



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-1867-2023(O&M)
Reserved on:- 20.12.2024
Pronounced on :-31.01.2025

SURENDER
Versus
STATE OF HARYANA
... Petitioner
... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Shivansh Malik, Advocate, for the petitioner.
Mr. Surender Singh, AAG, Haryana.

SANJIV BERRY, J.(ORAL)

The instant petition has been preferred by the petitioner under Section 397, 401 read with Section 482 of the Criminal Procedure Code, for setting aside of impugned order dated 07.07.2023 passed by learned Additional Sessions Judge, Rohtak whereby extension to file challan along with FSL report has been granted to prosecution and further for setting aside order dated 26.07.2023 passed by the learned Additional Sessions Judge, Rohtak, wherein application for default bail to the petitioner had been dismissed in the following case:-

FIR No.	Dated	Sections	Police Station
14	09.01.2023	22 and 29 of NDPS Act	Meham, Rohtak

- 2. Arguments heard.
- 3. Brief facts of the case put forth by the prosecution is that on



09.01.2023 a secret information was received by police regarding carrying of TUSKLIS-T drug by one Surender in car plying from Meham to Lakan Majara. Finding information reliable, a checkpoint on road was laid and checking of vehicle was going on. Meanwhile, a white car was seen, same was stopped, on asking, driver of the car named himself as Surender and on checking of conductor seat one white color plastic bag was found in which 200 bottles of Tuskil-T was found, consequently petitioner was arrested.

4. After completion of investigation, report under Section 173(2) Cr.P.C was filed on 07.06.2023 and thereafter the investigation agency moved an application dated 01.07.2023 (Annexure P-2) under Section 36A(4) of the NDPS Act (hereinafter referred to as “the Act”) seeking extension of time for presentation of final report along with the FSL Analysis Report and after hearing both the parties, learned Additional Sessions Judge, Rohtak vide order dated 07.07.2023 (Annexure P-3) granted extension to the investigating agency.

5. Petitioner had moved an application seeking concession of default bail under the Provisions of Section 167(2) Cr.P.C on 12.07.2023 (Annexure P-4) and after hearing, the same was dismissed vide impugned order dated 26.07.2023 by learned Additional Sessions Judge, Rohtak.

6. Aggrieved against both the aforesaid orders, petitioner filed the present Revision Petition.

7. It is *inter alia* contended by learned counsel for the petitioner that the petitioner is innocent and has been falsely implicated in this case and is in custody since 09.01.2023. He contends that final report/challan has not



been presented and the investigating agency on 01.07.2023 moved an application (Annexure P-2) seeking extension of time for presentation of final report along with FSL Report and the same was allowed vide order dated 07.07.2023 (Annexure P-3) and on the basis of the same ,petitioner moved an application seeking concession of default bail on 12.07.2023 (Annexure P-4) but the same was dismissed vide impugned order dated 26.07.2023 passed by learned Additional Sessions Judge, Rohtak. He contends that learned Additional Sessions Judge, Rohtak has erroneously, illegally and perversely passed the impugned order and denied the petitioner his right to default bail under Section 167(2) Cr.P.C. He contends that it was incumbent upon the Investigating Agency to present final report within a period of 180 days as per the provision of Section 36A(4) of the NDPS Act. He contends that 180 days in present case had elapsed on 10.01.2023 and the order dated 07.07.2023 vide which the prosecution was granted extension till 28.08.2023; for filing of challan along with FSL Report, is absolutely illegal. He contends that it is no longer *res integra* that extension cannot be granted by the Courts under Section 36A(4) of the NDPS Act only for the reason that the FSL Analysis Report is awaited. In support of his arguments, learned counsel for the petitioner has referred to the judgment of this Court titled as ***Hoshiar Singh @ Gora V. State of Punjab, 2019 (1) Law Herald 413***; and ***Mukesh Pal @ Makhan v. State of Haryana' 2023 (2) RCR (Criminal) 99***; to submit that only reason that the report of the FSL is awaited cannot be basis for extension of the period of detention beyond the period of 180 days. He has further referred to the judgment of Hon'ble Supreme Court of India in



“S. Kasi v. State through the Inspector of Police Samaynallur Police Station Madurai District, 2021 (12) 1;. to submit that the right of bail under Section 167(2) Cr.P.C is indispensable and cannot be denied under any circumstances. He has further assailed the impugned order on the ground that the application moved by the prosecution for extension of time was in fact filed by the Investigating Officer and it was nowhere been forwarded through the Public Prosecutor concerned nor any specific reason for detention beyond the specified period was mentioned therein as was required under Section 36A(4) of NDPS Act, and this aspect was never considered by the learned trial Court while passing the impugned order. He submits that the impugned order, therefore, is liable to set aside and the petitioner be granted concession of default bail. In this regard he has referred to the Judgment of Hon’ble Supreme Court in ***Hitender Vishnu Thakur v. State of Maharashtra , 1994(3)RCR(Criminal) 156 and in Chander Prakash v. State of Haryana 2023(3) RCR (Criminal) 903.***

8. *On the other hand,* learned State counsel referring to the reply submitted by the State has opposed the revision petition by arguing that the challan could not be presented within specified period of 180 days and application for extension of time was filed by the Investigating Agency on 01.07.2023, on which, the extension was given by the learned trial Court in accordance with law, as such, the petitioner was not entitled to concession of default bail, hence, prayed for dismissal of the petition.

