

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

121+266

Date of Decision: 31.10.2023

(1)

CRR-2161-2023

Taswwar Khan

...Petitioner

Versus

State of Haryana

...Respondent

(2)

CRR-2390-2023

Raju Singh

...Petitioner

Versus

State of Haryana

...Respondent

(3)

CRR-2350-2023 (O&M)

Ramesh Tuteja

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Kamal K. Chaudhary, Advocate,
for the petitioner (CRR-2161-2023).

Mr. Johan Kumar, Advocate
for the petitioner (CRR-2390-2023).

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pranshul Dhull, Advocate,
for the petitioner (CRR-2350-2023).

Mr. Pawan Jhanda, D.A.G., Haryana.

VIKAS SURI, J.

1. By this order, I propose to dispose of three petitions i.e. CRR-2161-2023, titled *Taswwar Khan vs. State of Haryana*; CRR-2390-2023, titled *Raju Singh vs. State of Haryana*; and CRR-2350-2023, titled *Ramesh Tuteja vs. State of Haryana*; involving common question of law, arising out of FIR No.148 dated 15.03.2023, under Sections 21C, 22B and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station SGM Nagar, Faridabad.

2. Facts necessary to be noticed for disposal of these petitions shorn of unnecessary details are that on a secret information, the instant FIR was registered and the premises of petitioner-Taswwar Khan were raided upon which 80 capsules of Tramadol and 14 bottles of Codeine (100 ML each) were recovered. The total quantity of Codeine came to be 1400 ML and it constituted commercial quantity. However, the total weight of Tramadol as recovered from the aforesaid accused has not been mentioned.

3. The matter was investigated by the police and the petitioners, namely, Ramesh Tuteja and Raju Singh were nominated as an accused on disclosure statement. Report under Section 173 of the Code of Criminal Procedure (for short 'Cr.P.C.') was presented before the trial Court on 28.04.2023 sans the report of FSL. It also needs to be noticed that to expedite submission of FSL report, letters were also addressed to the concerned quarters vide orders passed by the trial Court, in response

whereof, RFSL, Bhondsi, replied vide letter dated 12.09.2023 and informed, ‘The concerned case is not ready. P.S. will be informed after reporting of the case.’ After the expiry of period of 180 days, which is mandated for filing *challan* in case of recovery of non-commercial quantity as per provisions of Section 36A of NDPS Act read with Section 167(2) of Cr.P.C., the applications seeking statutory default bail were instituted and stand dismissed vide the impugned orders.

4. The preliminary question to be considered in this petition is whether a right has accrued to the petitioner(s) to seek statutory bail as the *challan* was not accompanied by FSL report. The conceded position is that the prosecution never sought extension of time for submission of report.

5. *Per contra*, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner(s) on the ground that report submitted under Section 173 Cr.P.C. without FSL report can never be termed as incomplete *challan*/charge-sheet.

6. This Court has considered the rival contentions of learned counsel for the parties and perused the material on record.

7. For proper appreciation of the fact, a tabulated chart of the relevant dates is given hereunder:-

Petitioner/Case No.	Arrested on	<i>Challan</i> presented on	Bail u/S.167(2) instituted on / Day	Bail dismissed on
Taswwar Khan CRM-M-2161-2023	16.03.2023	28.04.2023	13.09.2023 181 st	13.09.2023
Ramesh Tuteja CRM-M-2350-2023	22.03.2023	28.04.2023	25.09.2023 194 th	03.10.2023

Raju Singh CRM-M-2390-2023	20.03.2023	28.04.2023	25.09.2023 187 th	26.09.2023
-------------------------------	------------	------------	---------------------------------	------------

8. Before proceeding further in the matter, it would be apposite to make reference to the following statutory provisions. Section 36A of NDPS Act reads as thus:-

36A. Offences triable by Special Courts.—(1)
Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Speical Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him,

that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special

Court having jurisdiction;

- (c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;
- (d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

(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.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.”

9. Section 167(2) of the Cr.P.C., reads as thus:-

167. Procedure when investigation cannot be completed in twenty four hours.—(1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) 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 sub- section 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 of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend in any custody under further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(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.”

10. The Apex Court in the matter of *M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence*, 2021(2) SCC 485, has held as under:

“19.1. 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:-

25.1. 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.

25.2. 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.”

11. 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* not accompanied by FSL report can not be regarded as a complete one and the accused would be entitled to default bail in terms of Section 167(2) Cr.P.C.

12. A reference was made to the Division Bench vide order dated 16.09.2020 passed by a coordinate Bench in CRR-1125-2020, titled *Julfkar vs. State of Haryana*, which is still pending before the Full Bench of this

Court. In this context, reference is further made to the order dated 09.11.2022 passed by the Apex Court in Special leave to Appeal (Crl.) Nos.8164-8166/2021, titled *Mohd. Arbaz and others vs. State of NCT of Delhi*, by learned counsel for the petitioner(s) to contend that a matter as regards the *challan* presented in NDPS cases without FSL report being considered as incomplete, is also pending consideration before the Apex Court. Learned counsel for the petitioner(s) has also cited another order passed by the Apex Court dated 28.07.2023 in Special Leave to Appeal (Crl.) No.8610/2023, titled *Arif Khan vs. State (Govt. of NCT of Delhi)*. The said order dated 28.07.2023 reads as thus:-

“1. Heard learned counsel on both sides. Evidently, the larger question, rather, the primary question to be considered in this matter is whether the petitioner had accrued the right to seek statutory bail as the chargesheet was unaccompanied by FSL report, and in other words, about completeness or otherwise of the charge owing to its unaccompaniment. That question is now pending consideration in a batch of petitions. Evidently, it would take sometime for hearing this petition.

2. Taking note of the similar situation, this Court on 01.05.2023 in the case of Divyas Bardewa v. Narcotics Control Bureau, granted interim bail to the petitioner-therein pending consideration of the Special Leave Petition SLP(Crl) Nos.8164-8166/2021 and other similar petitions posing consideration of the question referred above.

3. In that view of the matter, we are of the considered view that the petitioner is also entitled to the similar benefit. Consequently, we direct that the petitioner be released on bail subject to the petitioner participating in the trial and also subject to the terms and conditions to be

imposed by the Trial Court. In that regard, the petitioner shall be produced before the Trial Court.

4. List this matter along with the other connected matter(s), forthwith.”

13. In view of all that has been observed above and in the light of the fact that the petitioners are behind bars since last more than nine months, this Court deems it appropriate to extend them the concession of bail in terms of Section 167(2) Cr.P.C. Consequently, these petitions are accepted. Petitioner(s) are ordered to be released on bail subject to their furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned. The release of the petitioners on bail is subject to their diligently participating in the trial.

14. It is clarified that the prosecution would be at liberty to move for cancellation of bail/recall of this order in case either the reference before the Full Bench in *Julfkar’s* case (supra) is answered in its favour or the matter pending before the Apex Court in *Mohd. Arbaz’s* case (supra), is adjudicated in favour of the prosecution.

15. Pending miscellaneous application, if any, stands disposed of.

October 31, 2023

harish

(VIKAS SURI)

JUDGE

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