

2024:PHHC:005720

2024:PHHC:005722

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Reserved on:12.01.2024  
Pronounced on: 16.01.2024

1. CRR No.2773 of 2023

Parmod Kumar

...Petitioner

Versus

State of Haryana

...Respondent

2. CRR No.2339 of 2023

Parmod Kumar

...Petitioner

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Present:-** Mr. Randhir Singh, Advocate for the petitioner.  
Mr. Randhir Singh, Addl. AG, Haryana.

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**DEEPAK GUPTA, J.(Oral)**

Both the petitions titled above, have arisen out of the proceedings in case FIR No.216 dated 21.03.2023 registered at Police Station Camp, Palwal, District Palwal under Section 21(c) of Narcotic Drugs and Psychotropic Substances (Act No.61 of 1985) [for short - 'the NDPS Act'].

2. In CRR No.2773 of 2023, petitioner has impugned the order dated 14.09.2023, whereby learned Special Court, Palwal extended the time for completion of investigation under Section 36A(4) of the NDPS Act; whereas in CRR No.2339 of 2023, petitioner has impugned the order dated 04.10.2023, whereby benefit of default bail under Section 167(2) Cr.P.C has been declined to the petitioner.

3. As per prosecution allegations, 450 grams of smack/heroin was recovered from the possession of the petitioner on 21.03.2023. He was arrested on the same date. Following dates are material in this case:-

21.03.2023 - Recovery of contraband and arrest of the petitioner

25.03.2023 - Petitioner sent to judicial custody

14.09.2023 - Application under Section 36A(4) Cr.P.C moved for extension of time for completion of investigation.

\*Allowed on the same date.

18.09.2023 - 180 days' period concluded for filing report under Section 173 Cr.P.C.

04.10.2023 - Application for default bail under Section 167(2) Cr.P.C declined.

4. It is contended by learned counsel for the petitioner that application moved by the respondent- State for extension of time under Section 36A of the NDPS Act was filed on 14.09.2023 on the ground that report from RFSL had not been received despite issuance of the DO letter of the Superintendent of Police and that without giving any notice to the petitioner or his counsel; and without seeking any report from the Public Prosecutor, the Special Court in an illegal manner allowed the application, extending the time for another 180 days for filing of the challan. Learned counsel further contends that on completion of 180 days in custody and challan having not been filed, the petitioner got indefeasible right to be released on default bail and, therefore, order dated 04.10.2023, declining him bail, is unsustainable. Prayer is accordingly made to set aside both the orders i.e. 14.09.2023 allowing the

application of State under Section 36A(4) of the NDPS Act; and order dated 04.10.2023 declining the default bail to the petitioner.

5. Learned State Counsel contends that the petitioner was arrested due to recovery of contraband of the commercial category; that it is on account of non-receipt of the FSL report that challan could not be filed within 180 days; that prior to the completion of 180 days, extension of time was sought from the Court concerned, which was allowed and, therefore, the default bail has been rightly declined to the petitioner.

6. I have considered the submissions of both the sides and have appraised the record.

7. A similar question was considered by a co-ordinate Bench of this Court in ***CRR No.2100 of 2023 (O&M) and CRR No.2105 of 2023 (O&M), both titled Ravinder @ Bhola Vs. State of Haryana***, decided vide common order dated 03.11.2023. In that case, petitioner was arrested on 14.01.2023. Period of 180 days expired on 12.07.2023. Application for extension of time was moved by the prosecution on 06.07.2023, which was extended on 11.07.2023. Challan was presented beyond 180 days on 06.10.2023 and the application for default bail was declined on 18.07.2023. Orders dated 11.07.2023, granting extension of time to file challan, and order dated 18.07.2023 declining default bail to the petitioner were challenged by way of two petitions before this Court.

