

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

CRR-1780-2021 (O&M)
Reserved on: 20.07.2022
Date of decision: 27.07.2022

JASWINDER SINGH

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana

SURESHWAR THAKUR, J.

1. The instant petition is directed against the impugned order, as made by the learned Additional and Sessions Judge, Fatehabad, on 11.11.2021, wherethrough, he declined to grant the craved for indulgence of de-fault bail to the petitioner herein, in case arising out of FIR No.219 of 24.09.2020, registered at Police Station Sadar Tohana, District Fatehabad, wherein offences constituted under Sections 22-C, 27-A of NDPS Act, are embodied.

2. From the alleged conscious, and, exclusive possession of the petitioner, and, co-accused, at the crime site, recovery became effected of 700 strips (containing 10 tablets each) of Tramadol Hydrochloride Tablets 100 mg. Clovidol-100 SR bearing batch No.TVD-20301, MFG-AUG-2020, EXP-JUL-2023 (total 7000 tablets), hence weighing 3 kg 714 grams. The weight of the seizure makes it fall within the ambit of commercial quantity thereof, and, thereons the rigor of Section 37 of NDPS Act are applicable, and, *prima-facie* the present bail petitioner, is not entitled, to his becoming admitted to regular bail.

3. However, since the investigating officer, from the date of registration of FIR against the present bail petitioner, inasmuch as on 25.09.2020, did not proceed to, within the ambit of the statutory contemplation carried in sub-Section 4 of Section 36A of NDPS Act, provisions whereof stands extracted hereinafter, rather file a complete challan, before the learned trial Judge concerned, and, nor asked hence on any valid credible grounds, qua extension of time nor when any affirmative order became made on the prosecutor's application (supra). Therefore, the petitioner through his casting an application under Section 167(2) of the Cr.P.C., claimed indulgence qua his being admitted to default bail.

“Section 36A (4) of NDPS Act

(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.”

4. However, as above stated a dis-affirmative order, became drawn thereons, on 11.11.2021. The petitioner becomes aggrieved from the above order, and, hence has proceeded to assail it, through his constituting the instant petition before this Court.

5. The statutory necessity as contemplated in the above extracted provisions, rather becomes cast in a per-emptory language, and, requires the makings of strictest compliance thereto, whereupon it becomes encumbered,

upon the investigating officer concerned, to within 180 days, as, commencing from the opening of investigations, to complete them, through his instituting a report before the jurisdictionally empowered Court, yet the *proviso* thereunderneath, gives leverage to the learned public prosecutor concerned, and, also to the learned trial Judge concerned, to on credible grounds, hence erected on the factum of the apposite delays, becoming occasioned in the makings, of a report by the Chemical Examiner concerned, upon the stuff concerned, given the heavy docket existing therein, rather to grant the apposite extension, but not for a tenure exceeding one year from the date of the commencement of investigations, as become commenced, on the registration of the FIR against accused concerned. Moreover, also the above made order would become valid, and, well founded, only when a prior thereto notice becomes served, qua the accused, upon the apposite application of the public prosecutor concerned,.

6. Importantly, investigations in respect of NDPS offences commences, are completed at the crime site, therefore, the date of the arrest of the offender, at the crime site, becomes the reckonable date, for the purpose of determining, the date of opening of the investigations, and, wherefrom the investigating officer concerned, is bound to complete them within 180 days.

7. Tritely the initiation of investigation in the instant case, occurred on the date of arrest of the accused, at the crime site, inasmuch as it occurred on 24.09.2020. Consequently, from the above date, the investigations, were even without the leave of the Court, rather required to be completed within 180 days, by the investigating officer concerned, and, if they were not then completed rather for any credible reason, thereupon they were to be through an apposite application, asked to be completed, through leave of the Court being asked, upon, an application, cast within the ambit of the proviso underneath sub-

Section 4 of Section 36A of NDPS Act, and, if the apposite leave became granted, yet the investigations were enjoined to be completed within a period of one year, as, commencing from the date of initiation of investigations.

