

CRR-2100-2023(O&M) and
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2100-2023 (O&M)
Date of Decision:03.11.2023

(I)
Ravinder @ Bhola

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CRR-2105-2023(O&M)

(II)
Ravinder @ Bhola

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sushil Sheoran, Advocate, for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. Both the petitions are taken up together for final disposal since they are inter-connected with each other.

2, CRR No.2100 of 2023 has been filed seeking quashing of order dated 18.07.2023 passed by the learned Additional Sessions Judge, Hisar whereby the application for default bail under Section 167(2) of the Code of Criminal Procedure filed by the petitioner has been rejected.

3. CRR No.2105 of 2023 has been filed seeking quashing of order

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dated 11.07.2023 passed by the learned Additional Sessions Judge, Hisar whereby the application filed by the prosecution for extension of time for filing the challan under Section 36A of the NDPS Act has been allowed.

4. So far as the prayer of the petitioner for setting aside and quashing of order dated 18.07.2023 passed by the learned Judge, Special Court by which prayer for default bail under Section 167 (2) Cr.P.C was declined is concerned, the reason mentioned by the learned Judge, Special Court was that since the period of 180 days has already been extended vide order dated 11.07.2023, the petitioner was not entitled for grant of default bail. Therefore, the entire case is dependent upon the legality of order dated 11.07.2023 passed by the learned Special Judge by which the time period was extended under Section 36A of the NDPS Act.

5. Learned counsel appearing on behalf of the petitioner has argued that vide impugned order dated 11.07.2023, the learned Judge, Special Court has allowed the application filed by the State for extension of time and granted three months extension on the ground that FSL report has not been received. He further submitted that a perusal of the aforesaid impugned order would show that various letters written by the SHO to the Forensic Science Laboratory seeking expert report which was still awaited has been referred and even the report of learned Public Prosecutor in this regard was also referred by the learned Special Judge and merely on the basis of the fact that FSL report was not received and mechanically the time was extended for a period of three months which is not justifiable under the provisions of Section 36A of the NDPS Act. He submitted that as per the aforesaid proviso to sub-section 4 of Section 36A, it is not only that the

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Public Prosecutor who is to indicate the progress of the investigation but it is also necessary to provide specific reasons for the detention of the accused beyond the period of 180 days whereas the aforeaid condition is missing in the order itself and also in the report of the Public Prosecutor. In this way, he also referred to the report of the Public Prosecutor which has been attached with the present petition as Annexure P-2 in CRR-2105-2023. He submitted that no reason at all has been mentioned in the report and even otherwise also it only says that efforts were made to collect the FSL report but has not been prepared till date.

6. Learned counsel further relied upon a judgment of a Co-ordinate Bench of this Court in ***Hoshiar Singh @ Gora Versus State of Punjab, CRR No.2537 of 2018, decided on 17.11.2018*** in which reference was made to the other judgments of Co-ordinate Benches of this Court in ***Sanjeev Kumar vs. State of Punjab, CRM-M-39703-2013, decided on 04.12.2013 and Hargobind Singh vs. State of Punjab, CRM-M-14269-2014, decided on 14.05.2014*** and submitted that in view of the aforesaid factual position whereby the essential ingredients as envisaged under Section 36A(4) of the NDPS Act is missing, the order dated 11.07.2023 by which the extension of three months was granted is violative of Section 36A(4) of the NDPS Act. He further submitted that since the extension granted by the learned Judge, Special Court was bad in law, the refusal to grant default bail as a consequence is also liable to be quashed since the complete challan has not been presented within the stipulated period of 180 days.

7. While referring to the dates of the present case, he submitted

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that the petitioner was arrested on 14.01.2023 and the period of 180 days expired on 12.07.2023. Application was filed by the prosecution for extension of time on 06.07.2023 which was extended on 11.07.2023 but such an order of extension was bad in law and thereafter, the challan was presented on 06.10.2023 alongwith FSL report which was much beyond the period of 180 days. He further submitted that both the orders dated 11.07.2023 and 18.07.2023 are liable to be set aside and quashed.

