

Before Aman Chaudhary, J.

SATPAL SINGH ALIAS SATPALA—*Petitioner(s)*

versus

STATE OF HARYANA—*Respondent(s)*

CRM No. 38302 of 2022

October 28, 2022

Code of Criminal Procedure, 1973—Ss. 173, 167—The Narcotic Drugs and Psychotropic Substances Act, 1985—Ss. 22, 27A, 36A, 61—Petition challenging orders of Additional Sessions Judge whereby two months of extension was granted for completion of investigation and filing of final report on ground that FSL report was awaited without issuing any notice to petitioners and default bail of petitioners was rejected this ground—Held that even though the proviso does not specifically mandate issuance of notice to accused while seeking extension yet issuance of notice has to be read into the provision for doing complete justice between parties—Such a requirement is in consonance with principles of natural justice—S. 36 A (4) envisages that the report of the Public Prosecutor must indicate progress of investigation as also specific and compelling reasons for seeking detention of accused beyond the period of 180 days—sole ground to seek extension of time was the want of FSL report which does not conform to the mandate of law—Petition allowed—petitioners to be released on default bail.

Held, that the provision of Section 36-A(4) of the Act as has been elucidatedly interpreted in the above judgments, envisages that the report of the Public Prosecutor must indicate the progress of the investigation as also specific and compelling reasons for seeking the detention of the accused beyond the period of 180 days. Since, the report of the Public Prosecutor is the pre-requisite in proviso to Sub Section 4 of Section 36-A of the Act, the same assumes utmost significance, as the further detention of the accused beyond the period of 180 days is dependent on the reasons stated therein, alongwith the progress of investigation as observed by him, basis the material produced by the Investigating Officer before him, on applying his mind to which, he is required to opine for seeking extension for presenting the final report. The consequence of acceptance of the same, affects the liberty of an accused. It is in these circumstances that Hon'ble The Supreme Court of India and

this Court in the judgments afore-referred have laid emphasis on strict compliance of the requirements of the proviso.

(Para 17)

Further held, that the orders passed by the trial Court granting extension of time to complete investigation without issuing of notice to the accused-petitioners and declining the application filed by them under Section 167(2) Cr.PC, are liable to be set aside.

(Para 20)

Vikas Bishnoi and B.S. Jatana, Advocates, *for the petitioners*.

Aditi Girdhar, A.A.G., Haryana.

AMAN CHAUDHARY, J.

(1) Instant applications have been filed in terms of order dated 19.09.2022 passed by this Court, for placing on record copy of application dated 26.03.2021, filed by the investigating agency, seeking extension of time for presentation of the challan, as Annexure P-1, application dated 05.04.2021, filed by the petitioners for bail under Section 167(2) Cr.P.C, as Annexure P-2, the report dated 26.03.2021 of Public Prosecutor, as Annexure P-3.

(2) For the reasons stated in the applications, same are allowed, subject to all just exceptions. Accordingly, Annexures P-1 to P-3 are taken on record.

(3) The Challenge laid in this petition is to the orders dated 26.03.2021 and 06.04.2021 passed by the Court of learned Additional Sessions Judge, Fatehabad.

(4) Briefly put, the prosecution version is that on 03.10.2020, during a chance recovery, out of the two young boys, who on seeing a Government vehicle approaching, started to walk with fast steps, one Lakhan Soni was found to be holding a white coloured plastic bag in his right hand, wherein on search, 880 tablets of Tramadol Hydrochloride, weighing 694.32 grams were found, alongwith him was petitioner no.2. FIR No.241 dated 03.10.2020 was thus lodged against the petitioners under Sections 22(c)/27-A/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'). Petitioner No.2 in his disclosure statement made on the same day during the course of investigation, named Satpal alias Satpala- petitioner no.1, who was also arrested on 03.10.2020.

(5) Learned counsel for the petitioners would submit the petitioners were produced before the trial Court on 04.10.2020. The contraband recovered fell under the category of commercial quantity as per the schedule in the NDPS Act, minimum sentence for which is 10 years, as such, the period of 180 days is provided for completion of investigation and filing of the final report under Section 173 CrPC. Learned counsel would further contend that the said period in the present case was to be completed on 02.04.2021. However, an application dated 26.03.2021, Annexure P-1 was filed by the SHO, seeking two months extension of time for presentation of the final report.

(6) Learned counsel while referring to the said application would submit that the sample parcels had been sent to the Forensic Science Laboratory, Madhuban regarding which on 23.03.2021, the Superintendent of Police, Fatehabad already sent an official letter to the Director, FSL, Madhuban, through special Messenger, but the result had not been received. The challan has already been prepared against the petitioners and Lakhani Soni, which was under process of checking but was incomplete without the examination report of FSL. The said application was allowed by the learned trial Court on the same day i.e. 26.3.2021, without issuing any notice to the accused-petitioners, the order of which has been impugned in this case. The learned counsel draws the attention of this Court to the report of the Public Prosecutor, dated 26.03.2021, Annexure P-3, to fortify his submission that no progress of the investigation was indicated therein and the only reason forthcoming therefrom was that the report of the FSL had not been received, thus the Public Prosecutor had stated that the request dated 26.03.2021 made by the SHO, regarding extension of time to present the challan may be accepted.