8. In the instant case the petitioner became arrested on 24.09.2020, and/or, on the above date, the investigations into the petition FIR commenced. Consequently, the investigations were required to be completed, within a period of 180 days, commencing from 24.09.2020. However, more than 180 days have elapsed since 24.09.2020, and, the investigations are not yet complete, rather within a period of 180 days, as, commencing from 24.09.2020, excepting the investigating officer concerned, filing a report on 24.12.2020, before the jurisdictionally empowered Court, but his not appending therewith the report of the FSL concerned.

9. In consequence, the learned counsel for the petitioner argues, that the above report is legally defective, and, that the petitioner becomes entitled to his becoming admitted to default bail, but since relief on his apposite application has been declined, therefore, the order challenged before this Court is argued, to require its being quashed, and, set aside.

10. The impugned order was recorded on 11.11.2021. As above stated, within the ambit of the proviso underneath sub-Section 4 of Section 36A of NDPS Act, the learned Public Prosecutor concerned, may on credible grounds, ask for extension of time for completing the investigations, but thereons rather only for evidently credible, and, weighty reasons, hence the jurisdictionally empowered Court, may grant the extension, but yet only for a period of one year commencing from the date of opening of the investigations. However, despite a period of one year, to be computed from 24.09.2020, hence elapsing at this phase, wherewithin the relevant extension was espousable, rather for the

relevant period, yet when neither the above extension became espoused, nor any order became made thereons. In consequence, he submits that the non-appending of the report of the FSL, with the initially instituted report, on 24.12.2020, makes the report (supra), to be defective, and, vitiated. He further argues that the further effect thereof, is that, the learned trial Judge becoming dis-empowered, to assume jurisdiction, and/or, to take cognizance vis-a-vis the offences carried in the petition FIR, and, that obviously the petitioner becomes entitled to his becoming admitted to default bail. He strengthens his argument, through his making a submission, that though, the above defect, was curable through availment by the prosecutor concerned, of the mandate, carried in the proviso underneath sub-Section 4 of Section 36A of NDPS Act. However, since the above mandate has not been availed, thereupon, on a purportedly completely deficit report of the investigating officer concerned, filed on 24.12.2020, there is a complete bar against the learned jurisdictionally empowered Court, rather to assume jurisdiction, and/or, take cognizance, qua the petition offences, and, reiteratedly hence the petitioner becomes entitled to default bail.

11. The controversy which besets this Court, is the one, which beset the Delhi High Court, in case titled as '**Mohd. Arbaz Vs State of NCT of Delhi**', decided on 03.11.2020. The hereinafter extracted questions became therein formulated for an answer being rendered thereons. The Delhi High Court after applying the ratio as propounded by this Court, in case '**Ajit Singh alias Jeeta and another V. State of Punjab**', decided on 30.11.2018, hence concluded that an answer against the prosecution has to be made thereons, and, also did so. Therefore, it drew a conclusion, that the appendings by the investigating officer concerned, of the report of the FSL concerned, rather along with his report cast under Section 173 of Cr.P.C., with echoings therein, qua the stuff examined,

hence containing the prohibited salt or the narcotic substance, rather being the *sine qua non*, for empowering the learned Judicial Magistrate concerned, to assume jurisdiction, and, to take cognizance, and/or, to enter upon trial against the accused, otherwise not.

“(i) Whether in a case of commission of an offence punishable under the provisions of the NDPS Act, which is founded on recovery of narcotic drugs and/or psychotropic substance, a police report under Section 173 (2) of the Cr.PC can be considered as such it is not accompanied by a Chemical Examiner's Report with regard to the substance recovered, and,;

(ii) Whether an accused would be entitled to bail in default under Section 167(2) of the Cr.PC where his application for such bail has been filed prior to the submission of the report under Section 173(8) of the Cr.PC but is taken up for consideration simultaneously with the said report being filed.”

12. Though, judgments forming a view contrary to the view taken by the Delhi High Court, have also been cited before this Court, inasmuch as, the ones reported in case titled as **Akash Kumar @ Sunny Vs. State of Haryana, decided on 16.10.2019, CRR-1731-2019**, but since the judgment (supra), as rendered by the Delhi High Court, is the last verdict on the conundrum (supra), and, also when it has been appealed before the Hon'ble Apex Court, and, when in the SLP arising from the verdict of the Delhi High Court, the Hon'ble Apex Court has not affirmed, the view, as taken by the Delhi High Court in verdict (supra). Consequently, the verdict (supra), as made by the Delhi High Court, in verdict (supra), does not acquire, any conclusive, and, binding effect, and, nor on its anvil any leverage can be derived by the petitioner.

