

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

2024:PHHC:034555
CRR-15-2024 (O&M)
Date of decision: March 12th, 2024
Sagar Kumar
.....Petitioner

Versus

State of Haryana
.....Respondent

2. CRM-M-319-2024
Sagar Kumar
.....Petitioner

Versus

State of Haryana
.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

MANJARI NEHRU KAUL, J.

This order shall dispose of the above-mentioned petitions as they arise out of same FIR i.e. FIR No.90 dated 15.02.2023 registered under Section 21(C)/29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') at Police Station Rania, District Sirsa.

2. Prayer in CRR No.15 of 2024 is for releasing the petitioner on default bail in the above-mentioned FIR and in CRM-M No.319 of 2024 is for quashing of order dated 02.08.2023 passed by learned trial Court, whereby application filed by the prosecution for extension of time to submit challan/final report was allowed.

3. SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER:

(i) Learned counsel for the petitioner while impugning the order dated 02.08.2023 has vehemently contended that he was arrested on 15.12.2023 in the FIR in question (Annexure P-2); the statutory period of 180 days for completion of the investigation under the NDPS Act was thus to expire on 15.08.2023. However, the investigating agency presented the challan without the report of the Forensic Science Laboratory (hereinafter referred to as 'FSL') on 30.11.2023. Subsequently, when the FSL report was received, it was filed by the prosecution before the learned trial Court on 05.12.2023.

(ii) Learned counsel has further submitted that though the challan had been presented by the investigating agency after the expiry of the statutory period of 180 days, however, in the interregnum, an application dated 31.07.2023 under Section 36A(4) of the NDPS Act was filed by the prosecution seeking extension of time to complete the investigation, which was allowed by the trial Court vide impugned order dated 02.08.2023, wherein the prosecution was granted 110 days' more time to complete the investigation.

(iii) Learned counsel has vehemently asserted that the report/application submitted by the Public Prosecution under Section 36A(4) of the NDPS Act did not comply with the conditions provided under the said section as due application of mind on the part of the Public Prosecutor was missing; the Public Prosecutor had merely appended his signatures at the bottom of the page. Neither the progress of investigation had been detailed by the Public Prosecutor in his report under Section 36A(4) of the NDPS Act nor was any cogent reason given as to why

extension of time to complete investigation was required. Learned counsel has thus urged that on account of non-compliance of Section 36A(4) of the NDPS Act, the extension which had been granted by the learned trial Court to the prosecution was non est. In the circumstances, the petitioner had become unequivocally entitled to the concession of default bail. In support, learned counsel has placed reliance upon the judgments of Hon'ble the Supreme Court in *Hitendra Vishnu Thakur and Ors. Versus State of Maharashtra and Ors. (1994) 4 SCC 602* and *Sanjay Kumar Kedia @ Sanjay Kedia v. Intelligence Officer, Narcotic Control Bureau and another, 2010(1) RCR (Criminal) 942*.

4. SUBMISSIONS BY LEARNED STATE COUNSEL:

(i) Learned State counsel, on the other hand, has vehemently opposed the prayer and submissions made by the counsel opposite. It has been submitted that challan as well as the FSL report were filed within time as it was a matter of record that the learned trial Court had already extended the period for investigation by 110 days vide the impugned order. Furthermore, the trial Court's order could not be said to be arbitrary, rather it was in consonance with the provisions of law as delineated under Section 36A(4) of the NDPS Act. Learned State counsel has further asserted that the extension sought to complete investigation by the prosecution was legally permissible as the learned Public Prosecutor had submitted a comprehensive report detailing the progress made till that time in the investigation and thus cogently justifying the A necessity for additional time.

(ii) Learned State counsel has still further argued that the extension which had been rightly granted by the learned trial Court was not merely a procedural formality but was firmly supported by many legal

precedents; the learned trial Court had minutely considered the prayer of the prosecution as the FSL report had not been received despite repeated reminders sent by the investigating agency. Learned State counsel has, therefore, prayed for dismissal of the instant petition.

FINDINGS BY THE COURT:

5. I have heard learned counsel for the parties and perused the relevant material on record.
6. Before proceeding further, it would be apposite to reproduce Section 167 (2) of the Cr.P.C. and Section 36A(4) of the NDPS Act, which read as under:-

“167 (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, 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 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.

36A (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."

7. A conjoint reading and interpretation of the above reproduced provisions unequivocally provide that if upon expiry of the prescribed 180 days period, the investigation remains incomplete, the accused would be entitled to default bail under Section 167 (2) of the Cr.P.C. Investigation would necessarily mean proceedings undertaken by the investigating agency for collection of material to facilitate the Magistrate in ascertaining whether an offence has been committed or not. Additionally, in cases under the NDPS Act, the investigation cannot be complete unless the FSL report

determining the nature of the substances recovered from the accused. In the absence of a definite opinion from the Chemical Examiner, mere sensory observation such as smell, sight etc. of the alleged recoveries by the investigating agency would not be sufficient to conclusively establish their nature. Moreover, without the FSL report being part of the challan, the learned Court would be handicapped to proceed further and take cognizance of the offences under the NDPS Act.

8. Furthermore, extension of the period of investigation permissible under the NDPS Act, provided that the conditions outlined in Section 36A(4) of the NDPS Act are adhered to. In short, the interplay between Section 36A(4) of the NDPS Act and Section 167 (2) of the Cr.P.C. reflects the intent of the legislature to strike a balance between the need for thorough investigations in serious drug related offences and the protection of the right of the accused. These provisions thus, establish a robust framework aimed at ensuring fairness, transparency, efficiency in the investigation and adjudication of such cases.