9. After considering the rival contentions and perusing the record, it is observed that as per the case of the prosecution, the petitioner in this



case was arrested on 09.01.2023 on the allegations of having kept in his possession contraband attracting the provisions of Section 22 of the NDPS Act. The petitioner was produced in the Court of learned Magistrate on 10.01.2023 and thereafter, incomplete challan without the report of FSL was presented in Court on 07.06.2023 and on 01.07.2023 the application (Annexure P-2) was moved by the Investigating Officer seeking extension of time and vide order dated 07.07.2023 (Annexure P-3) extension was granted. In the meanwhile, the petitioner preferred application for grant of default bail on 12.07.2023 (Annexure P-4), which, however was dismissed vide impugned order dated 26.07.2023 leading to petitioner filing the present petition.

10. The issue arising for consideration in the present case is “as to whether the application preferred by the Investigating Agency seeking extension of time without there being any report of the Public Prosecutor is sufficient compliance of the Provisions contained under Section 36A(4) of the NDPS Act”.

11. Before proceedings further, it would be apt to refer the Provisions laid down under Section 36A(4) of the NDPS Act, which reads as under:-

“36A. Offences triable by Special Courts.—

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(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.

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12. A bare perusal of the aforesaid Provisions would reveal that in the above stated Provisions, a specific time frame has been laid down for completion of investigation within the stipulated period. It is categorically mentioned in Clause 4 of the Section 36A of the NDPS Act that in respect of the present accused all offences involved are of commercial quantity, the investigation has to be completed within 180 days. The proviso thereto lays down that if it is not possible to complete the investigation within the stipulated period of 180 days then the Special Court may extend the said period up to 1 year, **on the report of Public Prosecutor indicating the progress of the investigation and the specific reasons for detention of the accused beyond the specified period.**

13. Coming to the present case, as stated above, the petitioner in the present case was accused of offences of keeping in his possession commercial quantity of narcotics, as such, by operation of the aforesaid provisions the investigation had to be concluded within the period of 180 days. The petitioner was produced before the Magistrate on 10.01.2023 and during course of proceedings an incomplete challan without the report of the



FSL was presented by the Instigating Agency on 07.06.2023. Thereafter an application for extension of time for completion of investigation was moved by the Investigating Officer on 01.07.2023(Annexure P-2) which was allowed vide order dated 07.07.2023 (Annexure P-3) by learned trial Court extending the time till 28.08.2023. So far as the presentation of aforesaid challan without FSL report on 07.06.2023 is concerned, it is clear by now in the light of Hon'ble Division Bench Judgment passed by this Court in ***Ajit Singh @ Jeeta and Another vs. State of Punjab in CRR 4659/2015 decided on 30.11.2018***; that the challan filed without the report of FSL with regard to nature of substances in question would be an incomplete challan and in such circumstances the accused would be entitled to concession of default bail.

14. Although, an application for extension of time for completion of investigation was filed by the investigating agency 01.07.2023 (Annexure P-2), bare perusal of this application would reveal that the same has been moved by the Investigating Officer of the case, primarily seeking extension of time stating that the report of the FSL had not been received, as such, time of three months was sought to present the report, although the final report under Section 173(2) Cr.P.C had been filed by the police on 07.06.2023. The learned trial Court while passing the impugned order 07.07.2023 (Annexure P-3) considered the same to be a valid reason for extension of time for submitting the challan along with FSL report and granted permission to the prosecution to file the same till 28.08.2023.

15. Considering the impugned order dated 07.07.2023 (Annexure



P-3) in the light of application dated 01.07.2023 (Annexure P-2) moved by the Investigating Agency, it is observed that the impugned order passed by the learned trial Court is not sustainable in the light of the following observations.

16. Firstly, it is settled preposition of law as laid down under Section 36A(4) of the Act that application for extension of time for filing the complete challan has to be “***on the report of the Public Prosecutor indicating the progress of the investigation and specific reasons for detention of the accused beyond the said period of 180 days***”. Strangely, in the facts and circumstances of the present case, it is evident from the perusal of the application (Annexure P-2) and the order dated 07.07.2023 (Annexure P-3) that the application for extension of time in the present case was moved by the Investigating Officer without there being any report of the Public Prosecutor indicating the progress of the investigation which was mandatory as per the Provisions of Section 36A(4) of the Act. It has been laid down in ***Hitender Vishnu Thakur’s case (supra)*** that the said report of the Public Prosecutor is not merely a formality but a vital report, consequence whereof, effect the personal liberty of the accused. Hon’ble Apex Court has further held in ***Hitender Vishnu Thakur’s case (supra)*** that a Public Prosecutor is a important officer of the Government appointed under the Provision of Code of Criminal Procedure and being not part of Investigating Agency, is expected to independently apply his mind to the request of Investigating Agency before submitting the report to Court for extension of time and the requisite report must disclose on the face of it that he had applied his mind



