

280

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

CRR No.2797-2022(O&M)

Date of Decision:31.01.2024

Philpus Sidhu @ Phili

...Petitioner

VS.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Pankaj Kalia, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

Ms. Sheenu Sura, DAG, Haryana, Amicus Curiae.

N.S.Shekhawat J.

CRM-48666-2022

1. Application is allowed as prayed for subject to all just exceptions.

Annexures P-1 and P-2 are taken on record.

CRR-2797-2022

1. The petitioner has filed the present petition against the impugned order dated 18.10.2022, passed by the Court of Additional Sessions Judge, Taran Taran, whereby the bail petition under Section 167(2) Cr.P.C., moved by the present petitioner was ordered to be dismissed.

2. The petitioner was arrayed as an accused in the present case, which arises out of registration of FIR No.96 dated 21.07.2021, under Sections 307, 332, 333, 353, 186, 34 of IPC and Sections 25, 27 of Arms Act and Sections 21, 29 of NDPS Act, at Police Station Sadar Patti, District Tarn Taran. As per the

allegations levelled by the prosecution, two accused, namely, Philpus Sidhu alias Phili i.e. the petitioner and Daniel @ Sanju, co-accused were nominated as accused to face trial in the present case.

3. Learned counsel for the petitioner submitted that the petitioner/accused was arrested in the present case on 13.04.2022 and the challan in the present case was presented before the Court of SDJM, Patti on 07.10.2022. Thereafter, the petitioner moved an application for grant of bail under Section 167(2) Cr.P.C., which was ordered to be dismissed by the Special Court, Tarn Taran on 18.10.2022. Learned counsel for the petitioner contends that the challan in the present case should have been presented before the Court of Special Judge, Tarn Taran which was a Special Court constituted under Section 36 of the NDPS Act for the trial of the offences under the NDPS Act and as per Sub-Section 2 of Section 36-A of the NDPS Act, such Special Court has been conferred powers to conduct trial for an accused, also for the offences with which he has been charged alongwith the various offences under the NDPS Act. Since the challan was not presented within a period of 180 days before the Special Court, Tarn Taran, the petitioner was entitled to be released on bail under Section 167(2) Cr.P.C.

4. On the other hand, learned State counsel submits that the challan was taken to the Special Court, Tarn Taran, however, he was advised to file challan in the Court of the Area Magistrate as the petitioner/accused was being tried for the offence punishable under the NDPS Act and various offences of Indian Penal Code were also added in the challan. Apart from that, even the remand papers of accused were pending in the Court of Area Magistrate, Patti and consequently, the challan was filed in the Court of SDJM, Patti, District

Tarn Taran, being the Area Magistrate and the Area Magistrate committed the case to the Court of Sessions Judge on 14.02.2023, as the offences were triable by the Sessions Court. Learned State counsel further submits that even the FSL report had been received in the present case and as per the said report, recovery of heroin was effected from the petitioner and his co-accused.

5. I have heard learned counsel for the parties and with their able assistance, I have gone through the record of the case.

6. Since the petitioner has prayed for grant of bail under Section 167(2) Cr.P.C. and the sole ground taken by the petitioner for grant of bail is that the challan is filed in the Court of Area Magistrate, instead of filing the same in the Special Court, he was entitled to be released on bail in the present case. Consequently, this Court needs not delve into the merits of the case and the facts of the case are being examined in the light of the provisions contained under Section 167(2) Cr.P.C.

7. The main contention raised on behalf of the petitioner is that as per Section 36(A) of the NDPS Act, the final report under Section 173 Cr.P.C. should have been presented before the Special Court, Tarn Taran and cognizance could be taken only by that Court. Consequently, it can be stated that the challan in the present case was not presented before the Special Court and consequently, the petitioner was entitled for bail under the provisions of Section 167(2) Cr.P.C. However, this Court does not find any merit in the submissions raised on behalf of the petitioner in the present case. In the present case, the FIR was registered against the petitioner for the commission of offences, which were punishable under the provisions of Indian Penal Code as well as under the various Sections of NDPS Act. Thereafter, the remand papers

of the petitioner were filed in the Court of Area Magistrate, where the petitioner was taken for remand immediately after his arrest. No doubt, if the alleged offences are under the provisions of NDPS Act, there is no need to present the challan before the Area Magistrate and the challan could be filed only before the Special Court. However, if the accused is being tried for the offences under the Indian Penal Code as well as under the provisions of NDPS Act, the final report is required to be filed before the Court of Area Magistrate as the case pertaining to the offences under the Indian Penal Code are required to be committed as per the provisions contained in Code of Criminal Procedure. In the present case, apart from that, the offences under NDPS Act, the offences under Sections 307, 332, 333, 353, 186, 34 of IPC and Sections 25, 27 of Arms Act were also attracted, the procedure under Cr.P.C. had to be followed for the purpose of filing of the charge-sheet. Apart from that, the right of the accused to seek statutory bail under Section 167(2) Cr.P.C. under similar circumstances was considered by the Hon'ble Supreme Court in the matter of ***"Judgebir Singh @ Jasbir Singh Smra @ Jasbir and others Vs. National Investigation Agency; 2023(3) R.C.R.(Criminal) 334"*** and it was held as follows:-

"72. We do agree that the charge-sheet could not have been filed in the Court of the SDJM and the same should have been filed in the Special Court. Section 16 of the NIA Act empowers the Special Court to take cognizance of any offence without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such an offence or upon a police report of such facts. However, the pristine question to consider is whether the unnecessary committal proceedings by itself vitiated all further

proceedings and thereby creating an indefeasible right in favour of the appellants to seek statutory/default bail under section 167 of the Cr.P.C., 1973? We are of the view that the error on the part of the investigating agency in filing the charge-sheet in the Court of SDJM and thereafter, committing the case to the Court of Sessions has again nothing to do with section 167 of the Cr.P.C., 1973. This entire argument canvassed on behalf of the appellants can be put to rest solely on the ground that the application seeking default bail under section 167(2) of the Cr.P.C., 1973 read with Section 43D of the UAPA was filed before the Special Judge, NIA, Mohali, on 14.12.2020 and by that time, the chargesheet had already been filed and the proceedings were pending in the court of Special Judge, CBI, Punjab, SAS Nagar, Mohali. It is not in dispute that at the time when the Special Court took cognizance of the offence the sanctions under the UAPA and the 1908 Act had already been granted.

73. Thus, we answer Issue No.2 holding that the error on the part of the investigating agency in filing chargesheet first before the Court of Magistrate has nothing to do with the right of the accused to seek statutory/default bail under section 167(2) of the CrPC, 1973. The committal proceedings are not warranted, when it comes to prosecution under the UAPA by the NIA by virtue of Section 16 of the NIA Act. This is because the Special Court acts, as one of the original jurisdictions. By virtue of Section 16 of the

NIA Act, the Court need not follow the requirements of section 193 of the CrPC, 1973.”

8. Consequently, in view of the above discussion and the law laid down by the Hon’ble Supreme Court in **Judgebir Singh @ Jasbir Singh Smra @ Jasbir’s case (Supra)**, there is no merit in the present petition and is accordingly ordered to be dismissed.

9. In the end, I record my appreciation for Ms. Sheenu Sura, learned Amicus Curiae, who had rendered able assistance to this Court.

31.01.2024.
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(N.S.SHEKHAWAT)
JUDGE

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