

Before Suvir Sehgal, J.

RANJEET @ ANGREJI @ BITTU—Petitioner

versus

STATE OF HARYANA—Respondent

CRR No. 656 of 2020

August 13, 2020

Narcotic Drugs and Psychotropic Substances Act, 1985, Ss.21 (b), 36-A, 61 and 85—Code of Criminal Procedure, 1973, S.167 (2)—Default bail—forfeiture of right, when—Report under S.173 Cr.P.C. not accompanied by FSL Report—Incomplete challan filed—Petitioner applied for default bail—Upon notice State filed FSL Report—The application for default bail was allowed by the Sessions Judge on furnishing bail bonds with two sureties each—The petitioner could furnish the same only later in the day, after the court hours, by filing an application, which was rejected by holding that his right to default bail stood forfeited on non-furnishing of bail bonds till court hours—Held, the bail under S.167 (2) of the Code is indefeasible right, which does not get defeated by removal of defect in the charge sheet by filing FSL Report—Further held, there is no such requirement in the Code that the petitioner has to be prepared with bail bonds and surety in anticipation of the bail order—A reasonable opportunity is required to be given to the accused to fulfill the conditions laid down for grant of bail—And the reasonable opportunity will vary from case to case—The impugned order set-aside and the petitioner was granted another opportunity to furnish bail bonds and sureties.

Held, that the facts of the present case when examined in the light of the above observations show that though the challan was filed within the period of 180 days as provided under Section 36-A of the NDPS Act read with Section 167(2) of the Code, but the same was incomplete as it was not accompanied by a report of Chemical Examiner. The petitioner availed of remedy and sought bail by invoking Section 167(2) of the Code, which was allowed on 10.02.2020 by relying upon a judgment of this Court in **Ravinder @ Binder** versus **State of Haryana** 2015 (4) RCR (Crl.) 441, and “default bail” was accordingly granted to the accused-petitioner. Therefore, it is clear that the accused-petitioner had exercised the right available to him on expiry of the prescribed period and an order thereon was passed by

the Sessions Court releasing him on bail. The fact that the FSL report was filed before the adjudication of his application does not defeat the right of the petitioner under Section 167(2) of the Code, more so, when there is nothing on record to show that State had sought extension of time for filing of the report. The right to bail under Section 167(2) of the Code being indefeasible right, does not stand defeated merely because the defect in the charge sheet had been removed by filing of the FSL report and that too after the expiry of the prescribed period.

(Para 10)

Further held, that coming to the second argument of the State Counsel that the petitioner was required to be ready and prepared with the requisite bail bonds and surety, when the bail order was passed. There is no such requirement in the Code. The accused cannot be expected to be prepared with the bail bonds and surety in anticipation of the favourable order. Upon the passing of an order granting bail, a reasonable opportunity is required to be given to the accused to fulfil the conditions laid down by the Court for grant of bail. What may amount to reasonable opportunity will vary from case to case depending upon the facts and circumstances of each case. There may be a situation, where the accused does not belong to the place, State or region where the FIR is registered against him and is not in a position to immediately fulfil the conditions of the bail. Upon such a cause having been brought to its notice, the Court may grant a sufficiently long time to the accused to take necessary steps. The accused is not required to furnish bail bonds and surety immediately upon the passing of order granting bail to the accused. Granting of bail with one hand and denying with another on the ground that the accused did not immediately fulfil the conditions for grant of bail amounts to travesty of justice.

(Para 11)

Amit Choudhary, Advocate, *for the petitioner.*

Rajiv Goel, D.A.G., Haryana, for the respondent-State.

SUVIR SEHGAL J.

(1) The Court has been convened through video conferencing due to Covid-19 pandemic.

(2) The instant revision petition has been filed by the petitioner challenging the order dated 10.02.2020 passed by the learned Additional Sessions Judge, Fatehabad.

