

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(233)

CRR-1210 of 2021
DATE OF DECISION:-20.02.2023

Bablu Ram @ Babblu Ram

...Petitioner

vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. R. S. Waraich, Advocate, for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

HARKESH MANUJA, J.

Present revision petition has been filed challenging the order dated 27.08.2021 passed by the Judge, Special Court, Ludhiana, whereby, an application filed at the instance of the petitioner, invoking Section 167(2) Cr.P.C., seeking default bail has been dismissed.

In the present case, the petitioner was implicated as an accused in FIR No.42 dated 27.02.2021 under Section 22 and 25 of the NDPS Act, Police Station City-2, Khanna, wherein, he was arrested on the same day i.e. 27.02.2021. The prosecution having failed to submit *challan* within the period of 180 days moved an application for seeking extension of time before the Court concerned invoking Sub-Section 4 to Section 36-A of the NDPS Act, 1985. The application was filed by the prosecution on 26.08.2021 i.e. on 180th day followed by an application dated 27.08.2021 moved at the instance of present petitioner invoking Section 167(2) Cr.PC. seeking default bail on the ground of non-filing of *challan* by the prosecution within the prescribed period of 180 days. Admittedly, the aforesaid application was moved at the instance of present petitioner at 10 a.m., in the morning on 27.08.2021, whereas, the prosecution filed its *challan* before the Special

Court on the same day at 10.20 am.

The trial Court vide its order dated 27.08.2021, dismissed the prayer made at the instance of present petitioner for granting him default bail under Section 167(2) Cr.P.C., on the ground that application for seeking extension of time moved at the instance of prosecution stood allowed on the same day i.e. on 27.08.2021 by the Judge, Special Court in exercise of powers under Section 36-A(4) of the NDPS Act.

Impugning the aforesaid order dated 27.08.2021, learned counsel for the petitioner submits that the application filed at the instance of the petitioner, invoking Section 167(2) of the Cr.P.C., for grant of default bail was moved at his instance on 27.08.2021 at 10 am in the morning whereas, the *challan* was filed thereafter at around 10:20 am and the application for seeking extension of time for the purpose of filing of *challan* was allowed later in the day. He further submits that even an order dated 27.08.2021, passed at the instance of Special Court exercising powers under sub-Section 4 to Section 36A of the NDPS Act already stands quashed vide order dated 20.02.2023 passed by this Court in CRR No.368 of 2021.

On the other hand, learned State counsel vehemently opposes the prayer made herein while submitting that the present case is of heavy recovery and thus, the petitioner does not deserve the concession of default bail. Learned State counsel, however, has not been able to dispute the fact that the application under Section 167 (2) Cr.P.C. was filed at the instance of the petitioner before the Special Court on 27.08.2021 at 10 am, before the filing of *challan* by the prosecution on the same day at 10.20 am.

I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

Right of default bail under the provisions of NDPS Act, 1985 is regulated by Sub-Section 4 to Section 36A of the NDPS Act, the same been relevant for consideration of the case in hand, is reproduced hereunder:

“(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. ”

A perusal of sub-Section 4 to Section 36A of NDPS Act, shows that for the purpose of invoking Sub-Section 2 to Section 167 Cr.P.C., in respect of persons accused of an offence punishable under Sections 19 and 24 or 27 or the offences involving commercial quantity, the period referred thereto “ninety days” has to be construed as reference to “one hundred and eighty days”, though the special Court while invoking powers as available under Sub-Section 4 can extend it further to a period of one year on consideration of report of the public prosecutor indicating the progress of the investigation as well as on recording of specific reasons for detention of the accused beyond the period of 180 days. In the present case, the Special Court on an application moved at the instance of prosecution granted extension of 10 days time for filing of *challan* vide order dated 27.08.2021, however, the same was challenged by way of CRR No.368 of 2021 and the same already stands quashed vide order dated 20.02.2023 for want of

recording of specific reasons for extending detention of the accused beyond the period of 180 days. Accordingly, once the order dated 27.08.2021 passed by the Judge, Special Court, granting extension of time in favour of prosecution for the purpose of filing of challan stands quashed and the fact that the application filed at the instance of petitioner seeking “default bail” while invoking sub-Section 2 to 167 Cr.P.C. was filed prior in time as compared to the filing of *challan* at the instance of prosecution, there is no valid reasons for denying the valuable right of the petitioner for grant of “default bail”. My aforesaid view also find support from a decision rendered by this Court in CRR No.1356-57 of 2022 decided on 19.09.2022 titled Gurmej Singh Vs. State of Haryana. Relevant para No.11(v) is reproduced hereunder for reference:

11. (v) It is not in dispute that the period of 180 days had already elapsed on the date on which the application under Section 167(2) Cr.P.C. read with Section 173(5) was filed. Since this court has come to the conclusion that the extension of time granted, vide order dated 18.06.2022, was not granted in accordance with law and thus the said order dated 18.06.2022 is liable to be set aside and accordingly, the application of the petitioner filed under Section 167(2) Cr.P.C. read with Section 173(5) Cr.P.C., which creates an indefeasible right in an accused person on account of the default by the investigating agency, deserves to be allowed and thus, the order dated 22.06.2022 also deserves to be set aside.”

In view of the discussion made hereinabove, the impugned order dated 27.08.2021 is set aside and the application filed at the instance of petitioner invoking Section 36-A(4) of NDPS Act read with Section 167(2) Cr.P.C., for “default bail” is allowed and petitioner is ordered to be released

on bail on his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Magistrate subject to him not being required in any other case. Petitioner shall also abide by any other conditions as imposed by the trial Court.

The present revision is allowed accordingly.

20.02.2023
anil

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No