13. The reason becomes rested in the factum, that the mandate, as recorded by the Delhi High Court in case (supra), and, appertaining to the necessity of the investigating officer concerned, appending the Chemical

Examiner's report along with his report under Section 173 of Cr.P.C., before the learned trial Judge concerned, when is yet *subjudice*, before the Hon'ble Apex Court, thereupon, unless the above meted answer by the Delhi High Court, in verdict (supra), qua question No.(i) (supra), does acquire binding, and, conclusive effect, and/or, only if the above question remains not yet open, for an affirmative answer being meted thereto, by the Hon'ble Apex Court, and/or, is yet *res integra*, which however has not yet happened. In sequel, this Court cannot, at this stage, depend upon the *ratio decidendi* (supra) as exists in the verdict (supra), rendered by the Delhi High Court.

14. The weight of the seizure makes it hence fall within the ambit of commercial quantity, but yet since the petitioner entered into custody, on 24.09.2020, and, when his custody uptill now is almost about 1 year 10 months. In consequence, when in the orders, as, made by the Hon'ble Apex Court in SLP (supra), orders whereof becomes extracted hereafter, the Hon'ble Apex Court, upon bearing in mind an almost co-equal with the present petitioner rather custody of the accused therein, had admitted them to interim bail, lasting for a period of 3 months, but on terms, and, conditions, as may become imposed upon him, by the learned trial Judge concerned. Therefore, at par therewith the instant petitioner, is assigned, the craved for indulgence of his being admitted to interim bail, but only for a period of 3 months, but on same terms, and, conditions, as may become imposed upon him, by the learned trial Judge concerned.

“xxx UPON hearing the counsel the Court made the following

O R D E R

The Court is convened through Video Conferencing.

SLP(Crl.)No(s).8164-8166/2021

The main relief sought by the petitioners in these petitions is that they are entitled to bail in default on account of the fact that the investigating agency has failed to file a police report under

Section 173(2) of the Cr.P.C. within the stipulated period of one hundred and eighty days. Although, it is not disputed that a report was filed within the stipulated period, the petitioners contend that the said report was incomplete as it was not accompanied by the report of the Chemical Examiner.

Heard learned counsel for the parties and carefully perused the material placed on record.

Taking into consideration the fact that the petitioners have suffered incarceration for a period of more than 2 years and 11 months, we are inclined to grant interim bail to them for a period of three months from today subject to the terms and conditions to be imposed by the trial court.

The petitioners are, accordingly, directed to be enlarged on interim bail for a period of three months from today subject to the terms and conditions to be imposed by the trial court.

List these matters on 08.02.2022 for final disposal.

SLP(Crl) No. 8718/2021

The relief sought by the petitioner in this petition is that he is entitled for default bail as the complete and final challan has not been filed within 180 days and the final report was not accompanied with an FSL Report.

Heard learned counsel for the parties and carefully perused the material placed on record.

Taking into consideration the fact that the petitioner has suffered incarceration for a period of more than 1 year and 4 months, we are inclined to grant interim bail to the petitioner for a period of three months from today subject to the terms and conditions to be imposed by the trial court.

The petitioner is, accordingly, directed to be enlarged on interim bail for a period of three months from today subject to the terms and conditions to be imposed by the trial court.

List the matter on 08.02.2022 for final disposal.

SLP(Crl) Nos. 8496-8497/2021

Heard learned counsel for the parties and carefully perused the record.

List these matters on 08.02.2022 for final disposal.”

15. Before parting this Court observes, that when the entire procedure relating to sampling, and, making of cloth parcels, at the crime site, does completely happen rather at the crime site. Moreover, also when immediately subsequent thereto, the seizure becomes deposited in the *malkhana* concerned. Therefore, it becomes incumbent, upon the Station House Officer concerned, to forthwith make transmission(s) of the seizure to the FSL concerned, but through a validly drawn road certificate. Since the Act, as above stated, empowers the investigating officer concerned, and, that too without the leave of the Court to complete investigations within 180 days, since commencement thereof, thereupon the above spell of time is sufficient for the relevant purpose.