8. This Court held as under:-

*“10. Both the petitions would be dependent upon the legality of the impugned order dated 11.07.2023 whereby the learned Judge, Special Court has extended the period of three months beyond the period of 180 days under Section 36A of the*

*NDPS Act. The provision of Sections 36A(4) of the NDPS Act is reproduced as under:-*

*“36A(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.*

*A perusal of the aforesaid proviso would show that in exceptional circumstances where it is not possible to complete the investigation within the said period of 180 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 detention of the accused beyond the said period of 180 days. There are two essential ingredients for the purpose of extension of period of 180 days. These ingredients envisaged in the proviso are rather conditions precedent and conditions sine qua non for invoking the provision of the aforesaid proviso in extreme circumstances where the investigation is not complete. First condition is that the report of the Public Prosecutor suggests or indicates regarding the progress of the investigation and the second condition sine qua non is that specific reasons for the detention of the accused beyond the period of 180 days. These two conditions are coexistent and non-satisfaction of even one condition will not give any entitlement to the prosecution for seeking an extension of 180 days. The language used in the proviso is absolutely unambiguous and clear and has to be given a literal construction. Otherwise also the grant or non-grant of a default bail is on a different pedestal as compared to grant or non-grant of regular bail under Section 439 of the Code of Criminal Procedure. The grant of bail under Section 167(2) Cr.P.C is a statutory and infeasible right. The present is a case falling under the NDPS Act*

*and therefore the period of 90 days envisaged under Section 167(2) Cr.P.C has to be read alongwith Section 36A of the NDPS Act and for the purpose of the present case the period of 180 days can be extended by virtue of sub-section (4) of Section 36A of the NDPS Act for a further period of one year but subject to the conditions specified under the proviso which are contained in the proviso to sub-section (4) of Section 36A of the NDPS Act. ”*

9. This Court in aforesaid ***Ravinder @ Bhola’s Case (supra)*** further referred to another judgment of co-ordinate Bench of this Court in **Hoshiar Singh @ Gora Vs. State of Punjab – CRR No.2537 of 2018, decided on 17.11.2018**, wherein it was held as under:-

*“Learned counsel for the petitioner has relied upon order dated 04.12.2013 passed in CRM-M-39703-2013, titled as “Sanjeev Kumar vs. State of Punjab”, wherein this Court has held as under:-*

*“Learned counsel for the petitioner has submitted that while presenting the application under Section 36-A of the NDPS Act for extension of time for presenting the challan, the Investigating Agency and the Additional Public Prosecutor did not give any specific reason as to why the detention of the petitioner was required beyond the period of 180 days. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Sanjay Kumar Kedia @ Sanjay Kedia v. Intelligence Officer, Narcotic Control Bureau and another, 2010(1) RCR (Criminal) 942**, counsel submitted that when no compelling reasons were indicated for extension of time for presenting the final report under Section 173 Cr.P.C., the petitioner was entitled to be released on bail.*

*Learned State counsel has opposed the prayer made on behalf of the petitioner by submitting that the trial Court was justified in extending the time for presenting the final report under Section 173 Cr.P.C. and, therefore, the petitioner was not entitled to the concession of bail. Having heard counsel for the parties and going through the aforementioned judgment in the case of Sanjay Kumar Kedia @ Sanjay Kedia (supra), this Court finds that in the application dated 21.10.2013 (P-3) prepared by ASI Bhupinder Singh and forwarded by the Additional Public Prosecutor, it was not mentioned as to why further detention of*

*the petitioner beyond the period of 180 days was required. Merely because the report of the chemical examiner had not been received was no ground to decline the concession of bail to the petitioner. A bare perusal at the proviso to Section 36A(4) of the NDPS Act reveals that in the event of the investigation not being completed within the period of 180 days, the Court concerned could extend the said period 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 180 days. In the application (Annexure P-3), no reason, much less specific reason, was stated as to how detention of the petitioner could have served any purpose beyond the period of 180 days in the event of investigating agency not obtaining the report of the chemical examiner and presenting the final report under Section 173 Cr.P.C. Therefore, this Court is of the considered view that the petitioner deserves the concession of bail during the pendency of the trial of the case.*

*Resultantly, the petition is accepted and the petitioner is ordered to be released on bail during the pendency of the trial of the case on his furnishing adequate bail bonds to the satisfaction of Special Judge, Fatehgarh Sahib.*

*“Similar view has been taken by this Court vide order dated 14.05.2014 passed in CRM-M-14269-2014 titled as “Hargobind Singh vs. State of Punjab”*

