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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-1265-2024

Date of Decision:- 16.09.2024

Subhash and Another

....Petitioners

Versus

State of Haryana

....Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Shivansh Malik, Advocate for the petitioners.

Ms. Aditi Girdhar, AAG, Haryana.

* * * *

AMARJOT BHATTI, J.

1. Petitioners Subhash and Prince have filed present revision for setting aside impugned order dated 11.06.2024 (Annexure P-2) passed by learned Additional Sessions Judge/Vacation Judge, Rohtak vide which learned Additional Sessions Judge granted an extension to prosecution till 11.07.2024 i.e. for a period of one month to submit challan alongwith FSL report under the provisions of Section 36A(4) of Narcotic Drugs and Psychotropic Substances Act, 1985 and to further set aside impugned order dated 26.06.2024 passed by learned Additional Sessions Judge/Vacation Judge, Rohtak vide which application filed by petitioners under Section 167(2) Cr.P.C. seeking default bail was dismissed.

2. Brief facts of the case registered under FIR No. 537 dated 20.12.2023 under Section 22C of NDPS Act, registered at Police Station Meham, District Rohtak are that on 20.12.2023, ASI Somveer and police party was patrolling near Gohana Turn, Meham in a private vehicle. ASI Somveer received secret information that Prince and his father Subhash are

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in business of illegal sale of narcotics and they were expected to arrive in Meham for supply of banned and intoxicated drugs in their vehicle No. HR-12-AL-9220 WagonR, colour White. As information was reliable, notice was sent under Section 42 of NDPS Act. Drug Control Inspector, Rohtak Mandip Mann was also informed. Aforesaid car was seen coming from the side of Rohtak and it was signalled to stop. Person sitting on driver seat disclosed his name as Prince and person sitting on co-driver seat disclosed his name as Subhash. After following procedure as provided under NDPS Act, search was conducted and 2400 tablets of Alprazolam I.P. 0.50 mg were recovered without any license. On the basis of this recovery, both Subhash and Prince were arrested in this case.

3. Learned counsel for petitioners pointed out that both petitioners were taken into custody by Investigating Agency on 20.12.2023. They failed to complete the investigation within stipulated period as provided under Section 36A(4) of NDPS Act. Learned Additional Sessions Judge, Rohtak granted extension to prosecution for a period of one month in an illegal and improper manner. Copy of said order dated 11.06.2024 is Annexure P-2 and copy of said application is Annexure P-3. It was incumbent upon Investigating Agency to present final report within a period of 180 days, which they failed. Learned Additional Sessions Judge, Rohtak extended time for filing of challan as report of Forensic Science Laboratory was not received. Learned counsel for petitioners relied upon the judgment cited in **2019(1) Law Herald 413**, case titled “**Hoshiar Singh @ Gora Versus State of Punjab**”, relevant para no. 12 runs as under :-



“12. Considering the view taken by this Court in Sanjeev Kumar's case (supra), I find that merely because the report of the chemical examiner/FSL was not received, is not a ground to decline the concession of bail to the petitioner as per proviso to Section 36A(d)(4) of the NDPS Act. In case, the investigation is not completed within a period of 180 days, the Court can extend the said period on a request of the public prosecutor, indicating the progress of the investigation and specific reasons for the detention of the accused beyond the period of 180 days. In the application dated 23.04.2018 (Annexure P2) filed by the public prosecutor, the only reason given is that the report of the chemical examiner/FSL is awaited and arrest of some other persons is effected and therefore, this cannot be a ground for detention of the petitioner beyond the period of 180 days. Therefore, this Court is of the considered view that the petitioner deserves the concession of bail during the pendency of the petition. Even otherwise, in view of the judgement of the Hon'ble Supreme Court in Mohan Lal's case (supra), the complainant ASI Paramjit Singh and the investigating officer are the same officer and no second investigating officer was appointed and therefore it will be open for the trial Court to decide whether the investigation was carried out in accordance with law or not.”

He has also put reliance on the judgment passed by Coordinate Bench cited in **2021(4) R.C.R.(Criminal) 296**, case titled **“Pritam Versus State of Haryana”**, where in that case, it was observed that *“where there were repeated applications for extension of time sought on the ground that chemical examination/FSL report was not received from Director of FSL, Madhuban, Karnal and in that case petitioner was granted bail under Section 167 (2) Cr.P.C.”*.

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It is further pointed out that petitioners were not granted any opportunity of being heard when impugned order dated 11.06.2024 (Annexure P-2) was passed. Application for extension of time should have been filed by Public Prosecutor but in the case in hand, application was drafted by Investigating Officer which is not proper compliance of Section 36A(4) of NDPS Act. In the light of aforesaid facts and circumstances of case, petitioners were wrongly denied indefeasible right to get default bail on non-submission of charge-sheet within time prescribed wrongly by learned Additional Sessions Judge/Vacation Judge, Rohtak vide impugned order dated 26.06.2024, which is liable to be set aside and both petitioners are entitled to be released on bail under the provisions of Section 167(2) of Cr.P.C.

