

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-2156-2022

Date of Decision: 25.04.2023

Sonu @ Sanjay

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Amit Kumar Jain, Advocate for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

ASHOK KUMAR VERMA, J. (ORAL)

1. The petitioner has filed the present revision petition for setting aside the impugned order dated 05.09.2022 passed by learned Additional Sessions Judge, Jind, whereby the application filed by the petitioner under Section 167(2) Cr.P.C. for grant of default bail in case FIR No. 62 dated 26.02.2022 registered under Section 21(C) of the NDPS Act at Police Station Sadar Narwana, was dismissed.

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner along with his co-accused-Ram Kishan was arrested on 26.02.2022 while travelling in a private vehicle cruiser and during search 412 grams of heroin was recovered from the black coloured polythene carried by the petitioner. He has further submitted that the subject matter of the alleged confiscated quantity in the present case was falling within the category of “commercial quantity” under the NDPS Act and, therefore, the challan was required to be presented within a period of 180 days, in view of Section 167(2) Cr.P.C. read with Section 36-A of the

NDPS Act. He has further submitted the challan in the present case was presented on 23.08.2022 but the challan was incomplete challan because it was not accompanied by the FSL report. The FSL report was filed by the prosecution only on 01.09.2022, when an application for default bail was filed by the petitioner. Therefore, an indefeasible right of default bail had vested to the petitioner immediately on the expiry of 180 days in view of the law laid down by a Division Bench of this Court in ***CRR No.4659 of 2015*** titled as “***Ajit Singh @ Jeeta and another vs. State of Punjab***”, decided on 30.11.2018. In support of his contentions, learned counsel for the petitioner has relied upon a judgment of Madras High Court in ***K.Muthuirul vs. The Inspector of Police, 2022(1) MadWN (Cri.) 196.***

3. Learned counsel for the State submits that so far as the aforesaid dates as stated by learned counsel for the petitioner are concerned, the same are correct. He, however, opposed the present petition on the ground that the challan filed without even FSL report would be a complete challan. In support of his contentions, learned counsel for the State has relied upon a judgment of Himachal Pradesh High Court in ***Krishna @ Kiran vs. State of Himachal Pradesh, 2020(3) ILR (H.P.) 246.***

4. I have heard learned counsel for the parties and carefully gone through the record.

5. The prayer in the instant revision is for grant of default bail under Section 167(2) Cr.P.C. read with Section 36-A of the NDPS Act by impugning the order dated 05.09.2022. The aforementioned dates are not disputed by the learned State counsel. Therefore, it is clear that before the

expiry of the statutory period of 180 days for filing the challan, an incomplete challan was filed on 23.08.2022. Admittedly, the said challan was not accompanied by the FSL report. The FSL report was presented before the trial Court only on 01.09.2022 when the petitioner had moved an application for default bail. Therefore, an indefeasible right of default bail had vested to the petitioner immediately on the expiry of 180 days. The law has been settled by a Division Bench of this Court in **Ajit Singh's case (supra)** and the relevant observations of the aforesaid judgment are reproduced as under:

“25. For this reason as well, it is essential that the report of the Chemical Examiner be included in the report under Section 173 Cr.P.C., 1973 and without which it can at best be termed to be an incomplete challan depriving the Magistrate of relevant material take cognizance and if it is not submitted within the requisite period of 180 days, it would essentially result in a default benefit to the accused unless an application is moved by the Investigating Agency apprising the Court of status of investigation with a prayer for extension of time to the satisfaction of the Court.”

6. In **K.Muthuirul's case (supra)**, the Madras High Court while referring to a judgment of Full Bench of the Hon'ble Apex Court in **M. Ravindran vs. The Intelligence Officer, Director of Revenue Intelligence, (2021) 2 SCC 485**, has observed that since the petitioner has availed of his indefeasible right to bail and offered to abide by the terms and conditions to be imposed the subsequent or even simultaneous filing of the charge-sheet/FSL report does not dis-entitled the petitioner from claiming the default bail.

