

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2697-2023 &
CRR-2696-2023
Date of decision: 28.02.2024

CRR-2697-2023

Sahid ...Petitioner

Versus

State of Haryana ...Respondent

AND

CRR-2696-2023

Sahid ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. G.C. Shahpuri, Advocate for the petitioner.

Mr. Neeraj Sheoran, DAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. Both the petitions are taken up together for final disposal since they are interconnected being arising out of same FIR No.291 dated 16.04.2023 under Section 21(c) of NDPS Act, Police Station Yamunanagar City, (Haryana).
2. CRR-2697-2023 has been filed by the petitioner seeking quashing of order dated 04.10.2023 passed by the Court of Additional Sessions Judge, Yamunanagar whereby the application filed by the

prosecution under Section 36-A seeking extension of time for filing of challan in the aforesaid criminal case has been allowed. CRR-2696-2023 has been filed by the petitioner seeking quashing of order dated 06.11.2023 passed by the Court of Additional Sessions Judge, Yamunanagar whereby the application filed by the petitioner for grant of default bail under Section 167 (2) Cr.P.C has been dismissed in aforesaid criminal case.

3. The allegations in brief are that on 16.04.2023, police apprehended petitioner Sahid and recovered 335 grams of heroin from him. The petitioner was arrested at the spot. The statutory period of 180 days as per Section 36A expired on 13.10.2023 and in the meantime, Investigating Officer filed an application seeking extension of time for filing of challan, on 03.10.2023. The said application was forwarded by the concerned public prosecutor. The application was contested by the petitioner who also filed bail application dated 04.11.2023 seeking default bail under Section 167 (2) Cr.P.C. The said application was contested by the State. The application filed by the prosecution seeking extension of time to file challan was allowed by the learned trial Court vide order dated 04.10.2023 which is under challenge in CRR-2697-2023. The application filed by the petitioner seeking default bail was dismissed by the said Court vide order dated 06.11.2023 which is under challenge in CRR-2696-2023.

4. Being aggrieved, the petitioner has filed the afore-titled petitions.

5. The counsel for the petitioner has submitted that the petitioner was arrested by the police on 16.04.2023 and the statutory period of 180 days expired on 13.10.2023 and by that time police failed to present challan

against the petitioner. Earlier to that, the prosecution filed an application on 03.10.2023 seeking extension of time for submission of challan, as the report of FSL was still awaited and arrest of co-accused was also pending. That the said application was not accompanied by any progress report of Public Prosecutor. The said application was contested by the petitioner. Even the petitioner filed application dated 04.11.2023 seeking grant of default bail. The application filed by the prosecution seeking extension of time was allowed while the application filed by the petitioner for grant of default bail was dismissed by the trial Court vide separate orders dated 04.10.2023 and 06.11.2023 respectively. The counsel for the petitioner further submits that the request made by the prosecution seeking extension of time to file challan against the petitioner was not as per the requirements of Section 36A(4) NDPS Act. It is further contended that the said application was not supported by any progress report of the Public Prosecutor as per the statutory requirement. It is further contended that the aforesaid application did not specify the reasons for seeking the detention of the petitioner beyond the period of 180 days. The counsel for the petitioner further submits that thus, the impugned order dated 04.10.2023 whereby the learned trial Court gave extension of 90 days to the prosecution for filing of challan, is not sustainable being illegal and deserves to be set aside. It is further submitted that in the given circumstances, as no challan was presented by the police even on 13.10.2023, the application filed by the petitioner seeking default bail under Section 167 (2) Cr.P.C. should have been allowed by the learned trial Court.

6. Both the petitions are resisted by the State counsel who submits that the learned trial Court rightly gave extension of time to the prosecution

to file challan vide order dated 04.10.2023, on the basis of the progress report submitted by the Investigating Officer and forwarded by the Public Prosecutor, as per the provisions of Section 36A(4) NDPS Act. The State counsel further submits that delay in filing of challan was due to non availability of report of FSL as the same was still awaited. The State counsel further submits that after the passing of the impugned order dated 04.10.2023, challan was presented on 20.12.2023 along with report of FSL. It is further submitted that there is no illegality in the impugned orders and the revision petitions deserve to be dismissed.

7. I have considered the submissions made by counsel for the parties.

8. As per prosecution, the petitioner was arrested on 16.04.2023 by police in the present case which is relating to recovery of commercial quantity of heroin. Statutory period of 180 days expired on 13.10.2023. Prior to that prosecution vide application dated 03.10.2023 sought extension of time to file challan and on the other hand, petitioner filed application under Section 167(2) dated 04.11.2023, after the expiry of the aforesaid statutory period of 180 days. The application filed by prosecution under Section 36(A) was allowed by the trial Court vide order 04.10.2023 and the application filed by the petitioner 167 (2) was dismissed by the Special Court vide order dated 06.11.2023. Admittedly, challan was presented in this case on 20.12.2023, after the receipt of report of FSL.

9. Before proceeding further, it would be appropriate to refer to the provision of Section 36A(4) of the NDPS Act which is reproduced as under:-

Section 36A(4)--
(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..

10. As per the mandate of Section 36A(4), the special Court may extend the period of 180 days up to one year on the report of the Public Prosecutor which must indicate the progress of the investigation and the specific reasons for detention of the accused beyond the period of 180 days. In the instant case, application filed by Investigating Officer seeking extension of time to file challan was filed on 03.10.2023. The same was forwarded by the Public Prosecutor concerned. No separate progress report was submitted by the Public Prosecutor as per the mandate of Section 36A (4) of NDPS Act. A bare perusal of aforesaid application dated 03.10.2023 simply states that there is delay in filing of the challan as report of FSL is still awaited and arrest of co-accused is pending. Perusal of the said application further shows that the Public Prosecutor forwarded the same in a mechanical manner without proper application of mind. The said application does not indicate the progress of investigation and furthermore, did not assign any specific reason for detention of the accused beyond the statutory period of 180 days. Thus, the aforesaid application dated 03.10.2023 filed under Section 36A(4) of NDPS Act by the prosecution was not in accordance with the mandate of the aforesaid statutory period. In this context reference be made to decision of Hon'ble Supreme Court in **Sanjay**

Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control

Bureau 2010 (1) RCR (Criminal) 942 wherein the Hon'ble Apex Court observed as follows:-

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 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.

11. I have also gone through the impugned order dated 04.10.2023 passed by the learned trial Court, even the same is not passed as per the

mandate of Section 36A(4) of NDPS Act and as per the law laid down in **Sanjay Kumar Kedia’s case** (supra) and accordingly, the said order dated 04.10.2023 whereby time of other 90 days was given to the prosecution to file challan deserves to be set aside. Admittedly, challan against the accused was presented in the Court on 20.12.2023. Thus, in the instant case, indefeasible right of bail under Section 167 (2) accrued to the petitioner on expiry of statutory period of 180 days i.e. 13.10.2023. So the impugned order dated 06.11.2023 whereby the application filed by the petitioner for grant of default bail was dismissed, is also unsustainable in eye of law.

12. Resultantly, the present petitions are allowed. Impugned orders dated 04.10.2023 and 06.11.2023 are hereby set aside. Petitioner is ordered to be released on default bail under Section 167 (2) Cr.P.C. subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/learned Special Court concerned.

28.02.2024
Yogesh

Whether speaking/reasoned:-
Whether reportable:-

(KARAMJIT SINGH)
JUDGE

Yes/No
Yes/No