IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-103-2024

Sajim ...Petitioner

Versus

State of Haryana ..Respondent

CRR-125-2024

Sajim ...Petitioner

Versus

State of Haryana ...Respondent

Date of Decision: 14.02.2024

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. G.C. Shahpuri, Advocate for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

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KARAMJIT SINGH, J. (ORAL)

1. Both the petitions are taken up together for final disposal as the parties are same and the petitions are arising out of same FIR No.526 dated 03.07.2023 under Section 21 (c) NDPS Act, Police Station City Yamunanagar, District Yamunanagar.

2. CRR-103-2024 has been filed by the petitioner/accused seeking quashing of order dated 21.12.2023 passed by the Court of learned Additional Sessions Judge, Yamunanagar whereby the application filed under Section 36A(4) of NDPS Act by the prosecution seeking extension of time for filing the challan against the petitioner, has been allowed. CRR-

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125-2024 has been filed by the petitioner/accused seeking quashing of order dated 04.01.2024 passed by the Court of learned Additional Sessions Judge, Yamunanagar whereby the application filed by the petitioner for grant of default bail under Section 167 (2) Cr.P.C has been dismissed.

3. The allegations in brief are that on 03.07.2023 police received secret information against the petitioner that he was indulging into drug trafficking and on that day, he had reached Yamunanagar from Uttar Pradesh for selling heroin. On the basis of the said secret information, police raided the disclosed spot and apprehended petitioner and recovery of 330 grams of heroin was recovered in presence of gazetted officer. The petitioner was arrested at the spot.

4. On 14.12.2023, the prosecution filed an application Annexure R-2 seeking extension of time for filing of challan against the petitioner. The application was opposed by the petitioner. The said application filed under Section 36A(4) NDPS Act was allowed by the learned trial Court vide impugned order dated 21.12.2023 and period of another 90 days was given to the prosecution to file challan against the petitioner.

5. On expiry of statutory period of 180 days, petitioner filed an application for grant of default bail under Section 167 (2) Cr.P.C. but the same was dismissed by the learned trial Court vide impugned order dated 04.01.2024 on the ground that the aforesaid statutory period was extended by the said Court vide order dated 21.12.2023.

6. Being aggrieved, the petitioner has filed the afore-titled criminal revision petitions.

7. The counsel for the petitioner has submitted that petitioner was

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arrested by the police on 03.07.2023 and the statutory period of 180 days expired by end of December 2023. That no challan was presented by the police against the petitioner by that date. It is further submitted that earlier to that on 14.12.2023 application Annexure P-2 was filed by Anti Narcotic Cell, Yamunanagar seeking extension of time period in order to submit challan against the petitioner, as the report of FSL was still awaited as on that date. It is further submitted that the said application was forwarded by Additional Public Prosecutor and the same was allowed by the learned trial Court vide order Annexure R-3 in presence of the petitioner. The counsel for the petitioner has further submitted that the request made by the prosecution seeking extension of time to file challan was not in consonance with the provisions of Section 36A(4) NDPS Act as the same was not supported by a report of the Additional Public Prosecutor with regard to progress of investigation and did not specify the compelling reasons for seeking the detention of the petitioner beyond the period of 180 days. The counsel for the petitioner further submits that thus, the impugned order dated 21.12.2023 is illegal and deserves to be set aside. The counsel for the petitioner further submits that it being so, the impugned order dated 04.01.2024 whereby application moved by petitioner seeking default bail under Section 167 (2) Cr.P.C. by the learned trial Court, also deserves to be set aside and consequently, direction be given to release the petitioner on bail.

8. Both the petitions are resisted by the State counsel who submits that there is no illegality or infirmity in the impugned orders dated 21.12.2023 and 04.01.2024 passed by the learned trial Court. It is further submitted that due reasons were given by the prosecution in its application

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under Section 36A(4) NDPS Act seeking extension of time to file challan. It is further submitted that delay in filing of challan occurred as the report of FSL was still awaited. It is further submitted that the petitioner is not entitled to default bail. However, the State counsel on instructions from ASI Mohan has not disputed that the aforesaid application seeking extension of time to file challan was moved by Anti Narcotic Cell, Yamunanagar and the same was forwarded by the Additional Public Prosecutor.

