

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1720-2023 &
CRR-1718-2023
Reserved on 28.02.2024
Date of decision: 05.03.2024

CRR-1720-2023

Tarsem Singh ...Petitioner

Versus

State of Haryana ...Respondent

AND

CRR-1718-2023

Tarsem Singh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Manish Verma, Advocate for the petitioner.

Mr. Viney Phogat, DAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. Both the petitions are taken up together for final disposal as the parties are same and petitions are arising out of same FIR No.310 dated 29.11.2022 under Sections 15, 25, 27-A and 29 of NDPS Act, Police Station Sadar Ambala.
2. CRR-1720-2023 has been filed by the petitioner/accused seeking quashing of order dated 19.05.2023 passed by the Court of learned Additional Sessions Judge, Ambala whereby the application filed by prosecution under Section 36A (4) of NDPS Act for extension of time for

filing FSL report has been allowed. CRR-1718-2023 has been filed by the petitioner/accused seeking quashing of order dated 03.06.2023 passed by the Court of learned Additional Sessions Judge, Ambala 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 29.11.2022, police received secret information against petitioner Tarsem Singh and one Jaspal Singh and then police officials laid naka and truck number HR-56-B-7979 was apprehended which was driven by petitioner Tarsem Singh and Jaspal Singh was also sitting along-side the driver's seat and on checking 13 quintal 44 kg of poppy husk was recovered from said truck. The police presented challan against the petitioner without report of FSL, on 28.02.2023. Even, thereafter, the report of FSL was not received and finally prosecution filed an application dated 16.05.2023 seeking extension of time for filing of supplementary challan. The application was supported by report of Public Prosecutor under Section 36A (4) of NDPS Act. The same was contested by the petitioner but was allowed by the learned trial Court vide order dated 19.05.2023 and period of another 3 months was given to the prosecution to submit the report of FSL.

4. As per the State counsel and counsel for the petitioner, statutory period of 180 days provided under Section 36A NDPS Act expired on 28.05.2023. Thereafter, petitioner filed application dated 02.06.2023 seeking grant of default bail under Section 167 (2) Cr.P.C. on the ground that the challan filed by the prosecution was an incomplete challan. The said application for grant of default bail was dismissed by the trial Court on

03.06.2023, in the light of earlier order dated 19.05.2023 whereby extension was given to the prosecution to submit report of FSL within next 3 months.

5. The counsel for the petitioner has contended that the statutory period of 180 days provided for filing of complete challan expired on 28.05.2023, however, by that date incomplete challan was presented without the report of FSL. The counsel for the petitioner has further contended that the report submitted by Public Prosecutor under Section 36A NDPS Act dated 16.05.2023 was not in consonance with the mandate of the said statutory provision. That no reason was given by the Public Prosecutor in the said report as to why detention of petitioner beyond 180 days period was sought by the prosecution. The only prayer made in the said report was that period of another 3 months be granted for filing supplementary challan on the ground that report of FSL was not received and arrest of co-accused was pending. The counsel for the petitioner further submits that even the impugned order dated 19.05.2023 was not passed in accordance with law and deserves to be set aside. The counsel for the petitioner further submits that as the FSL report had not been filed till 28.05.2023, the investigation could not be said to be complete. Therefore, an indefeasible right accrued to the petitioner for grant of default bail on expiry of the statutory period of 180 days. In the circumstances, impugned order dated 03.06.2023 whereby default bail was declined by the learned trial Court, is not sustainable in the eyes of law. In support of his contention, the counsel for the petitioner has placed reliance upon *Ajit Singh @ Jeeta and Another Vs. State of Punjab* CRR-4659-2015 decided on 30.11.2018 and *Suresh Vs. State of Haryana* CRR-1135-2020 decided on 18.11.2020 to urge that challan presented

without the report of FSL would be an incomplete challan, entitling the accused default bail under Section 167 (2) of the NDPS Act.