(3) Facts in brief are that FIR No.579 dated 07.11.2019 was registered at Police Station City Fatehabad under Sections 21(b)/61/85 of The **Narcotic Drugs and Psychotropic Substances Act, 1985** (for brevity “the NDPS Act”) on the allegation that the accused-petitioner was caught with some contraband. The petitioner was arrested and is in custody since then. The final report under Section 173 of the Code of Criminal Procedure (hereinafter referred to as “the Code”), was presented before the Special Court on 06.01.2020, however, the same was not accompanied by the FSL report. Since incomplete challan had been filed by the police and the requisite period for filing the same expired, the petitioner filed an application on 07.02.2020 seeking bail under Section 36-A of the NDPS Act read with Section 167(2) of the Code. Upon notice, State filed reply. On 10.02.2020, at 10.00 a.m, the FSL report was filed in the Court, as per which, contraband recovered from the petitioner was proved to be heroin weighing 10 grams. After considering the application, the Sessions Judge, vide order dated 10.02.2020 allowed the application and granted bail to the petitioner on his furnishing bail bonds in the sum of Rs.50,000/- with two sureties each to the satisfaction of the Court. The Court simultaneously observed that the requisite bail bond and surety have not been furnished. During the later part of the day, the petitioner filed an application for acceptance and attestation of bail and surety bonds, which was rejected by the Court by passing the following order:-

“Case file taken up again at 4.40 pm as an application moved on behalf of petitioner/accused Ranjit @ Angreji @ Bittu for acceptance and attestation of bail and surety bonds on the ground that petitioner/accused Ranjit @ Angreji @ Bittu has been granted bail by this Court today i.e. 10.02.2020.

Heard. Record perused. The bail was granted to petitioner/accused Ranjit @ Angreji @ Bittu under Section 36-A of NDPS Act and Section 167(2) of Cr.P.C in the morning hours today by this Court. However, the requisite bail and surety bonds were not furnished on behalf of petitioner/accused Ranjit @ Angreji @ Bittu till Court hours i.e. 4.30 pm and the present application for acceptance and attestation of bail bonds has been filed at about 4.40 pm. **The petitioner/accused was required to be ready and furnish the bail bonds on grant of default bail to him but he failed to furnish the requisite bail bonds**

till Court hours. The right of petitioner/accused to default bail has been forfeited on non- furnishing of the requisite bail bonds till Court hours today. Moreover, one of the surety is not sound as he does not have any landed property and he has placed copy of registration certificate of motor vehicle only. Hence, keeping in view the aforesaid facts, the bail and surety bonds are not accepted and the present application for acceptance and attestation of bail and surety bonds is dismissed. Papers be tagged within main case file.”

(4) Aggrieved there against the petitioner has approached this Court.

(5) Counsel for the petitioner has argued that the bail under Section 167(2) of the Code is an indefeasible right and once granted, the same cannot be forfeited merely because the petitioner could not furnish surety and bail bonds at the time of passing of the order or during the course of the day when the order was passed. His submission is that the petitioner- accused should have been given sufficient time to fulfil the conditions of the bail.

(6) State counsel has resisted the revision petition on two grounds. Firstly, his submission is that as the Chemical Analyst's report had been received, the challan could not be said to be incomplete and, therefore, the occasion for grant of default bail no longer survived. Secondly, he has argued that having failed to fulfil the conditions mentioned in the bail order, the petitioner was not entitled to another opportunity to satisfy with the same. By referring to the custody certificate, he has pointed out that 12 other cases are pending against the petitioner, out of which 04 cases are under the NDPS Act and he stands convicted in 02 cases.

(7) I have considered the rival submissions of the parties.

(8) The first argument of the State counsel deserves to be noticed and rejected. Hon'ble Supreme Court in *Raghubir Singh and others versus State of Bihar*¹ (para 22) held as under:-

“22. The result of our discussion and the case-law in this: An order for release on bail made under the proviso to s.167(2) is not defeated by lapse of time, the filing of the charge sheet or by remand to custody under s. 309(2). The

¹ 1986 (4) SCC 481

order for release on bail may however be cancelled under s. 437(5) or s.439(2). Generally the grounds for cancellation of bail, broadly, are, interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him. The due administration of justice may be interfered with by intimidating or suborning witnesses, by interfering with investigation, by creating or causing disappearance of evidence etc. The course of justice may be evaded or attempted to be evaded by leaving the country or going underground or otherwise placing himself beyond the reach of the sureties. He may abuse the liberty granted to him by indulging in similar or other unlawful acts. Where bail has been granted under the proviso to s. 167(2) for the default of the prosecution in not completing the investigation in sixty days, after the defect is cured by the filing of a charge sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case, one would expect very strong grounds indeed”.