9. Adverting to the present case, the petitioner was arrested on 15.12.2023 and the statutory period of 180 days was set to expire on 15.08.2023. It is matter of record that prior to the expiry of this deadline, that is, on 15.08.2023 the Public Prosecutor had already submitted an application/report seeking extension of time to complete investigation on 31.07.2023; the learned trial Court vide the impugned order granted extension of time of 110 days on 02.08.2023. The challan and the FSL report were subsequently filed before the learned trial Court on 30.11.2023 and 05.12.2023 respectively.

10. Learned counsel for the petitioner has vehemently argued that the report of the Public Prosecutor in the instant case was not in

consonance with the provisions of Section 36A(4) of the NDPS Act, as it did not detail the progress of the investigation or even provide any reasons for seeking an extension for presentation of challan.

11. Thus, the moot question which arises for the consideration of was this Court is whether the report of the Public Prosecutor was in consonance with the conditions stipulated under Section 36A(4) of the NDPS Act or not.

12. For facility of reference, the report made by the learned Public Prosecution under Section 36A(4) of the NDPS Act is reproduced hereinunder:-

"Report Under Section 36A(4) NDPS Act in case FIR No. 90 dated 15.02.2023 U/g 21-C,29,61/85 NDPS Act Police Station Rania.

As per the facts of case file produced on 26-07-2023 by 10 Shri Sandeep Kumar (210) No. 941 on 15-02-2023 SI Data Ram recovered 259 Grams Heroin (Chitta) from possession of Sagar alias Chinna. During investigation it was revealed that the recovered 259 gram Heroine (Chitta) was got purchased from other accused persons namely Samsung Nigerian.

In this regard, sample parcels were taken out at the time of inventory attestation before Id. Halqa Magistrate and sent to Regional Forensic Science Laboratory Hisar on dated 24-02-2023 and same was deposited there on 27-02-2023 for chemical analysis, but report in this regard is still awaited. According to investigation file IO has made request for obtaining analysis report through telephone message and in this regard a letter vide letters numbers 24323 dated 27-06-2023 was sent to Director Regional Forensic Science laboratory Hisar by Superintend of Police Sirsa. (Copy of this letter is attached herewith as annexure A1)". But analysis result

is still awaited. The Assistant Director cum Incharge RFSL. Hisar has intimated vide memo No. 1280 dated 07-07-2023 report wanted to prepare up to 29-11-2023. ADO letter bearing No. 28004 dated 26-07-2023 was also been sent by W.SP Sirsa for speedy disposal.

After going through the case file and above mentioned correspondence, as far as investigation on any pending aspect, same can be completed later on and supplementary challan can be filed in the court in this regard if permitted by Hon'ble Court: However, in the present case result of chemical analysis of the sample parcels, sent by IO to RFSL Hisar is still pending and challan/report under section 173 is incomplete without FSL Report. This issue has been held by Hon'ble Higher Courts in cases and recently Hon'ble Punjab & Haryana High Court, after relying upon the case Jagwinder Singh Vs. State of Haryana, Ajaib Singh Vs. State of Haryana along with Hon'ble Supreme Court's Judgment in Mohammad Arbaj Vs. State of NCT Delhi held that FSL report goes to the route of case and is material document, filling of challan without the same is not be treated as complete challan.

In view of the above mentioned facts and in absence of FSL report, investigation in present case is incomplete so application of investigation Officer for extention of time for maximum period provide by provisions of NDPS Act to complete investigation, may kindly be allowed.

Submitted Please".

13. A perusal of the Public Prosecutor's report reveals that despite repeated requests made by the Investigating Officer of the instant case, the FSL report was not received from the FSL. The argument of the learned counsel for the petitioner that the Public Prosecutor did not apply his mind independently while approaching the learned trial Court under Section

36A(4) of the NDPS Act lacks merit as the report extensively outlines the progress of the investigation and also provides specific reasons for seeking extension of time, notably citing non-receipt/absence of the FSL report. Since the FSL report is a crucial document to determine the nature of the recovered substance, challan presented without it would be deemed incomplete.

14. Furthermore, the report submitted by the learned Public clearly Prosecutor before the trial Court clearly demonstrates that earnest efforts were made by the investigating agency including telephonic requests to the RFSL to expedite the preparation and the despatch of the Shill further in this regard of the FSL. Still further, it is also a matter of record that in this regard, a written request vide letter No.24323 dated 27.06.2023 was sent to Director, RFSL, Hisar, by the Superintendent of Police, Sirsa. Besides a letter bearing No.28004 dated 26.07.2023 had also been sent by the Superintendent of Police, Sirsa, asking for speedy despatch of the FSL report of the present case.

15. Thus, the delay, if any, in presenting the challan cannot be attributed to the investigating agency. Since the FSL report was not received within the stipulated period despite earnest efforts of the investigating agency, the investigating agency was left with no other resort but to seek extension of time to complete investigation. This Court in the aforementioned circumstances, does not find any infirmity in the order dated 02.08.2023 passed by the learned trial Court vide which the extension of time to complete the investigation has been granted to the prosecution. Consequently, the challan as well as the FSL report are deemed to be filed by the investigating agency within the statutory period, thus, no right under Section 167 (2) of the Cr.P.C. accrued to the petitioner

on 11.10.2023 when he filed his application for default bail before the Court below.

16. The petitions, therefore, stand dismissed.

March 12th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No