7. There is a misconception that in cases where the bail application under Section 167(2) Cr.P.C and the charge sheet are being filed on the same day, then the time at which, bail application or the

charge sheet is filed, is the deciding factor and that if the charge sheet is filed earlier to the bail application, then the accused is not entitled to get the statutory bail or in case, if the bail petition is filed before laying of charge sheet, then the bail application has to be allowed. The accused is entitled to file his application for default bail only after the expiry of 60 days or 90 days or 180 days as the case may be and that his right to avail the statutory bail accrues only on the next day i.e., on 61st, 91st or 181st day, as the case may be, but the investigating agency has to file the charge sheet before the expiry of 60 days, 90 days or 180 days as the case may be, if they require the detention of the accused beyond the aforesaid prescribed period.

8. The Hon'ble Supreme Court in ***Rakesh Kumar Paul Vs. State of Assam reported in (2017) 15 SCC 67***, has held that, “as a cautionary measure, the counsel for the accused as well as the Magistrate ought to inform the accused of the availability of the indefeasible right under Section 167(2) once it accrues to him, without any delay. This is especially where the accused is from an underprivileged section of society and is unlikely to have access to information about his legal rights. Such knowledge-sharing by Magistrates will thwart any dilatory tactics by the prosecution and also ensure that the obligations spelled out under Article 21 of the Constitution and the statement of objects and Reasons of the Cr.P.C are upheld.”

9. As already pointed out, the investigating agency is duty bound to file its final report before expiry of 60 or 90 or 180 days, as the case may be, and on the next day i.e, 61st or 91st or 181st day only, the right of statutory bail gets accrued to the accused and there must be some

reasonable time limit enabling him to apply for the default bail. In my considered view, the accused can exercise his right to apply the default bail on the whole day, on which, indefeasible right of statutory bail accrues to him.

10. A Full Bench of the Hon'ble Supreme Court in ***S.Kasi Vs. State through the Inspector of Police, Samayanallur Police Station, Madurai District reported in 2020 SCC Online SC 529*** has observed that “the indefeasible right to default bail under Section 167(2) is an integral part of the right to personal liberty under Article 21 of the Constitution and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasized that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge-sheet.”

12. The Hon'ble Apex Court has referred, its earlier judgments, for highlighting the purpose and object of Section 167 Cr.P.C in

(i) Uday Mohanlal Acharya Vs. State of Maharashtra (2001) 5 SCC 453 :

(ii) Rakesh Kumar Paul Vs. State of Assam (2017) 15 SCC 67

(iii) Achpal @ Ramswaroop and another Vs. State of Rajasthan 2019 14 SCC 599, and held as follows;

“14. The Scheme of Code of Criminal Procedure as noticed above clearly delineates that provisions of Section 167 of Code of Criminal Procedure gives due regard to the personal liberty of a person. Without submission of charge sheet within 60 days or 90 days as may be applicable, an accused cannot be detained by the Police. The provision gives due recognition to the personal liberty.”

13. Considering the above, this Court has no hesitation to hold that the learned Additional Sessions Judge, Jind, has not dealt with the

application filed under Section 167(2) Cr.P.C in a proper legal perspective, but by considering the merits of the case dismissed the petition and as such, the impugned order is not as per law and the same is liable to be set aside.

14. In the result, this revision petition is allowed and the impugned order dated 05.09.2022, passed by learned Additional Sessions Judge, Jind, is set aside. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the trial Court/Duty Magistrate, concerned, subject to following conditions:

- i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;
- ii) the petitioner shall report before the concerned Court on every Monday at 10.30 a.m until further orders.
- iii) the petitioner shall not tamper with evidence or witness.
- iv) the petitioner shall not abscond during trial.
- v) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***.

25.04.2023
rishu

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No