(7) Learned counsel would further contend that on 183rd day i.e. on 05.04.2021, an application under Section 167(2) to CrPC was filed by the petitioners seeking default bail on the ground that they were in judicial custody since 04.10.2020 i.e. 182nd day and the police had not submitted that challan till that date, which had to be filed within the stipulated period of 180 days of the judicial custody of the petitioners. He contends that the said application came to be dismissed by the learned trial Court vide order dated 06.04.2021, on the solitary ground that the application filed by the SHO, for extension of time to submit the final report had already been allowed vide order dated 26.03.2021, Annexure P-1. He while referring to the said order, Annexure P-1, further contends that the request was allowed keeping in view the report submitted by the

Public Prosecutor for the State, in which it had been stated that the FSL report was awaited. Thus, he stated that the order dated 26.03.2021 granting extension of time for presenting the Challan, being the basis of dismissal of the application of the petitioners seeking default bail, is also being impugned in the present case.

(8) Learned counsel would further contend that the trial Court fell in error while allowing the application for extension of time to complete the investigation vide its order dated 26.03.2021, on two grounds, firstly; that no notice of the said application had been issued to the petitioners as required, having so been held by Hon'ble The Supreme Court in the cases of Hitendra Vishnu Thakur Vs. State of Maharashtra, 1994 AIR (Supreme Court) 2623 and Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau, (2009) 17 SCC 631. Secondly; that the report of the Public Prosecutor seeking extension of time for presentation of the final report was based only on one fact that the FSL report was awaited without any reference to the progress of investigation in the case and specifying the compelling reasons for seeking the detention of the accused- petitioners beyond the period of 180 days, as categorically held by Hon'ble The Supreme Court of India in the case of Sanjay Kumar Kedia (supra) and in the judgments of this Court in CRM-M-3339-2014 titled as 'Nardev Inder Singh Vs. State of Punjab' decided on 04.02.2014, CRM-M-39703- 2013 titled as 'Sanjeev Kumar Vs. State of Punjab' decided on 04.12.2013; CRR-2537-2018 titled as 'Hoshiar Singh @ Gora Vs. State of Punjab' decided on 17.11.2018; CRM-M-20708-2015 titled as 'Hardeep Singh Vs. State of Punjab' decided on 09.07.2015, CRR-1334-2020 titled as 'Pardeep Vs. State of Haryana' decided on 17.08.2021. Thus, it was canvassed by the learned Counsel that the ground of non-receipt of FSL report for seeking extension of time as mentioned in the report of the Public Prosecutor in this case, based on which the application by the SHO concerned was filed and allowed, was not sufficient for granting extension of time, inasmuch as the same was in violation of the mandatory provision of Section 36-A(4) of the Act and the judgments.

(9) Learned counsel for the petitioners has urged that once the ground for seeking extension of time being non-receipt of FSL report was bad in law, accordingly, the order granting extension based on the same, was also an error, which had been committed by the trial Court.

(10) Contrarily, learned State counsel submits that the application for seeking extension of time to file final report was filed well within time i.e. on 26.03.2021 and the same was rightly allowed. The Public

Prosecutor in his report had given valid reasons, sufficient enough for seeking extension of time for completing investigation, which was non-receipt of the FSL report, necessary for completing the challan in all respects and to bring home the guilt of the accused. She is, however, unable to controvert the fact that notice of the said application was not issued to the petitioners by the Court before allowing the same. She further submits that there is no mandate in the Act that notice is required to be issued before granting such extension. She would therefore submit that the application of the petitioners under Section 167(2) CrPC had been rightly declined.

(11) Heard the submission advanced by learned counsel for the parties at length.

(12) The relevant Sub Section 4 of Section 36-A of the NDPS Act reads thus:-

“Section 36A.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) to (d) xx xx

(2) & (3) xx xx xx

(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."

(5) xx xx xx

(13) Before proceeding further, it is apposite to make a reference to the judgment of Hon'ble The Supreme Court of India in the case of Hitendra Vishnu Thakur (supra), wherein it was observed that though in the provision of Clause (b) and (bb) of Sub Section 4 of Section 20 of

TADA, it was not specifically provided for issuance of a notice but it was held that issuance of such a notice must be read into these provisions, both in the interest of the accused and the prosecution as well as for doing complete justice between the parties.

(14) Still further, Hon'ble The Supreme Court in the case of Sanjay Kumar Kedia (supra), enumerated the stringent conditions to be complied with, paras relevant in this regard read thus:-

"10. The maximum period of 90 days fixed under Section 167 (2) of the Code has been increased to 180 days for several categories of offences under the Act but the proviso authorizes a yet further period of detention which may in total go upto one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:

(1) a report of the public prosecutor, (2) which indicates the progress of the investigation, and (3) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and (4) after notice to the accused.