16. Therefore, irrespective of the above controversy being *res integra*, before the Hon'ble Apex Court, it is extremely enigmatic, that yet the investigating officers concerned, rather not in the quickest promptitude, to the conclusion of the investigations, at the crime site, hence taking to, despatch the sample parcels to the FSL concerned, for the latter making an opinion, on the stuff sent to it, for examination. A period of 180 days is a sufficient period of time for the relevant despatches being made, and, also for an opinion, qua the stuff enclosed therein becoming recorded by the FSL concerned, but yet rather through palpable unwanted indolence, either of the investigating officer concerned, or on the part of the FSL concerned, to respectively send, and, to make an opinion on the stuff, as, enclosed in the sample parcels, despite, investigations completing, at the crime site, and, despite the sample parcels, for makings of opinions on the stuff enclosed therein, being received at the FSL concerned, rather yet the period of 180 days being permitted to elapse. Significantly the above period of time is sufficient, and, adequate for the

completion of investigations, into an offence under the NDPS. It should be, on the very rarest of rare occasions, that a situation should arise, qua for purportedly defective reports, being filed, by the investigating officer concerned, before the jurisdictionally empowered Court, that hence the learned Public Prosecutor concerned, within the ambit of the proviso underneath sub-Section 4 of Section 36A of NDPS Act, takes to institute an application, for extension of time for completion of investigations, for, ensuring that the report of the FSL concerned, becomes appended with the apposite report. Nonetheless, also in certain cases, even without any credible, and, weighty reasons, rather existing for the relevant purpose, yet the learned Public Prosecutor concerned, become led to, upon, a purportedly defective report become initially filed, before the jurisdictionally empowered Court, hence place reliance, on the proviso underneath sub-Section 4 of Section 36A of NDPS Act. It is but for the above purported defective reports, and, on misplaced reliances being made by the public prosecutor concerned, upon the proviso underneath sub-Section 4 of Section 36A of NDPS Act, that the legal conundrum which now besets this Court rather does emerge. The above conundrum is completely obviabile, but only when promptest despatches, by the police are made, of the sample parcels, under a validly drawn road certificate, to the FSL concerned, and, thereafter the Chemical Analyst concerned, at the FSL concerned, also with the quickest promptitude, does examine the stuff enclosed therein, and, promptly thereafter also makes his opinion thereons.

17. For obviating the emergence of the above legal conundrum, especially when a sufficient time of 180 days is assigned, to the investigating officer concerned, to without leave of the jurisdictionally empowered Court, to complete the investigations, this Court deems it fit, to direct the Director

General(s) of Police, Punjab, Haryana, and, U.T. Chandigarh, to ensure that all the investigating officers concerned, who are investigating NDPS cases, are directed to within a period of 180 days, complete investigations thereinto, inasmuch as, through theirs making promptest despatches, under valid road certificates, of the sealed sample cloth parcels to the FSL concerned, hence for ensuring that, no opportunity arises, for the present legal conundrum hence making emergence before the Courts of law. The above prompt despatches would necessarily, ensure that, the statutory jurisdiction vested in the police officer concerned, to without leave of the Court institute, hence a report under Section 173 of Cr.P.C., rather within a period of 180 days, since the opening of the investigations, becomes meted strictest compliances, so that very rarely any occasion, arises for the jurisdictionally empowered Court, becoming led to, on valid, and, cogent reasons, make reliances, upon the proviso underneath sub-Section 4 of Section 36A of NDPS Act, necessarily for enabling, that with a supplementary challan, the report of the FSL becomes appended, and, also becomes instituted before the learned trial Judge concerned, for hence the earlier purported defective report, as filed within 180 days, rather not, becoming purportedly vitiated and, stained.

