

*Before Amol Rattan Singh, J.*

**JEEVAN SHARMA @ VICKY—Petitioner**

*versus*

**STATE OF PUNJAB—Respondents**

**CRM - M No. 41673 of 2013**

January 15, 2014

*Code of Criminal Procedure, 1973 - S.167(2), 173 - Narcotic  
Drugs and Psychotropic Substances Act, 1985 - S.36A - Petitioner  
arrested for commission of offence u/s 22 of NDPS Act, 1985 - Report  
u/s 173 Cr.P.C./Challan not presented within statutory period of 180  
days - Police moved application seeking further time to complete  
investigation - Application u/s 167(2) Cr.P.C. dismissed by Special*

*Court on the ground that police had filed an application - Petition filed u/s 439 Cr.P.C. in High Court - Allowed - Reports u/s 173 Cr.P.C. often presented without report from FSL - Report is often presented along with a supplementary challan - Application for extension of time on ground of non-receipt of report from FSL without giving any reasons amounts to non-application of mind by public prosecutor - Bail allowed.*

*Held*, that statutory period of 180 days as provided under Section 36-A(4) of the Act of 1985, having been expired without any "challan having been presented", the petitioner filed an application under Section 167 (ii) Cr.P.C. before the Special Court on 28.10.2013 which declined the application on 31.10.2013 on the ground that the police had moved an application seeking further time to complete the investigation and present the challan though time was allowed vide the same order dated 31.10.2013.

(Para 4)

*Further held*, that hence, in my opinion, the application for extension of time for presenting the challan in the present case, only on the ground of non-receipt of the FSL report, without giving any reasons, as to why non-receipt of such report was sufficient cause for delay in the completion of investigation, would amount to non-application of mind, as is essential for seeking such extension of time by the public prosecutor, as has been held by the Supreme Court.

(Para 12)

Rajbir Singh, Advocate, *for the petitioner*:

Kirat Singh Sidhu, DAG Punjab.

**AMOL RATTAN SINGH, J. (ORAL)**

(1) This petition seeks grant of regular bail to the petitioner who is in custody since 28.04.2013 after an FIR was registered against him on that date for the alleged commission of an offence punishable under Section 22 of the NDPS Act.

(2) As per the contents of the FIR, 50 bottles of "Rexcof" of 100 ml each having Chlorpheniramine Malteate IP-4mg. and Codeine Phosphate IP-10 mg. was allegedly recovered from him in addition to 70 pouches of Momotil tablets, containing 100 tablets in each.

(3) Other than alleging that the FIR itself has been falsely registered, the petitioner is seeking grant of bail invoking Section 167 (ii) of the Cr.P.C. read with Section 36-A of the NDPS Act, 1985.

(4) The statutory period of 180 days as provided under Section 36-A(4) of the Act of 1985, having been expired without any "*challan having been presented*", the petitioner filed an application under Section 167 (ii) Cr.P.C. before the Special Court on 28.10.2013 which declined the application on 31.10.2013 on the ground that the police had moved an application seeking further time to complete the investigation and present the challan though time was allowed vide the same order dated 31.10.2013. The petitioner has also annexed a copy of the application moved by the learned Additional Public Prosecutor, Sangrur, on 23.10.2013, seeking extension of time to submit the challan, with the petition presently filed.

(5) This application was filed on the ground that despite efforts made by the investigating agency the report of the Director Forensic Science Laboratory had not been received, thereby making it difficult to present the report under Section 173 Cr.P.C. within time.

(6) Mr. Rajbir Singh, learned counsel appearing for the petitioner at the outset relied upon various judgments of the Supreme Court and of this Court to submit that the petitioner is entitled to grant of bail. List of such judgments are as under:-

(i) Sayed Mohd. Ahmed Kazmi vs. State, GMCTD & others, 2012(4) R.C.R. (Criminal) 875.

(ii) Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau & another 2010(1) RCR (Criminal) 942.

(iii) Uday Mohanlal Acharya vs. State of Maharashtra 2001(2) RCR (Criminal) 452

(iv) Union of India vs. Thamisharasi & Ors. 1995(2) RCR (Criminal) 531.

