

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

109

CRR-1767-2023

Date of decision: 16.08.2023

Harsukhvir Singh @ Raja

.....Petitioner

Versus

Union of India

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ruhani Chadha, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is impugning the order dated 12.06.2023 whereby his application for grant of default bail under Section 167(2) of the Cr.P.C. in case NCB Crime No.79 of 15.11.2022 under Sections 8, 8A, 18, 21, 23, 25, 27A, 27B, 28, 29, 60 and 62 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered with P.S. NCB Chandigarh, was dismissed.

2. Learned counsel for the petitioner *inter alia* submits that the petitioner was taken into custody on 19.11.2022; the prescribed period for filing of challan within 180 days, was to expire on 18.05.2023. The challan in the instant case, though was presented within the prescribed period of 180 days, however, it was an incomplete one as it did not contain the FSL report qua one of the samples out of the 12 drawn and sent by the investigating agency. Instead that one sample was sent to CFSL, Chandigarh, for re-testing because the CRCL New Delhi, where it was earlier sent, was unable to give any definite opinion qua the same. Learned counsel while drawing the attention of

this Court to the ratio of law laid down in ***Thana Singh Vs. Central Bureau of Narcotics : 2013(1) RCR (Criminal) 861***, has contended that the Hon'ble Supreme Court has categorically held therein that there is no provision for re-testing under the NDPS Act; re-testing can be ordered only in exceptional circumstances and not as a matter of course. Hence, it was evident that the Trial Court had erred in ignoring the ratio of law laid down by the Hon'ble Supreme Court in ***Thana Singh's case (supra)***. Furthermore, it has been argued that the Court below had erroneously granted permission for re-testing of the sample in question vide order dated 01.06.2023 even through the prescribed period of 180 days had expired and no extension of time as envisaged under Section 36A(4) of the NDPS Act had been granted to the prosecution. Learned counsel has asserted that in the circumstances, there could be no manner of doubt that since the challan was incomplete, there was no evidence on record to conclude that the recovered substance which had been sent for re-testing, attracted the mischief of offences under the NDPS Act. Hence, the petitioner was entitled to default bail on this ground. In support, learned counsel has also placed reliance upon ***Karan Kakkar Vs. State of U.T., Chandigarh : 2014(4) RCR (Criminal) 159; Suresh Kumar S/o Mangilalji Tak Vs. State through NCB Indore : 2015(33) RCR (Criminal) 818; CRM-M-33037 of 2020 titled as 'Badar Ram Vs. State of Haryana' decided on 27.01.2021 and CRR-1326-2023 titled as 'Chander Prakash Vs. State of Haryana' decided on 06.06.2023.***

3. I have heard learned counsel and perused the relevant material on record.

4. Though the learned counsel has argued that the Court below did not take into consideration the ratio of law settled in *Thana Singh's case (supra)*, however, a perusal of the impugned order reveals that the petitioner's application for grant of default bail has certainly not been dismissed to await the report of CFSL, Chandigarh qua the sample sent for re-testing.

5. Before proceeding further, for facility of reference Section 167(2) of the Cr.P.C. and Section 36A(4) of the NDPS Act are reproduced hereunder:-

“Section 167(2) of the Cr.P.C.

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 subsection 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 in any custody under this section unless the accused is produced before

him;

(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. 1 Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;]. 2 Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.]”

“36A. Offences triable by Special Courts

XXXX XXXX XXXX

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27 A 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.”

6. A minute reading of the above provisions of law make it abundantly clear that if the investigation is not complete and challan has not been presented within the prescribed period of 180 days, the accused would be entitled to the grant of default bail. However, as per the proviso to Section 36A(4) of the NDPS Act, the Special Court trying cases under the NDPS Act can extend the period to a maximum of one year, subject to a report of the Public Prosecutor with respect to the progress of investigation and specific reasons to be recorded

therein, as to why detention of the accused beyond the prescribed period would be necessitated. On a conjoint reading of Section 167(2) of the Cr.P.C. and Section 36A(4) of the NDPS Act, it thus becomes clear that a great deal of emphasis has been laid on completion of “investigation”. “Investigation” would include within its ambit all proceedings conducted by the investigating agency for collection of all such material and evidence which would assist in ascertaining whether an offence has been committed or not under the NDPS Act. The purpose behind investigation is to enable the Court to take cognizance of the case. In this regard, it would be relevant to refer to the observations made by the Hon'ble Supreme Court in State of ***Maharashtra Vs. Sharadchandra Vinayak Dongre and others*** : ***1995(1) SCC 42*** as under:-

“7. The purpose of the submission of the police report with the details as mentioned above, is to enable the Magistrate to satisfy himself, whether on the basis of the report and the material filed along with the police report, a case for taking cognizance has been made out or not. After applying his mind to the police report and the material submitted therewith, if the Magistrate is satisfied that cognizance of the offence is required to be taken, he shall proceed further in accordance with the provisions of the Code of Criminal Procedure. Section 190(1)(b) CrPC provides that a Magistrate has the power to take cognizance upon a police report of such facts as are provided therein on being satisfied that the case is a fit one for taking cognizance of the offence.....”

7. Adverting to the case in hand, as per the case of the prosecution, different recoveries of narcotic substances and contraband were effected from different accused. Out of the recoveries effected, it is a matter of record that report from the FSL has been received qua 10 of the samples sent to it for testing, and furthermore the reports

received from the FSL were part of the challan, which as already noticed earlier, was presented within the prescribed period of 180 days. Merely because FSL report qua one of the samples was not part of the challan, since it had been sent for re-testing to CFSL, Chandigarh would not in any manner make the challan incomplete so as to entitle the petitioner to the concession of default bail under Section 167(2) of the Cr.P.C. read with Section 36A(4) of the NDPS Act.

8. No doubt, the FSL report goes to the root of the matter in cases under the NDPS Act, however, in the instant case since there are as many as 10 reports received from the FSL which have tested positive with respect to the recovered contraband, therefore, prima facie there exists enough cogent material on record for the Court to take cognizance and proceed with the trial. The case laws relied upon by the learned counsel for the petitioner are thus, clearly distinguishable on facts and would not come to his rescue.

9. Accordingly, the instant revision petition being devoid of any merit is dismissed.

10. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

16.08.2023

(MANJARI NEHRU KAUL)

Vinay

JUDGE

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