18. However, even if there is the most promptest makings of the relevant despatches by the investigating officer concerned, to the FSL concerned, yet the latter also become enjoined, to make promptest examination(s) of the stuff, enclosed in the sealed cloth parcel, and, thereafter to make a promptest report thereons, but the above promptness is completely lacking, and, may arise from sheer indolence or may arise from a deliberate omission(s), and, may become condonable only, upon, valid credible reasons, arising from heavy dockets awaiting the makings of opinions thereons. The

heaviness of docket rather precluding the FSL concerned, to make examination of the stuff, inside a cloth parcel, may not always be a truthful projection, for the relevant leave, rather within the ambit of the proviso underneath sub-Section 4 of Section 36A of NDPS Act, being asked for, by the learned Public Prosecutor concerned, from the jurisdictionally empowered Court, rather it may be surmisal. Therefore, the strength of the Chemical Examiners, at all the FSLs concerned, if is deficit, and, leads to the above crises, thereupon, the above shortfalls be ensured to be forthwith made good, through prompt deployments of Chemical Examiners, at all the FSLs concerned, within the States of Punjab, Haryana, and, U.T. Chandigarh, and, in the above regard all concerned, are directed to take the promptest measures.

19. However, in those FSLs concerned, where despite sufficient manpower, being available, yet for the delayed examinations of the stuff inside the sample cloth parcels, as become transmitted thereto, thereupon, the police faces, an unfortunate situation, and, it also leads to the ill emergence, of the above legal conundrum, becoming beset with Courts of law.

20. For overcoming the above, this Court deems it fit, and, appropriate to make the hereinafter directions, both upon the Secretary Home, Punjab, and, upon, the DGP Punjab, and, also upon the Secretary Home, Haryana, and, DGP Haryana, as well as the, upon, the Administrator U.T. Chandigarh, besides, upon, the DGP, U.T. Chandigarh.

- i) They shall ensure that all the investigating officers holding investigations into the NDPS cases, hence ensure theirs making the earliest, and, promptest, despatches of the sealed sample cloth parcels, through validly drawn road certificate, to all the FSLs concerned. The FSLs concerned, to which the sample cloth

parcels are sent, be ensured to be adequately manpowered, to deal with the heavy docket, if any.

ii) However, since surmised reasons with respect to heaviness of dockets do emerge, and, hence lead to delayed reports being made, upon the stuff inside sample cloth parcels, as sent to the FSLs concerned. Therefore, for obviating the above, this Court deems fit, and, just, to hence constitute a Regulatory Mechanism rather imperatively for obviating the emergence of the above stated conundrum. Consequently, this Court directs the Governments of Punjab, Haryana, and, also the U.T. Chandigarh, to constitute in their respective States/Territories, a Steering Committee, headed by an officer not less than the rank of a Secretary, for not only drawing statistics, in respect of the heaviness of dockets at the FSLs concerned, but also to quarterly garner statistics, from their respective FSLs concerned, about the volume of work pending at the respective FSLs concerned, and, to ensure that promptest opinions, are made by the Chemical Analysts', at the respective FSLs concerned, on the stuff sent to the FSLs' concerned, for theirs' making examinations, and, also opinion(s)' thereons. The respectively constituted Steering Committees, shall also keep track of the relevant despatches, rather through the respective Superintendents of Police of police districts concerned, and, shall also keep track that with respect to the seizures, the investigating officers concerned, not later than two weeks since the making of the relevant seizure, depositing them, in the malkhanas concerned, and, shall also ensure that

within a week thereafter, the sample parcels are sent for examinations, of the stuff inside the sample parcels, to the respective FSLs concerned.

iii) The above data be shared with the prosecuting agency, and, if yet, it makes unfoldments, that despite sufficiency of manpower, the load of stuff to be examined inside the sample cloth parcels concerned, is immense, thereupon the prosecution may, within the ambit of the proviso underneath sub-Section 4 of Section 36A of NDPS Act, and, obviously on the above *prima-facie* credible, and, weighty reason, hence seek the leave of the Court, to grant extension, for filing of a supplementary report, before the learned jurisdictionally empowered Court, necessarily for ensuring the appendings therewith, the report of the FSLs concerned.

21. The report of the Steering Committees concerned, and, also the action taken thereons, after every 6 months' hereafter, be intimated to the Registry of this Court.

22. A copy of this verdict be delivered to the Secretary Home, Punjab, and, DGP Punjab, and, to the Secretary Home, Haryana, and, DGP Haryana, as well as to the Administrator, U.T. Chandigarh, and, to the DGP Chandigarh.

23. Disposed of with above observations.

24. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

27.07.2022

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Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No