



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

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CRR-1862-2023**Date of decision: 16.09.2024**

Naresh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Rajesh Bansal, Advocate
for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

MANJARI NEHRU KAUL, J.

1. The petitioner is impugning the order dated 25.07.2023 passed by learned Additional Sessions Judge, Panipat whereby an application filed by the petitioner for grant of default bail under Section 167(2) of the Cr.P.C. in case FIR No.43 dated 19.01.2023 under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') (Section 29 of the NDPS Act added lateron) registered at Police Station Industrial Sector 29, Panipat, District Panipat, has been dismissed.

2. Learned counsel for the petitioner submits that the petitioner was arrested on 19.01.2023 in connection with the FIR under consideration. Although the final report under Section 173(2) of the Cr.P.C. was presented within the stipulated period, it was submitted without the Forensic Science Laboratory (FSL) report. Despite this, the



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investigating agency failed to file the FSL report within the mandated period, leaving the investigation incomplete even after the lapse of 180 days. Consequently, an indefeasible right to default bail under Section 167(2) of the Cr.P.C. accrued to the petitioner. The petitioner accordingly moved an application before the learned Trial Court on 25.07.2023 for the grant of default bail which was erroneously declined, contrary to the law laid down in *Ajit Singh @ Jeeta & Another Vs. State of Punjab (CRR No. 4659 of 2015, decided on 30.11.2018)* and '*Saleem @ Mulla Vs. State of Haryana*' CRM-M No.11271 of 2021 d/d 26.03.2021. The learned Trial Court rejected the petitioner's application under Section 167(2) of the Cr.P.C. for default bail, vide the impugned order, on the ground that an extension for the period of investigation had already been granted to the prosecution on 30.05.2023. Learned Counsel for the petitioner contends that this extension was patently illegal due to non-compliance with Section 36A(4) of the NDPS Act. As per the mandatory provisions of Section 36A(4) of the NDPS Act, it was incumbent upon the Public Prosecutor to submit a report before the Court justifying the extension of time, particularly on the basis of the FSL report. However, the learned Trial Court extended the investigation period merely on the application filed by the Investigating Officer (IO), citing the non-receipt of the FSL report.

3. Learned counsel for the petitioner asserts that this approach is legally flawed, as it is only the Public Prosecutor who is authorized under Section 36A(4) of the NDPS Act to seek an extension



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of time for investigation. Since no such report was submitted by the Public Prosecutor, the extension granted by the learned Trial Court is not sustainable in law. In support of this argument, reliance has been placed upon the decision in *Hitendra Vishnu Thakur Vs. State of Maharashtra : (1994) 4 SCC 602*, where Hon'ble the Supreme Court categorically held that the Public Prosecutor must independently apply his mind and submit a detailed report indicating the progress of the investigation and reasons for seeking an extension. The mere filing of an application by the Investigating Officer is not sufficient for the grant of an extension under the NDPS Act. Therefore, the impugned order is erroneous and unsustainable.

4. On the other hand, learned State counsel, while opposing the prayer and submissions made by the counsel opposite, submits that the instant petition is not maintainable as the petitioner did not challenge the order dated 30.05.2023, which granted the extension, by filing a separate revision petition. It is also contended that since the extension of the investigation period had already been granted, the statutory period for investigation had not elapsed, and thus, the petitioner had no locus to claim default bail. However, the learned State counsel was unable to dispute that no report was submitted by the Public Prosecutor, as mandated under Section 36A(4) of the NDPS Act. Instead, it was argued that the Public Prosecutor had endorsed the application filed by the Investigating Officer.

5. Having heard the submissions of both parties, this Court finds merit in the Ld Counsel for the petitioner's arguments. While the



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State has raised a procedural objection regarding the maintainability of the petition, it is well-established that mere procedural technicalities should not obstruct the consideration of substantive rights. The petitioner's application for default bail is intrinsically linked to the legality of the extension of the investigation period granted on 30.05.2023, which has been impugned in this petition by annexing the relevant documents. Therefore, the petition is maintainable.

6. Before proceeding further, it would be apposite here to reproduce Section 167(2) of the Cr.P.C. and Section 36A(4) of the NDPS Act.

Section 167(2) of the Cr.P.C. reads as follows:-

“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 the 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 subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that



Chapter;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.”

Section 36A(4) of the NDPS Act reads thus:-

“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.”

7. A plain reading of Section 167(2) of the Cr.P.C. and Section 36A(4) of the NDPS Act reveals that upon expiry of the prescribed period of 180 days, an indefeasible right to default bail accrues to the accused if the investigation remains incomplete. In cases under the NDPS Act, the FSL report is a critical component of the investigation, as it determines the nature of the substance allegedly recovered. Without the FSL report, the investigation is deemed incomplete, and the accused cannot be linked to the alleged crime with certainty.