9. I have considered the submissions made by counsel for the parties.

10. Admittedly, the petitioner was arrested in this case on 03.07.2023 and police failed to file challan within statutory period of 180 days as per the law laid down by Hon'ble Supreme Court in ***M. Ravindran Vs. Intelligence Officer, DRI (2021) 2 SCC 485***. On expiry of statutory period of 180 days as prescribed in Section 36A NDPS Act, petitioner filed an application for grant of default bail on 03.01.2024 and even by that time, no challan was presented by the police against the petitioner.

11. The outcome of both the petitions would be dependent upon the legality of impugned order dated 21.12.2023, whereby the learned trial Court extended the period to 90 days beyond the statutory period of 180 days under Section 36A(4) NDPS Act. The provision of Section 36A(4) of the NDPS Act is reproduced as under:-

> ***Section 36A(4) in The Narcotic Drugs And Psychotropic Substances Act, 1985***
>
> *(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*

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> *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..*

12. As per the mandate of Section 36A(4), the special Court may extend the period of 180 days up to one year on the report of the Public Prosecutor which must indicate the progress of the investigation and the specific reasons for detention of the accused beyond the period of 180 days. Admittedly, in the present case, Public Prosecutor/Additional Public Prosecutor did not submit any such progress report. An application filed by Anti Narcotic Cell, Yamunanagar seeking extension of time to file challan dated 14.12.2023 was simply forwarded by Additional Public Prosecutor. The only reason given in the aforesaid application was that there is delay in filing of the challan as report of FSL Madhuban is still awaited and arrest of co-accused is also pending. While forwarding the said application, no endorsement was made by the Additional Public Prosecutor that he applied his mind and was satisfied with the progress of the investigation and further did not assign any specific reasons for the detention of the accused beyond the statutory period of 180 days. This aspect is also missing in the aforesaid application moved by Anti Narcotic Cell, Yamunanagar dated 14.12.2023.

13. The issue whether statutory period of 180 days can be extended by the Court without there being any reason given by the Public Prosecutor for detention of accused beyond aforesaid statutory period, was considered by the Hon'ble Supreme Court in ***Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau 2010 (1) RCR (Criminal)***

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942 wherein the Hon'ble Apex Court observed as follows:-

> *A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary. deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with this request or application and report. but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "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" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor.*

14. In **Sanjay Kumar Kedia's case** (supra), the Hon'ble Apex Court further held that even if the application for extension of time was either rooted through the Public Prosecutor or supported by him would not make the said application, a report of the Public Prosecutor.

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15. A bare perusal of the application dated 14.12.2023 shows that it was filed by Anti Narcotic Cell, Yamunanagar and as has been already discussed above, it does not indicate even remotely any application of mind on the part of the Public Prosecutor. Even from the perusal of the impugned order dated 21.12.2023, it appears that the same was also passed by the Court concerned without proper application of mind and even otherwise the same was not passed as per the mandate of Section 36A(4) NDPS Act and the law laid down in **Sanjay Kumar Kedia's case** (supra) and accordingly, the impugned order dated 21.12.2023 being not passed in accordance with law, deserves to be set aside. Consequently, indefeasible right of bail under Section 167 (2) accrued to the petitioner on expiry of statutory period of 180 days. Thus, the impugned order dated 04.01.2024 whereby the application filed by the petitioner for grant of default bail was dismissed, is also unsustainable in eye of law.

16. Resultantly, the present petitions are allowed. Impugned order dated 21.12.2023 passed by the Court concerned under Section 36A(4) NDPS Act is hereby set aside. Order dated 04.01.2024 passed by the said Court is also hereby set aside. Petitioner is ordered to be released on default bail under Section 167 (2) of Cr.P.C subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/learned Special Court concerned.

14.02.2024 **(KARAMJIT SINGH)**
Yogesh **JUDGE**

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

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