

Decided on: 14.03.2024

Arshdeep Kumar @ Arshdeep Petitioner

State of Punjab Respondent

Rajesh Chawla Petitioner

State of Punjab Respondent

Present: Mr. G.S.Saini, Advocate
for the petitioner in CRR-1126-2023.

Mr. S.K.Passi, Advocate
for the petitioner in CRR-1222-2023.

Mr. Iqbalpreet Singh, AAG, Punjab.

Manjari Nehru Kaul, J.

This order shall dispose of above said petition as both of them arisen out the same FIR. The brief facts of the case are taken from CRR No.1126 of 2023.

2. The present petition has been filed impugning the order dated 13.03.2023 passed by Special Judge, Ferozepur vide which the application filed by the petitioner under Section 167(2) Cr.PC in FIR No.88 dated 13.09.2022 registered under Section 22 of NDPS Act at Police Station Ghali Khurd District Ferozepur has been dismissed.

3. Learned counsel for the petitioners submit that the petitioners were arrested on 13.09.2022 in the instant case, and thus, the statutory period of 180 days to present challan was set to expire on 12.03.2023. Despite this, the investigating agency failed to present the challan before the Special Court within the stipulated period of 180 days. Hence, the indefeasible right of the petitioners under Section 167(2) Cr.PC had accrued in their favour, for being released on default bail. It has been further submitted that an application was filed by the petitioners under Section 167(2) Cr.PC before the learned Special Court, prompting the Court to then issue directions to the Court Ahlmad to report on the status of the challan. In support, learned counsel has drawn the attention of this Court to Annexure P-2. Pursuant to the aforesaid directions of the Court below, the Court Ahlmad initially reported that challan had not been presented, however, later on, submitted another report to the effect that challan in the instant case had been presented on 11.03.2023 but before the learned JMIC/Duty Magistrate, Ferozepur.

It has been vehemently argued by the learned counsel that the trial Court erred in dismissing the application filed under Section 167(2) Cr.PC by the petitioners by erroneously observing that the challan already stood presented prior to the expiry of the statutory period of 180 days, rendering the prayer made by the petitioners for being released on default bail infructuous. Learned counsel has submitted that in cases involving recovery of contraband exceeding the minimum prescribed under the commercial quantity, it is only the Special Court and not any Judicial Magistrate/Duty Magistrate, which is empowered under Section

36 NDPS Act to take cognizance of an offence. Hence, the challan could not have been presented before the Judicial Magistrate/Ilqa Magistrate as had been done in the instant case.

A prayer has, therefore, been made that the right of the petitioners to be enlarged on default bail under Section 167(2) Cr.P.C would not stand extinguished merely because of the presentation of challan before a Court, which was not even empowered to take cognizance. Learned counsel submits that in the aforementioned facts and circumstances, the impugned order deserves to be set aside and the petitioners deserve to be granted the concession of default bail.

3. Per contra, learned State counsel has vehemently opposed the prayer and submissions made by the counsel opposite by drawing the attention of this Court to the affidavit of Deputy Superintendent of Police (Rural) Ferozepur dated 16.01.2024; it has been asserted that no right under Section 167(2) Cr.PC had accrued to the petitioners as it was a matter of record that the challan had been presented before the expiry of statutory period of 180 days on 11.03.2023. Learned State Counsel has further submitted that it was also a matter of record that since it was a Court holiday on account of it being second Saturday on 11.03.2023, and as such the challan was then rightly presented before the learned Duty Magistrate.

4. I have heard learned counsel for the parties and perused the relevant material on record.

5. Before proceeding further, it would be apposite to reproduce

the provisions of Section 167(2) Cr.P.C., and Section 36(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, 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 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;]

“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.”

6. A comprehensive examination of the provisions outlined in Section 167(2) Cr.P.C., and Section 36(4) of the NDPS Act underscores the paramount concern of the legislature for concluding investigations. The term “investigation” inherently encompasses all proceedings conducted by the Investigating Agency after the registration of the FIR, with an aim to gather all relevant evidence to enable the Court to ascertain as to whether there has been any commission of an offence. It is also imperative to note the historical context behind the enactment of 167(2) Cr.P.C., which can be traced back to the widespread abuse of Section 344 of the 1898 Code. The latter provision, permitting the remand of accused during investigations, was frequently exploited by investigating agencies, resulting in prolonged custodial detention as investigations often exceeded the prescribed period of 15 days. Consequently, the

accused kept languishing in custody and the investigation proceeded at a sluggish pace. To rectify this injustice and ensure fair trial and expeditious investigation, 167(2) Cr.P.C. was incorporated. This provision thus, aimed at establishing a systematic procedure for investigation, safeguarding the interest of society, especially those economically disadvantaged, by setting guidelines for the duration of detention during investigation, thereby preventing indefinite detention without progress in the case.

7. Hence, the statutory scheme of Section 167(2) Cr.P.C. hinges on periodic progress in the case and completion of investigation. A fine reading of these provisions would also reveal that the right of the accused to default bail would not persist merely because the Court has not taken cognizance, even if the investigation concludes and challan is presented before the expiry of the statutory period. In this regard, it would be relevant to refer to the observations made by Hon'ble the Supreme Court in **Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and another, 2006 (1) SCC 283**, which are as follows:

*“18. None of the said cases detract from the position that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. **Whether cognizance is taken or not is not material as far as Section 167 Cr.P.C. is concerned.** The right which may have accrued to the Petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of **Section 309 Cr.P.C.**, it cannot be said that the*

accused is entitled to grant of statutory bail, as envisaged in Section 167 Cr.P.C.”

8. Adverting to the instant case, the argument of the learned counsel for the petitioners that they are entitled to the concession of default bail because the learned Duty Magistrate did not have the power to take cognizance of the police report under Section 173(2) Cr.PC/Challan is devoid of merit in the light of the settled law in *Suresh Kumar Bhikamchand Jain’s case(supra)*. It has not been disputed by the learned counsel for the petitioners that, as per the report of the Court Ahlmad, the challan in the instant case had indeed been represented before the expiry of 180 days period.

9. As the sequel to the above, since the investigation in the instant case stood completed on the date when the petitioners moved an application for default bail under Section 167(2) Cr.P.C, the instant petition is bereft of any merit and deserve to be dismissed.

14.03.2024
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No