6. The State counsel while opposing the prayer and the contentions raised by the counsel opposite, has submitted that challan without report of FSL was presented on 28.02.2023 and before the expiry of statutory period of 180 days, Public Prosecutor submitted an application/progress report under Section 36A (4) NDPS Act and the same was accepted by the trial Court and period of another 3 months was given to prosecution to submit the report of FSL by way of supplementary challan vide order dated 19.05.2023. It is further submitted that there is no illegality or perversity in order dated 19.05.2023. That subsequent order dated 03.06.2023 being based on the earlier order dated 19.05.2023 is also legal and valid.

7. I have heard the counsel for the parties.

8. The petitioner was arrested on 29.11.2022 in a case relating to recovery of commercial quantity of contraband. Counsel for both the parties are of the view that in the present case statutory period of 180 days for filing of challan, as per the provision of Section 36A, expired on 28.05.2023. Prior to that police presented challan without report of FSL, on 28.02.2023. As per the law laid down by Division Bench of this Court in **Ajit Singh @ Jeeta's case** (supra), the challan filed without the FSL report is to be considered as incomplete challan and therefore, the accused is entitled for grant of default bail. However, as the contrary view was taken by a learned Single Bench of this Court in CRR-1731-2019 titled as Akash Kumar @ Sunny Vs. State of Haryana, decided on 16.10.2019, the matter was requested to be referred to a larger Bench for consideration, by placing it before Hon'ble the Chief

Justice. The said reference was made by a Single Bench of this Court in CRR-1125-2020 titled as Julfkar Vs. State of Haryana, decided on 16.09.2020 and now the matter is pending before the larger Bench of this Court.

9. Further, the question was raised for consideration before the Hon'ble Supreme Court in SLP (CrI.)-12200-2023 titled as Pankaj Gupta Vs. Narcotics Control Bureau, as to whether the petitioner acquired the statutory right to seek default bail on ground that incomplete charge-sheet was filed within the stipulated period without the CRCL report and vide order dated 04.12.2023, the petitioner therein was ordered to be released on interim bail while the main petition was listed to be heard along with SLP (CrI.)-8164-8166/2021.

10. Now adverting to the facts of the present case, it appears that the report submitted by Public Prosecutor did not give specific reasons for detention of the accused beyond the period of 180 days. From the perusal of the impugned order dated 19.05.2023, it appears that the same was passed in a mechanical manner without any application of mind. No specific reason is given in the said order which warrants further detention of the petitioner beyond the prescribed period of 180 days. Section 36A (4) of NDPS Act, obligates the trial Court to record specific reasons for detention of the accused beyond the statutory period of 180 days. Moreover, in the absence of the report of FSL, the learned trial Court would not be in a position to take cognizance of the offence.

11. In light of the above, since the investigation was incomplete on the date when petitioner moved an application under Section 167 (2) Cr.P.C.

for grant of bail, indefeasible right of default bail accrued to the petitioner immediately on the expiry of statutory period of 180 days as per the law laid down by Hon’ble Apex Court in ***M. Ravinderan Vs. Intelligence Officer, Directorate of Revenue Intelligence 2021 (2) SCC 485*** wherein it was held as follows:-

“18.1 Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have ‘availed of’ or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under [Section 167\(2\)](#), CrPC read with [Section 36A \(4\)](#), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.

18.2 The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.”

12. Consequently, in view of the above discussion, both the petitions are allowed and impugned orders dated 19.05.2023 and 03.06.2023 passed by the learned trial Court are hereby set aside. The petitioner is ordered to be admitted to bail in terms of Section 167 (2) Cr.P.C. to the satisfaction of trial Court/CJM/Duty Magistrate concerned. However, it is made clear that anything observed herein above shall not be construed to be an expression of opinion on the merits of the case.

05.03.2024
Yogesh

Whether speaking/reasoned:-
Whether reportable:-

(KARAMJIT SINGH)
JUDGE

Yes/No
Yes/No