11 to 15 xx xx xx

16. We are, therefore, of the opinion that the extensions granted to the investigating department under the proviso to Section 36A (4) did not satisfy the conditions laid down therein and both the extensions, therefore, being contrary to law, must be struck down accordingly."

(15) In the case of Nardev Inder Singh (supra), this Court while granting default bail in view of non-compliance of the provisions of Section 36-A of the Act, as the only reason and basis cited in application seeking extension of time for completion of investigation was the report of Chemical Examiner not having been received. The report of the Public Prosecutor did not indicate the progress of investigation as also the specific and compelling reasons for seeking the detention of accused beyond a period 180 days. It was held that the order extending the time for completion of investigation was passed in a routine and mechanical manner by the trial Court. It was also observed as under:-

"7. The Hon'ble Supreme Court in Hitendra Vishnu Thakur v. State of Maharashtra, 1994(3) RCR (Criminal) 156 while

dealing with the proviso inserted as clause (bb) in sub-section (4) of Section 20 of TADA which is parimateria with the proviso to sub-Section (4) of Section 36-A of the Act had categorically held that even though the proviso does not specifically mandate the issuance of a notice to the accused while seeking extension yet the issuance of a notice has to be read into the provision which would be, both, in the interest of the accused, as also the prosecution as well as for doing complete justice between the parties. Such requirement was held to be in consonance with the principles of natural justice."

(16) Apropos to the case in hand, this Court indubitably finds strength in the arguments raised by the learned counsel for the petitioners, as it is the admitted case of the parties that no notice was issued to the accused-petitioners, of the application seeking extension to file the final report, which was allowed by the trial Court on the same very day and the only reason seeking extension was the non-receipt of FSL report, which is in contravention to the provision and the judgments as have been referred to, in the forgoing paragraphs.

(17) It may be accentuated that the provision of Section 36-A(4) of the Act as has been elucidatedly interpreted in the above judgments, envisages that the report of the Public Prosecutor must indicate the progress of the investigation as also specific and compelling reasons for seeking the detention of the accused beyond the period of 180 days. Since, the report of the Public Prosecutor is the pre-requisite in proviso to Sub Section 4 of Section 36-A of the Act, the same assumes utmost significance, as the further detention of the accused beyond the period of 180 days is dependent on the reasons stated therein, alongwith the progress of investigation as observed by him, basis the material produced by the Investigating Officer before him, on applying his mind to which, he is required to opine for seeking extension for presenting the final report. The consequence of acceptance of the same, affects the liberty of an accused. It is in these circumstances that Hon'ble The Supreme Court of India and this Court in the judgments afore-referred have laid emphasis on strict compliance of the requirements of the proviso.

(18) In so far as the report of Public Prosecutor in this case is concerned, the sole ground set forth therein, to seek extension of time

was the want of the FSL report, which does not conform to the mandate of law.

(19) The indefeasible right having once accrued in favour of the petitioners, could not be extinguished by the trial Court, without taking into consideration and satisfying itself of the compliance of the stringent conditions laid down by Hon'ble The Supreme Court of India in the case of Sanjay Kumar Kedia (supra).

(20) In view of the above discussion, this Court finds that the orders passed by the trial Court granting extension of time to complete investigation without issuing of notice to the accused-petitioners and declining the application filed by them under Section 167(2) Cr.PC, are liable to be set aside.

(21) Consequently, and as a sequel thereto, the present petition is allowed. The orders dated 26.03.2021 and 06.04.2021 passed by the Additional Sessions Judge, Fatehabad, are set aside. The petitioners are ordered to be released on default bail, on their furnishing bail/heavy surety bonds to the satisfaction of trial Court/Duty Magistrate, concerned. The petitioners shall also abide by the following conditions:-

1. The petitioners will not tamper with the evidence during the trial.
2. The petitioners will not pressurize/ intimidate the prosecution witnesses.
3. The petitioners will furnish an undertaking by way of an affidavit to appear before the trial Court on each and every date fixed, unless are exempted by a specific order of Court.
4. The petitioners shall not commit an offence similar to the offence of which, they are accused of, or for commission of which, they are suspected.
5. The petitioners shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/ her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
6. The petitioners shall furnish their respective addresses and mobile numbers to the Investigating Officer/trial Court forthwith and shall not change the same till the conclusion

of the trial and in case for any reason, the petitioners seek to change any of the aforesaid, the same shall subject to prior intimation to the Investigating Officer/trial Court.

7. The petitioners shall not in any manner misuse their liberty. Any infraction shall entail in withdrawal of the benefit granted by this Court.
8. The petitioners shall deposit their passports, if any, with the Investigating Officer/trial Court forthwith and in case, they do not have the same, they shall furnish a specific affidavit in this regard.

(22) It is also made clear that in case of breach of any of the conditions aforesaid, the State shall be at liberty to seek cancellation of bail granted to the petitioners by this order.

(23) In view of the above, this Court further clarifies that the observations made herein above are limited for the purpose of present proceedings and would not be construed as any opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

Divya Gurney