8. In ***‘Saleem @ Mulla Vs. State of Haryana’ CRM-M***



No.11271 of 2021 d/d 26.03.2021, this Court held that in NDPS cases, the submission of the FSL report is essential for the completion of the investigation. The Court emphasized that without the FSL report, the investigation is incomplete, and the filing of a charge sheet without it cannot be considered a complete challan. Relevant observations read as under:-

“A co-joint reading of Section 167(2) Cr.P.C., as well as Section 36A(4) of the NDPS Act reveals that a great deal of emphasis has been laid on completion of 'investigation'. The moot question which thus arises is as to what would be implied by 'investigation' which appears in both the aforementioned Sections and as to when 'investigation' would be deemed to have been completed in cases under the NDPS Act. Section 2(h) of the Cr.P.C., defines investigation as:-

'investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;'

Thus, what can be culled from the above definition of 'investigation' is that it would include within its ambit all proceedings conducted by the investigating agency for collection of all such material and evidence which would help in ascertaining whether an offence has been committed or not. In other words, investigation would be deemed to have been completed in cases under the NDPS Act only after an opinion has been formed and given by the chemical examiner qua the nature of the articles/substance sent to it by the investigating agency. Therefore, without a doubt in cases under NDPS Act, FSL report would be a decisive document to link the accused with the alleged commission of crime for attracting the mischief of offences under the NDPS Act. It is precisely for this reason that it becomes imperative in cases under the NDPS Act that the challan is mandatorily accompanied by FSL report. Unless and until no definite opinion is given by the chemical examiner qua the nature of the articles etc., sent, it would lead to no other inference but the one that the investigation is still incomplete as 'smell' and 'sight' of the articles/substance seized by the investigating agency cannot be taken to be a conclusive proof of the nature of the articles/substance. Moreover, in the absence of the



FSL report not being part of the challan, the Magistrate would be handicapped to proceed further and take cognizance of the offences. FSL report in cases under NDPS Act is an intrinsic part of the investigation and it is for this reason that investigation of cases under the NDPS Act would have to be kept at a pedestal, different from investigation which is carried out in cases under the Indian Penal Code and certain other statutes.”

9. The Hon'ble Division Bench in ***Ajit Singh @ Jeeta's case (supra)*** also reaffirmed that a charge sheet filed without the FSL report is incomplete, entitling the accused to default bail under Section 167(2) of the Cr.P.C.

10. In the present case, the challan was submitted without the FSL report on 27.03.2023. Despite the extension granted on 30.05.2023, the FSL report was still not filed within the statutory period of 180 days. It is crucial to note that Section 36A(4) of the NDPS Act provides procedural safeguards to prevent the arbitrary extension of the investigation period. The provision mandates that any extension must be sought through a report by the Public Prosecutor, who is required to independently apply his mind and submit a detailed report justifying the extension. In ***Hitendra Vishnu Thakur's case (supra)***, Hon'ble the Supreme Court underscored the importance of this procedure, stating that the Public Prosecutor must not merely act as a forwarding agent for the Investigating Officer but must provide an independent assessment of the investigation's progress. Relevant extract of the judgment reads as under:-

“22. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time



for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. 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 his 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. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release hi on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the Justification, from the report of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes indefeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier part of this judgment. We are unable to agree with Mr Madhava Reddy or the Additional Solicitor General Mr Tulsi that even if the public prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the report of the public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution of any expression in it. We have already dealt with the importance of the report of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to



the twin conditions contained in clause (bb) of sub-section (4) of Section 20. Since the law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid report falls in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether the public prosecutor labels his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (bb) (supra). Even the mere reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report to seek extension of time. In the absence of an appropriate report the Designated Court would have no jurisdiction to deny to an accused his Indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. Moreover, no extension can be granted to keep an accused in custody beyond the prescribed period except to enable the investigation to be completed and as already stated before any extension is granted under clause (bb), the accused must be put on notice and permitted to have his say so as to be able to object to the grant of extension.”

11. In this case, it is undisputed that no such report was submitted by the Public Prosecutor. The learned Trial Court granted the extension solely on the basis of the Investigating Officer's application, which is a clear violation of the mandate of Section 36A(4) of the NDPS Act. This Court, therefore, holds that the learned Trial Court misinterpreted the provisions of the NDPS Act and erroneously granted the extension of time for the investigation.

12. In light of the law laid down by Hon'ble the Supreme Court



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in *Hitendra Vishnu Thakur's case (supra)* and the Division Bench of this Court in *Ajit Singh @ Jeeta's case (supra)* it is clear that the extension of the investigation period without the proper procedure would be unsustainable. The absence of the FSL report at the time of filing the challan and the subsequent failure to comply with Section 36A(4) of the NDPS Act entitles the petitioner to default bail under Section 167(2) of the Cr.P.C. Accordingly, the instant petition is allowed and the impugned order dated 25.07.2023 is set aside. The petitioner is ordered to be admitted to bail in terms of Section 167(2) of the Cr.P.C. on his furnishing bail/surety bonds to the satisfaction of the Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

13. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

16.09.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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