4. On the other hand, learned counsel representing State filed status report taking the stand that revision preferred by petitioners is without any basis. Both petitioners were having banned intoxicating medicines. They were arrested alongwith contraband. Impugned order dated 26.06.2024 is fully justified as time was already extended by one month by learned Additional Sessions Judge/Vacation Judge, Rohtak vide order dated 11.06.2024, Annexure P-2. Investigating Officer had made sincere efforts to complete the investigation and present charge-sheet within stipulated period of 180 days as provided under Section 36A(4) of NDPS Act. Investigating Officer as well as SHO made efforts to collect FSL report well within time but same was not provided by FSL Laboratory, Madhuban. On 11.06.2024, application was filed in Court seeking extension of one month time to submit challan, which was rightly extended up to 11.07.2024. FSL report was received by police on 09.07.2024.



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Challan has been prepared and forwarded to Court on 10.07.2024 within extended period of one month. Therefore, application filed by petitioners seeking default bail under the provisions of Section 167(2) of Cr.P.C. was rightly rejected.

5. I have considered the arguments advanced by learned counsel for petitioners, learned counsel representing State and have gone through the record annexed with petition carefully. On 20.12.2023, both petitioners were apprehended allegedly having possession of 2400 Alprazolam tablets while travelling in car No. HR-12-AL-9220. Alleged recovery was of commercial quantity. Their date of arrest is 20.12.2023. Section 36A of NDPS Act, relevant clause (4) runs as under :-

“36A. Offences triable by Special Courts. -

- (1) xxx xxx xxx
- (2) xxx xxx xxx
- (3) xxx xxx xxx
- (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.”

Since, alleged recovery was of commercial quantity, therefore, Investigating Agency was required to complete investigation within a

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period of 180 days and challan was required to be presented before the Court. Said period of 180 days was to complete on 16.06.2024 but in the case in hand, application was filed for extension of time under Section 36(4) of NDPS Act on which date is mentioned as 12.06.2024 and it is forwarded by Public Prosecutor on the same day. On the said application, there is order of learned Additional Sessions Judge/Vacation Judge, Rohtak dated 11.06.2024 vide which time was extended for a period of one month for presentation of challan. Thus, there is discrepancy as application is dated 12.06.2024, forwarded by Public Prosecutor on the same day, on the other hand, on the order passed by learned Additional Sessions Judge/Vacation Judge, Rohtak, date is mentioned as 11.06.2024, which appears to be a typographical error. This application was filed seeking extension of time after 175 days. Therefore, application was filed well in time.

6. Learned counsel for petitioners firstly raised the issue that application was not filed by Public Prosecutor in gross violation to provisions of Section 36A(4) of NDPS Act, according to which application was required to be filed by Public Prosecutor indicating the progress of investigation. I have considered this aspect of case. Obviously, investigation was carried out firstly by ASI Somveer, then by ASI Rohtash who was well aware of the progress of investigation carried out by him. Therefore, in the application Annexure P-3, he has given detail of investigation carried out from time to time with the prayer for extension of time. Reason explained in the application was that report of FSL was not received despite efforts and for that reason extension was requested. There was correspondence with RFSL Sunaria, Rohtak who gave date of

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26.09.2024 for preparing the report. Aforesaid application (Annexure P-3) was duly forwarded by Public Prosecutor. Otherwise, Public Prosecutor is not part of investigating team. It is the Investigating Officer who is well aware of the progress of investigation and reason for which he is seeking extension of time. Therefore, in my opinion, there is due compliance of provisions of Section 36A(4) of NDPS Act.

7. Learned counsel for petitioners further raised the issue that accused were not given opportunity of being heard. I have perused order dated 11.06.2024, Annexure P-2, passed by learned Additional Sessions Judge/Vacation Judge, Rohtak, in which presence of both accused is marked through VC (Video Conferencing). Therefore, it cannot be said that aforesaid order was passed in the absence of accused persons. There is single application for extension and learned Additional Sessions Judge/Vacation Judge, Rohtak gave reasonable extension of one month. During the extended period, report of FSL was received and thereafter, challan was prepared and presented in Court on 10.07.2024.

In the light of this, impugned order dated 26.06.2024, dismissing application for default bail under Section 167(2) Cr.P.C. and order dated 11.06.2024, Annexure P-2 does not require any interference and same are accordingly upheld and petition filed by petitioners is accordingly dismissed.

8. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

16.09.2024

*lalit***(AMARJOT BHATTI)
JUDGE**Whether speaking/reasoned:
Whether reportable:Yes/No
Yes/No