and was satisfied with the progress of the Investigation, which considering necessary for extension of time to complete investigation. It has further been held therein that the Public Prosecutor is neither the post office of the Investigating Officer nor it is forwarding Agency but is charged with strict duty and he must apply mind to the facts and circumstances and the same must be evident in the report so submitted by him for extension of time for completion of investigation.

Admittedly coming to the facts and circumstances of the present case, this mandatory component of the application for extension of time for completion of investigation as envisaged under Section 36A(4) of the Act had not been complied with in the present case while moving the present application (Annexure P-2) by the Investigation Agency nor the learned trial Court took note of this major lapse while granting extension of time vide order dated 07.07.2023 (Annexure P-3).

17. Secondly, the instant application dated 01.07.2023 (Annexure P-2) was moved by the Investigating Agency solely on the ground that time be extended for furnishing the complete challan along with FSL report. It is by now settled in judgment cited as ***Hoshiar Singh @ Gora vs. State of Punjab 2019 (1) Law Herald 413 and Mukesh Pal @ Makhan vs. State of Haryana, 2023(2) RCR (Criminal) 99***; that the only reason given in the application for extension of time to file the complete challan under Section 173(2) Cr.P.C being the non receipt of the FSL report, it is solely by itself cannot be a ground to deny the statutory right of default bail to the accused. It is further been laid down that filing of the challan without there being an



report of FSL, which is integral part of the challan, cannot be brushed aside. It has been laid down by Hon'ble Supreme Court in *S. Kasi's case (supra)* that the accused be detained by police beyond the period laid down under Section 167 of the Cr.P.C without submission of the charge sheet, failing to do so would entail default bail under Section 167(2) Cr.P.C.

18. Considering all these facts and circumstance in the light of facts and circumstances of the present case, it is evident from the record that the consequent upon the arrest of the petitioner on 09.01.2023 the incomplete challan without the FSL report was submitted in the Court on 07.06.2023. This challan cannot be considered as complete challan in the light of aforesaid pronouncement because the report of the FSL for offence under NDPS Act is the integral part of the challan specifying the nature of the substance allegedly recovered from the accused, so the challan filed by the police on 07.06.2023 is incomplete challan which cannot take away right of the default bail of the accused. Furthermore, although the application for extension of time was moved by the Investigating Officer (Annexure P-2) on 01.07.2023, solely on the ground that the FSL report has not been received and acting upon it, the learned trial Court on 07.07.2023 (Annexure P-3) extended time till 28.08.2023 to complete challan alongwith FSL Report. In the light of the above discussion, it transpires that this application (Annexure P-2) not accompanied with the report of Public Prosecutor and being not in compliance to the Provisions under Section 36A(4) of the Act, the order dated 07.07.2023 (Annexure P-3) extending time is not sustainable in the eyes of law being violative of the mandatory provisions contained in Section



36A(4) of the Act. The consequent passing of the impugned order dated 26.07.2023 dismissing the petitioner's bail on the basis of the said extension of time vide order dated 07.07.2023 (Annexure P-3), therefore, as a consequent, is held to be non-sustainable in the eyes of law.

19. Thus from the above discussion, it is evident that the learned trial Court passed the impugned order dated 26.07.2023 solely on the basis of having extended time vide order dated 07.07.2023 (Annexure P-3) which in the light of the above discussion is observed to be not in accordance with law and hence liable to be set aside being violate of the mandatory provisions of Section 36A(4) of the Act, therefore the impugned order passed on the basis of said illegal order cannot be sustained in the eyes of law requiring the report of the Public Prosecutor indicating the progress of the investigation, which hopelessly is missing in the present case.

20. Consequently, it is observed that once the investigation by itself was incomplete when the application for grant of default bail was moved by the petitioner on 12.07.2023, the impugned order dated 26.07.2023 passed by the learned trial Court dismissing the bail application is held to be against law and hence is set aside.

21. As a result, the present petition is hereby allowed the impugned orders dated 07.07.2023 (Annexure P-3) and order dated 26.07.2023 passed by learned Additional Sessions Judge, Rohtak are hereby set aside. The petitioner is ordered to be released on bail subject to furnishing bail bonds/surety bonds to the satisfaction of learned Trial Court concerned, if not required in any other case; undertaking to regularly appear on each and every

date; not to leave the country without prior permission of the Court; and not to tamper with evidence of prosecution in any manner.

22. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

23. Pending application(s) if any, shall also stands disposed of.

(SANJIV BERRY)
JUDGE

31.01.2025
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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |