

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1427-2023 &
CRR-1535-2023
Date of decision: 20.02.2024

CRR-1427-2023

Punma Ram...Petitioner

Versus

State of Haryana...Respondent

AND

CRR-1535-2023

Nazam Singh Brar...Petitioner

Versus

State of Haryana...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Aditya Sanghi, Advocate for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. Both the petitions are taken up together for final disposal since they are interconnected being arising out of same FIR No.598 dated 21.11.2022 under Section 17(C)/61/85 of NDPS Act, Police Station City Dabwali (Haryana).
2. CRR-1427-2023 has been filed by the petitioner Punma Ram seeking quashing of order dated 22.05.2023 passed by the Fast Track, Special Court Sirsa whereby the application filed under Section 167 (2) Cr.P.C. by the petitioner seeking default bail was dismissed. CRR-1535-2023 has been

filed by the petitioner Nazam Singh Brar seeking quashing of order dated 22.05.2023 passed by the Court of Fast Track, Special Court, Sirsa 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 21.11.2022 police apprehended petitioners Punma Ram and Nazam Singh Brar along with one truck and on search of the said truck 3 kg of opium was recovered. Both the petitioner(s) were arrested at the spot. The statutory period of 180 days as per Section 36A expired on 19.05.2023 and in the meantime, SHO filed an application seeking extension of time for filing of challan on 16.05.2023 which was supported by progress report submitted by Public Prosecutor, Sirsa which was also of even date. The reply to said application was filed by the petitioner(s). The petitioner(s) also filed bail applications dated 20.05.2023 seeking default bail under Section 167(2) Cr.P.C. The application filed by the prosecution seeking extension of time was allowed vide order dated 22.05.2023 while the applications filed by the petitioner(s) were dismissed by the Special Court vide separate orders dated 22.05.2023.

4. Being aggrieved, the petitioner(s) have filed the afore-titled petitions.

5. The counsel for the petitioner(s) has submitted that both the petitioner(s) were arrested by the police on 21.11.2022 and the statutory period of 180 days expired on 19.05.2023 and by that time police failed to present challan against the petitioner(s). That earlier to that, the prosecution filed an application on 16.05.2023 seeking extension of time for submission of challan, as the report of FSL was still awaited and arrest of co-accused was

pending. The said application was accompanied by progress report submitted by the Public Prosecutor. The said application was contested by the petitioner(s). Even the petitioner(s) filed applications dated 20.05.2023 seeking grant of default bail. The application filed by the prosecution seeking extension of time was allowed while the applications filed by the petitioner(s) for grant of default bail were dismissed by the Special Court vide separate orders dated 22.05.2022. The counsel for the petitioner(s) further submits that the request made by the prosecution seeking extension of time to file challan against the petitioner(s) was not as per the requirements of Section 36A(4) NDPS Act. It is further contended that even the progress report submitted by the Public Prosecutor did not specify the reasons for seeking the detention of the petitioner beyond the period of 180 days. The counsel for the petitioner(s) further submits that thus, the impugned order dated 22.05.2023 whereby the learned trial Court gave extension of 45 days to the prosecution for filing of challan, is not sustainable being illegal and deserves to be set aside. It is further submitted that in the given circumstances, as no challan was presented by the police even on 22.05.2023, the applications filed by the petitioner(s) seeking default bail under Section 167 (2) Cr.P.C. should have been allowed by the learned trial Court.

6. Both the petitions are resisted by the State counsel who submits that the learned trial Court rightly gave extension of time to the prosecution to file challan vide order dated 22.05.2023, on the basis of the progress report submitted by the Public Prosecutor, by invoking provisions of Section 36A(4) NDPS Act. The State counsel further submits that delay in filing of challan was due to non availability of report of FSL as the same was still

awaited. The State counsel further submits that even after the passing of the impugned order dated 22.05.2023, one another extension was sought and permitted by the trial Court in accordance with the provisions of law. It is further submitted that there is no illegality in the impugned orders and the revision petitions deserve to be dismissed.

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

8. As per prosecution, the petitioner(s) were arrested on 21.11.2022 by police in the present case which is relating to recovery of commercial quantity of contraband. Statutory period of 180 days expired on 19.05.2023. Prior to that prosecution vide application dated 16.05.2023 sought extension of time to file challan and on the other hand, petitioner(s) filed applications under Section 167(2) dated 20.05.2023 seeking grant of default bail. The said applications were disposed of by the Special Court and the application filed by the prosecution supported by report of Public Prosecutor was allowed while applications moved by the petitioner(s) under Section 167(2) Cr.P.C. were dismissed by the Special Court vide separate orders dated 22.05.2023. Admittedly, challan was presented at much later stage after passing of the impugned orders.

9. The provision of Section 36A(4) of the NDPS Act is reproduced as under:-

Section 36A(4)--

(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..

10. 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. An application filed by SHO Police Station City Dabwali seeking extension of time to file challan was filed on 16.05.2023. The reasons given in the aforesaid application were that there is delay in filing of the challan as report of FSL is still awaited and arrest of co-accused is pending. The said application was supported by separate application dated 16.05.2023 moved by Public Prosecutor seeking extension of time for submitting the challan. Even in the said application, it was mentioned that the report of FSL is awaited and more over arrest of the co-accused is also pending. From the perusal of both the said applications dated 16.05.2023, it cannot be made out that the SHO concerned and Public Prosecutor applied their mind before moving the said applications. Further, the application moved by the Public Prosecutor does not indicate the progress of the investigation and furthermore, did not assign any specific reason for detention of the accused persons beyond the statutory period of 180 days. This aspect is also not their in the aforesaid application moved by SHO, Police Station City Dabwali.

11 The issue whether time can be extended in such like cases without their being any reason assigned by Public Prosecutor for detention

of accused beyond the statutory period is no more res-integra and the said issue was considered by the Hon'ble Supreme Court in ***Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau 2010 (1) RCR (Criminal) 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.

12. A bare perusal of the applications dated 16.05.2023 show that they were filed by SHO Police Station City Dabwali and Public Prosecutor and as has been already discussed above, they do not indicate even remotely any application of mind on their part. Even from the perusal of the impugned orders dated 22.05.2023, it appears that the same were also passed by the Court concerned in a mechanical manner without proper application of mind and even otherwise the same were 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 22.05.2023 whereby time of another 45 days was given to the prosecution to file challan, 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 orders dated 22.05.2023 whereby the applications filed by the petitioner(s) for grant of default bail were dismissed, are also unsustainable in eye of law.

13. Resultantly, the present petitions are allowed. Impugned order dated 22.05.2023 passed by the Court concerned under Section 36A(4) NDPS Act is hereby set aside. Orders dated 22.05.2023 passed by the said Court whereby the applications seeking default bail were dismissed are also hereby set aside. Petitioner(s) are 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.

20.02.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No