

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

CRM-M-64361-2023
Decided on:08.02.2024

Dilwar

.... Petitioner

versus

State of Haryana

.... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. D.P.S.Bajwa, Advocate
for the petitioner.

Manjari Nehru Kaul, J. (Oral)

Instant petition has been filed under Section 482 Cr.PC for setting aside the order dated 27.10.2023 passed by Addl. Session Judge, Jind vide which application under Section 36-A(4) of NDPS Act for extension of time for filing challan has been allowed.

2. Learned counsel for the petitioner *inter alia* submits that the petitioner was taken into custody on 04.05.2023 and thus, the statutory period of 180 days to present challan was to expire on 30.10.2023. To circumvent the right of the petitioner for default bail under Section 167(2) Cr.PC, the prosecution through public prosecutor submitted an application/report under Section 36-A(4) of the NDPS Act for extension of time to present the challan. Learned Court below erroneously allowed the said application vide order dated 27.10.2023 and granted extension of time to the prosecution to file challan.

3. It has been argued by the learned counsel that the impugned

order was passed without proper application of mind and contrary to the settled law. Learned counsel has asserted that while seeking extension of time, the report/application of the public prosecutor must provide cogent reasons, particularly, regarding the progress of the investigation and for justifying further detention of the accused. However, the report/application, which was filed before the Court below by the public prosecutor was evasive and none of the conditions as laid down by the Hon'ble Supreme Court in ***Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau and another, 2010(1) RCR (Crl.) 942*** were complied with. Consequently, the impugned order deserved to be set aside and the petitioner deserved to be extended the concession of default bail.

4. Heard learned counsel and perused the relevant material available on record.

5. There is no dispute regarding the settled law that the report/application of the public prosecutor must demonstrate due application of mind and provide detailed information regarding the progress of investigation and also the reasons for the extended detention of the accused.

Upon examination of the report/application of the public prosecutor under Section 36-A(4) of the NDPS Act, which has been annexed as Annexure P-4, it is evident that cogent reasons were provided therein qua the progress of investigation and the rationale for seeking extension of time to file challan. The report mentions the efforts made by the prosecution to obtain the FSL report, which had not been received,

thereby contributing to the delay in presenting the challan before the trial Court. It needs to be reiterated that in cases under the NDPS Act, the FSL report is a decisive document to link the accused with the alleged commission of crime for attracting the mischief under the NDPS Act; 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.

6. On a pointed query put to the learned counsel as to whether any petition for default bail had been filed by the petitioner, he admitted that though a petition bearing *CRR No.256 of 2024* titled as *Dilwar vs. State of Haryana* had been filed, however, it stood withdrawn vide order dated 07.02.2024.

7. As a sequel to the above, no ground is made out to interfere in the impugned order passed by the Court below. Accordingly, the present petition stands dismissed.

08.02.2024
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?
Whether reportable?

Yes/No
Yes/No