(9) In *Uday Mohanlal Acharya versus State of Maharashtra*² (para 13), the Apex Court observed:-

“There is no provision in the Criminal Procedure Code authorising detention of an accused in custody after the expiry of the period indicated in the proviso to sub-section (2) of Section 167 excepting the contingency indicated in Explanation I, namely, if the accused does not furnish the bail. It is in this sense it can be stated that if after expiry of the period, an application for being released on bail is filed, and the accused offers to furnish the bail, and thereby avails of his indefeasible right and then an order of bail is passed on certain terms and conditions but the accused fails to furnish the bail, and at that point of time a challan is filed then possibly it can be said that the right of the accused stood extinguished. But so long as the accused files an application and indicates in the application to offer bail on

² 2001 (5) SCC 453

being released by appropriate orders of the Court then the right of the accused on being released on bail cannot be frustrated on the oft chance of Magistrate not being available and the matter not being moved, or that the Magistrate erroneously refuses to pass an order and the matter is moved to the higher forum and a challan is filed in interregnum.”

(10) The facts of the present case when examined in the light of the above observations show that though the challan was filed within the period of 180 days as provided under Section 36-A of the NDPS Act read with Section 167(2) of the Code, but the same was incomplete as it was not accompanied by a report of Chemical Examiner. The petitioner availed of remedy and sought bail by invoking Section 167(2) of the Code, which was allowed on 10.02.2020 by relying upon a judgment of this Court in *Ravinder @ Binder* versus *State of Haryana*³, and “default bail” was accordingly granted to the accused-petitioner. Therefore, it is clear that the accused-petitioner had exercised the right available to him on expiry of the prescribed period and an order thereon was passed by the Sessions Court releasing him on bail. The fact that the FSL report was filed before the adjudication of his application does not defeat the right of the petitioner under Section 167(2) of the Code, more so, when there is nothing on record to show that State had sought extension of time for filing of the report. The right to bail under Section 167(2) of the Code being indefeasible right, does not stand defeated merely because the defect in the charge sheet had been removed by filing of the FSL report and that too after the expiry of the prescribed period.

(11) Coming to the second argument of the State Counsel that the petitioner was required to be ready and prepared with the requisite bail bonds and surety, when the bail order was passed. There is no such requirement in the Code. The accused cannot be expected to be prepared with the bail bonds and surety in anticipation of the favourable order. Upon the passing of an order granting bail, a reasonable opportunity is required to be given to the accused to fulfil the conditions laid down by the Court for grant of bail. What may amount to reasonable opportunity will vary from case to case depending upon the facts and circumstances of each case. There may be a situation, where the accused does not belong to the place, State or

³ 2015 (4) RCR (CrI.) 441

region where the FIR is registered against him and is not in a position to immediately fulfil the conditions of the bail. Upon such a cause having been brought to its notice, the Court may grant a sufficiently long time to the accused to take necessary steps. The accused is not required to furnish bail bonds and surety immediately upon the passing of order granting bail to the accused. Granting of bail with one hand and denying with another on the ground that the accused did not immediately fulfil the conditions for grant of bail amounts to travesty of justice.

(12) In the present case, the accused has moved an application on the same day, though after the Court hours, for acceptance of the bail bonds and surety. As the Court was not satisfied with the surety furnished by the petitioner, the Court was required to afford him with another opportunity to furnish the surety, rather than holding that the default bail stood forfeited. Therefore, the impugned order cannot be sustained to this extent.

(13) As a sequel to the above discussion, the impugned order dated 20.02.2020 passed on the application of the accused-petitioner insofar as the Sessions Court held that “*The petitioner/accused was required to be ready and furnish the bail bonds on grant of default bail to him but he failed to furnish the requisite bail bonds till Court hours. The right of petitioner/accused to default bail has been forfeited on non-furnishing of the requisite bail bonds till Court hours today*” is set aside and the petitioner is granted another opportunity to furnish the requisite bail bond and sureties to the satisfaction of the trial Court.

(14) Revision petition is accordingly disposed of.

Tribhuvan Dahiya