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

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Reserved on 21.05.2024

Date of decision: 24.05.2024.

Amit Kumar @ Piti and Another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Parshant Sethi, Advocate for the petitioners.

Mr. Neeraj Sheoran, DAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioners/accused seeking quashing of order dated 28.10.2022 passed by the Court of Special Judge under NDPS Act, Fatehabad whereby the application filed by prosecution under Section 36A (4) of NDPS Act seeking extension of time for filing of challan has been allowed and order dated 09.11.2022 passed by the said Court whereby the application filed by the petitioners for grant of default bail under Section 167 (2) Cr.P.C. has been dismissed.

2. The allegations in brief are that on 04.05.2022, police apprehended the petitioners and one Mukesh who were traveling in a Ritz Car No.HR-26-BX-1164 and on search of the said car, 302 grams of heroin was recovered. Petitioners and Mukesh Kumar were arrested at the spot. Thereafter, one another accused Kanu Obina @ Bican was arrested by the police. On 28.10.2022, an application(Annexure R-1) was filed by ASI Ram



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Avtar of CIA Staff, Fatehabad seeking extension of time to file the challan as report of the RFSL Hisar was not received till that date. The said application was supported by the progress report (Annexure R-5) submitted by Public Prosecutor under Section 36A (4) of NDPS Act. The said application was allowed by the learned trial Court on the same very day i.e. 28.10.2022 vide order (Annexure R-6) and period of another two months was given to the prosecution to present the complete challan along with report of FSL.

3. Consequently, the application dated 07.11.2022 filed by the petitioners for grant of default bail under Section 167 (2) Cr.P.C. was dismissed by the learned trial Court vide order dated 09.11.2022.

4. It is not in dispute that statutory period of 180 days provided under Section 36A NDPS Act was to expire on 30.10.2022. Prior to that the prosecution filed application (Annexure R-1) and progress report (Annexure R-5), both bearing date 21.10.2022, seeking extension of time to file challan, as the report of RFSL Hisar was not received. From the perusal of impugned order (Annexure R-6), it appears that (Annexure R-1) and (Annexure R-5) were presented before the learned trial Court on 28.10.2022 and on the same very day, the petitioners and other accused were produced in the Court through video conferencing and application (Annexure R-1) was allowed on the same day by the learned trial Court. Admittedly, challan was not presented even on expiry of the statutory period of 180 days. On this, the petitioners filed bail application dated 07.11.2022 under Section 167 (2) Cr.P.C. and the same was dismissed by the learned trial Court vide order dated 09.11.2022, while taking into consideration, its earlier order dated 28.10.2022 (Annexure R-6) whereby time for filing of challan was extended



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to another two months.

5. The counsel for the petitioner has contended that the statutory period of 180 days provided for filing of complete challan expired on 30.10.2022, however, by that time, challan was not presented by the prosecution. The counsel for the petitioner has further contended that the report (Annexure R-5) dated 21.10.2022 submitted by Public Prosecutor under Section 36A (4) NDPS Act 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 for filing of challan may be extended, in the interest of justice on the ground that report of RFSL Hisar was not received till that date and was still awaited. The counsel for the petitioners further submits that even the impugned order dated 28.10.2022 was not passed in accordance with the statutory provision of Section 36A (4) NDPS Act and deserves to be set aside. The counsel for the petitioners has further submitted that as the challan was not filed within statutory period of 180 days, the petitioners filed an application dated 07.11.2022 under Section 167 (2) Cr.P.C. for grant of default bail, as an indefeasible right accrued to the petitioners for grant of default bail on expiry of the statutory period of 180 days. In the circumstances, impugned orders dated 28.10.2022 (Annexure R-6) and dated 09.11.2022 are not sustainable in the eyes of law. In support of his contention, the counsel for the petitioner has referred to decisions of this Court in ***Rajpal @ Billu Vs. State of Haryana*** having CRR-1907-2022, decided on 16.05.2023 and decision of this Court in CRR-1718 and 1720 of



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2023 titled *Tarsem Singh Vs. State of Haryana*, decided on 05.03.2024, CRR-1357-2022, CRR-1356-2022 titled as *Gurmej Singh Vs. State of Haryana*, decided on 19.09.2022 and *Joginder Singh Vs. State of Haryana* having CRR-1314-2021, decided on 11.02.2022.

6. The State counsel while opposing the prayer and the contentions raised by the counsel opposite, has submitted that in the present case, the petitioners were arrested on 04.05.2022 and statutory period of 180 days provided for filing challan, was to expire on 30.10.2022. That prior to that the Public Prosecutor prepared progress report dated 21.10.2022 (Annexure R-5) as per the provision of Section 36A (4) NDPS Act and the same was filed in the trial Court along with application Annexure R-1 on 28.10.2022. The learned trial Court gave opportunity of hearing to both the parties and passed order Annexure R-6 dated 28.10.2022 in accordance with law, after taking into consideration the fact that the report of RFSL was not received till that date and the trial Court granted period of another 2 months to prosecution to submit the challan. It is further submitted that consequently, the application moved by the petitioners for grant of default bail was also rightly dismissed by the said Court vide order dated 09.11.2022. That thus, there is no illegality or perversity in orders dated 28.10.2022 and 09.11.2022.

