not received till date. On 02.03.2023 vide memo No. 509-5A dated 02.03.2023, 23.03.2023 vide memo No.15406 dated 23.03.2023 and on 02.05.2023 vide memo No.29532 dated 02.05.2023, DO letters were sent to the RFSL Hisar by Superintendent of Police, Fatehabad for obtaining FSL report but official of the RFSL reported that “ A priority date i.e. 23.06.2023” is given and till date result of FSL not received. The accused are in custody since 03.12.2022 and co-accused in custody since 27.01.2023 and period to submit the final report u/s 173 Cr.P.C against accused is going to be expired on 31.05.2023. In view of above, the request dated 17.05.2023 of the SHO Police Station City Fatehabad regarding extension of time to submit Challan may kindly be accepted in the interest of justice.

Sd/-

Public Prosecutor

for the State of Haryana

17.05.2023

A perusal of the aforesaid report and the impugned order would show that as per proviso to sub-section (4) of Section 36A of NDPS Act, the essential condition *sine qua non* has not been satisfied. This Court is also of the view that the present case is covered by a judgment of this Court *Ravinder @ Bhola Versus State of Haryana, CRR-2100-2023, decided on 03.11.2023.*

7. In view of the aforesaid facts and circumstances of the present case, the present revision petition is allowed. The order dated 18.05.2023 and 06.06.2023 passed by the learned Judge, Special Court are hereby set aside. The petitioner shall be entitled for the grant of default bail under Section 167(2) of the Code of Criminal Procedure. He shall be released on

default bail under Section 167(2) of the Code of Criminal Procedure
subject to furnishing bail bonds/surety to the satisfaction of the learned trial
Court/Duty Magistrate concerned.

12.12.2023
rakesh

(JASGURPREET SINGH PURI)
JUDGE

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