8. On the other hand, Mr. Vishal Kashyap, DAG, Haryana has submitted that the learned Special Judge has acted in accordance with law by which extension of three months was granted because FSL report was not received and has also referred and relied upon the report of the Public Prosecutor whereby the reason for seeking extension was mentioned as non-receipt of FSL report which was not prepared till date.

9. I have heard the learned counsel for the parties.

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

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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 co-existent 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 indefeasible 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

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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.

11. A perusal of the report of the Public prosecutor which is Annexure P-2 in CRR-2105-2023 would show that it only mentioned that as per DO letters written by the police efforts were made to collect the FSL report which was not prepared till date and therefore request was made to the Court to extend the time for collecting the FSL report and to submit the same before the Court. The aforesaid report of the Public Prosecutor Annexure P-2 is reproduced as under:-

*“Case FIR No.21 dated 14-1-2023 PS Adampur U/s 21(c), 27(A)
NDPS Act.*

I have gone through the case file as well as DO letters and found that I/o made the efforts to collect the FSL report but same has not prepared till date. So it is therefore requested to the Hon'ble Court to extent the time for collect the FSL report and submitted the same before the Court.

Sd/- Baljeet Singh”

A perusal of the aforesaid would show that it only states that time may be given for collecting the FSL report and extension of time was required for the purpose of collection of the FSL report whereas as per proviso to sub-section (4) of Section 36A of NDPS Act, the essential condition *sine qua non* is that reason has to be mentioned for seeking detention of the accused and also the progress of the investigation whereas nothing is stated in the aforesaid report pertaining to progress of the

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investigation nor any reason has been given seeking detention of the accused. In this way, this Court is of the view that both the aforesaid conditions have not been satisfied in the aforesaid report (Annexure P-2) *ex facie*.

12. Thereafter when the aforesaid report of the Public Prosecutor was considered by the learned Judge, Special Court, only reference has been made to the aforesaid report by stating that the report made by the learned Public Prosecutor in this regard has been perused. Para No.5 of the impugned order passed by the learned Judge, Special Court is reproduced as under:-

*“5.The SHO concerned has written a letters dated 23.03.2023 and dated 1.05.2023 to the RFSL, seeking the expert report which is still awaited. Even the Superintendent of Police, Hisar has written a letter dated 29.03.2023 to FSL seeking report. All these three letters suggest that the Investigating Officer has made bonafide efforts to obtain the report of FSL which is still awaited and such a lapse is not attributable to the police officials. **The report made by the learned Public Prosecutor in this regard has also been perused.** Hence, this application is hereby allowed. The period of three months is further granted to the Investigating officer to place the complete chargesheet on record and this period of three months will start to run on the completion of the period of 180 days i.e. on 12.07.2023”.*

A perusal of the aforesaid operative part of the order would show that even the learned Judge, Special Court has not applied his mind in accordance with the spirit of the statutory provisions of Section 36A of the NDPS Act. Even if a reference was made to the report of the Public Prosecutor but no application of mind was made as to whether the

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conditions of the proviso have been satisfied or not. Apparently there is no reason given either by the learned Judge, Special Court or the report of the Public Prosecutor as to why the detention is to be continued.

13. A Co-ordinate Bench of this Court in ***Hoshiar Singh @ Gora Versus State of Punjab (Supra)*** observed 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*

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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”

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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

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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.

14. In view of the aforesaid factual and legal position, this Court is of the view that order dated 11.07.2023 is liable to be set aside being contrary to the provisions of Section 36A(4) of the NDPS Act.

15. Consequently, both the petitions are allowed. The order dated 11.07.2023 by which the time was extended by the learned Judge, Special Court is hereby set aside. The subsequent order dated 18.07.2023 by which default bail was rejected only on the ground that the period has been extended as a consequence would also be liable to be set aside and the same is hereby set aside. The petitioner shall be released on default bail under Section 167(2) of the Code of Criminal Procedure subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

03.11.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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