7. I have heard the counsel for the parties.

8. The petitioners were arrested on 04.05.2022 in a case relating to recovery of commercial quantity of contraband. Counsel for both the parties have not disputed the fact that in the present case statutory period of 180 days for filing of challan, as per the provision of Section 36A, was to expire on 30.10.2022. Prior to that prosecution filed application (Annexure R-1) and



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progress report of Public Prosecutor (Annexure R-5) both bearing date 21.10.2022. Subsequently, Police presented challan against the accused persons on 19.12.2022. In the meanwhile, petitioners filed an application dated 07.11.2022 seeking grant of default bail.

9. The Hon'ble Supreme Court in ***Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau and Another 2010 (1) RCR (Criminal) 942*** held as under:-

9. The maximum period of 90 days fixed under Section 167 (2) of the Code has been increased to 180 days for several categories of offences under the Act but the proviso authorizes a yet further period of detention which may in total go upto one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:

*(1) a report of the public prosecutor,
(2) which indicates the progress of the investigation, and
(3) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and
(4) after notice to the accused.*

10. The question to be noticed at this stage is as to whether the two applications for extension that had been filed by the public prosecutor seeking an extension beyond 180 days met the necessary conditions. We find that the matter need not detain us as it is no longer res integra and is completely covered by the judgment of this Court in Hitendra Vishnu's case (supra). In this case, the Bench was dealing with the proviso inserted as clause (bb) in Sub-section (4) of Section 20 of TADA, which is parimateria with the proviso to Sub-Section (4) of Section 36-A of the Act. This Court accepted the argument of the accused that an extension beyond 180 days could be granted but laid a rider that it could be so after certain conditions were satisfied. It was observed :

"It is true that neither clause (b) nor clause (bb) of sub-section (4) of Section 20 TADA specifically provide for the issuance of such a notice but in our opinion the issuance of such a notice must be read into these provisions both in the interest of the accused and the prosecution as well as for doing complete justice between the parties. This is a requirement of the principles of



natural justice and the issuance of notice to the accused or the public prosecutor, as the case may be, would accord with fair play in action, which the courts have always encouraged and even insisted upon. It would also strike a just balance between the interest of the liberty of an accused on the one hand and the society at large through the prosecuting agency on the other hand. There is no prohibition to the issuance of such a notice to the accused or the public prosecutor in the scheme of the Act and no prejudice whatsoever can be caused by the issuance of such a notice to any party.

11. Mr. Lalit, has further contended that the two applications for extension of time could not, by any stretch of imagination, be said to be reports of the public prosecutor as envisaged under Section 36A (4) and has again referred us to the case ibidem:

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 subsection (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. The court further went on to say that even if the application for extension of time was either rooted through the public prosecutor or supported by him would not make the said application a report of the public prosecutor.

10. A perusal of the ratio laid down by Hon’ble Supreme Court in **Sanjay Kumar Kedia’s case** (supra) would show that mere filing of an application for extension does not ipso facto empower the Court to extend the statutory period for filing the challan under Section 173 (2) Cr.P.C. The co-ordinate Bench of this Court in **Gurmej Singh’s case** (supra), after taking into consideration the earlier judgments passed by this Court with regard to provisions of Section 36A (4) NDPS Act, came to conclusion that the reason given for seeking extension of time as non receipt of the report of FSL/Chemical Examiner could not be stated to be a compelling reason for seeking the detention of the accused beyond the period of 180 days.

11. Further, as per the law laid down in **Sanjay Kumar Kedia’s case** (supra), 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. In the instant case, undisputably, impugned order (Annexure R-6) dated 28.10.2022 was passed



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by the learned trial Court on the same very day on which application (Annexure R-1) and progress report (Annexure R-5) were presented. From the perusal of (Annexure R-6), it appears that the presence of the petitioners was marked through video conferencing but no separate notice of (Annexure R-1) and (Annexure R-5) was given in writing to them by the Court concerned, thus making it clear that no proper opportunity was given to the petitioners to contest the prayer made by Public Prosecutor seeking extension of time to present the challan.

12. 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 petitioners 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.”

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13. Keeping in view the abovesaid facts and circumstances, the present petition is allowed and impugned orders dated 28.10.2022 and 09.11.2022 passed by the learned trial Court are hereby set aside. The petitioners are 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.

24.05.2024

Yogesh

(KARAMJIT SINGH)

JUDGE

Whether speaking/reasoned:-

Whether reportable:-

Yes/No

Yes/No