*XXX*

*XXX*

*XXX*

*Considering the view taken by this Court in Sanjeev Kumar's case (supra), I find that merely because the report of the chemical examiner/FSL was not received, is not a ground to decline the concession of bail to the petitioner as per proviso to Section 36- A(d)(4) of the NDPS Act. In case, the investigation is not completed within a period of 180 days, the Court can extend the said period on a request of the public prosecutor, indicating the progress of the investigation and specific reasons for the detention of the accused beyond the period of 180 days. In the application dated 23.04.2018 (Annexure P2) filed by the public prosecutor, the only reason given is that the report of the chemical examiner/FSL is awaited and arrest of some other persons is effected and therefore, this cannot be a ground for detention of the petitioner*

*beyond the period of 180 days. Therefore, this Court is of the considered view that the petitioner deserves the concession of bail during the pendency of the petition. Even otherwise, in view of the judgement of the Hon'ble Supreme Court in Mohan Lal's case (supra), the complainant ASI Paramjit Singh and the investigating officer are the same officer and no second investigating officer was appointed and therefore it will be open for the trial Court to decide whether the investigation was carried out in accordance with law or not.*

*For the aforesaid reasons, the present petition is allowed. The petitioner Hoshiar Singh @ Gora is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court.”*

10. In view of the above legal position, it is clear that before allowing an application under Section 36A(4) of the NDPS Act, Court concerned is required to give an opportunity of hearing to the accused by serving notice of the application upon him or his counsel. An independent report is required to be obtained from Public Prosecutor. Public Prosecutor is required to indicate the progress of investigation and give specific reasons for detention of the accused beyond 180 days. Only then the Court is required to give specific reasons as to why the detention of the petitioner is required beyond the period of 180 days.

11. In the present case, the impugned order dated 14.09.2023 reads as under:-

“Present: Sh. Vinod Kumar, Ld. PP for the State.  
Accused Pramod Kumar in custody through VC  
represented by Sh. Narender Chauhan,  
Advocate.  
Accused Benjamin @ Prince in custody through  
VC represented by Sh. Rajender Singh Khatri,  
Advocate.

An application for extension of judicial remand during pendency of the investigation filed. Heard. Both the accused are remanded to judicial custody and be produced on **28.09.2023** through

VC.

At this stage, an application for extension of time under Section 36A of NDPS Act also filed. The report from RFSL has not been received so far despite the issuance of DO letter by Superintendent of Police. Otherwise, the investigation stands completed. But for want of report from RFSL., Bhondsi, the final report was not being filed. There are sufficient reasons for delay. Hence, the time period is extended for 180 more days to file the charge sheet and the application stands disposed of accordingly.

Riya/Steno Gr.III

Rajesh Garg,  
ASJ/Palwal/14.09.2023  
UID No.HR-0120”

12. A bare perusal of the afore-said order would reveal that on the day, when the application under Section 36A(4) of the NDPS Act was moved for extension of time due to non-receipt of the FSL report, despite issuance of DO letter, the period was extended by allowing the application. Neither the copy of the application was supplied to the accused or his counsel nor any report was obtained from the Public Prosecutor so as to indicate the progress of investigation to specify the reasons for further extension.

13. Thus, the impugned order dated 14.09.2023 is manifestly illegal and contrary to the law explained by Hon'ble Supreme Court in ***Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau and another, 2010(1) RCR (Criminal) 942***; and as explained by this court in ***Ravinder @ Bola and Hoshiar Singh's cases (supra)***

14. In view of the afore-said factual & legal position, this Court is of the view that impugned order dated 14.09.2023 is liable to be set

aside being contrary to the provisions of Section 36A(4) of the NDPS Act and the legal position as explained by Hon'ble Supreme Court and also by this High Court from time to time.

15. Consequently, both the petitions are allowed. Order dated 14.09.2023, whereby time was extended by the learned Special Court, Palwal, is hereby set aside. The subsequent order dated 04.10.2023, by which default bail was declined to the petitioner on the ground that period had been extended as a consequence, would also be liable to be set aside. The same is accordingly set aside. Petitioner is directed to be released on default bail under Section 167(2) Cr.P.C subject to furnishing requisite bail bonds and surety bonds to the satisfaction of learned trial Court/ Duty Magistrate concerned.

16. Photocopy of this order be placed on the connected case file.

January 16, 2024

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(DEEPAK GUPTA)  
JUDGE

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