(v) Jaswinder Singh & another vs. State of Punjab 2005(2) R.C.R. (Criminal) 663.

(vi) Mohd. Dishad vs. State of Union Territory, Chandigarh in CRM-M No.38823 of 2012 (O&M).

(vii) Satnam Singh vs. State of Punjab in CRM-M No.36059 of 2012.

In Sayed Mohd. Ahmed Kazmi (supra), statutory bail was held to have been admissible to the appellant before the Hon'ble Apex Court, in view of the fact that his right for grant of such bail accrued before the prosecution moved an application for extension of time to submit the charge-sheet.

(7) In the present case of course, the application by the prosecution was moved prior to the petitioner having filed his application under Section 167(ii) Cr.P.C., the Additional Public Prosecutors' application having been filed on 23.10.2013 or a day thereafter, the petitioners' application having been filed on 28.10.2013 as already mentioned above, hence the ratio of the law laid down in that case, would not, in my opinion, be applicable on all fours, to the present case.

(8) Mr. Rajbir Singh argued his case relying more upon the judgment in Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau & another (supra), wherein, after discussing the law on the issue, their Lordships held that the application moved by the Public Prosecutor was without any application of mind. That application (reproduced in extenso in para No.13 of the said judgment), was also primarily filed on the ground that the report from the Central Forensic Science Laboratory had not been received. This reason was held to be not sufficient and consequently, the application was held to have been made without any application of mind on the part of the Public Prosecutor.

(9) Mr. Kirat Singh Sidhu, learned Dy. Advocate General, Punjab, has also relied upon the judgment in **Sanjay Kumār Kedia @ Sanjay Kedia**'s case (supra), to submit that it was not the fault of the prosecution that the report from the Forensic Science Laboratory had not been received, despite due diligence on their part. Mr. Sidhus' contention, therefore, is that there was due application of mind by the public prosecutor and it was only on account of factors beyond the control of the investigating agency that the "challan" could not be presented. As such, the Public Prosecutor having

applied his mind to the issue and filed an application for extension of time, there is no reason for the petitioner to be granted statutory bail, time having been extended by the learned trial Court.

However, a reading of Kedias' case shows that it was held to the contrary therein. After noticing the reply of the Public Prosecutor, enumerated in an earlier judgment, of *Hitender Vishnu Thakur versus State of Maharashtra (1)*, their Lordships, in Sanjay Kumar Kedias' case (supra), held that even though the application was moved by the public prosecutor, it was actually an application moved by the investigating officer and does not even remotely indicate any application of mind on the part of the public prosecutor.

Obviously, this observation is in view of the fact that in that application, apart from giving the history of the case and other litigation against the accused therein, the reason for seeking extension of time was non-receipt of the report of the FSL.

(10) In the present case also, the sole reason given in the application of the public prosecutor (Annexure P-3 with the petition), is that:

"That I am satisfied that the investigating officer of this case made every effort to receive the report of the Director, Forensic Science Laboratory, Mohali. But the same was beyond his control, so the extension of above noted period for presenting the challan is very much necessary and the same may be extended in the interest of justice. Otherwise prosecution will suffer irreparable loss.

It is therefore requested that the application may kindly be allowed in the interest of justice.

(11) Keeping in view the contents of the application moved by the public prosecutor for extension of time, I find that the matter would be squarely covered by the ratio of the law laid down in Sanjay Kumar Kedias' case, as extension of time for presentation of "challan" was obviously sought on similar grounds as given in the case before the Apex Court, wherein such reason has been held to be not good for grant of extension of time.

It is further necessary to state here that, upon specific query from learned State counsel, he, on instructions, states that reports under Section 173 Cr.P.C. are often presented, without the report of the FSI having been received, which is, therefore, often presented along with a supplementary "challan" under Section 173 (8) Cr.P.C.

(12) Hence, in my opinion, the application for extension of time for presenting the challan in the present case, only on the ground of non-receipt of the FSI report, without giving any reasons, as to why non-receipt of such report was sufficient cause for delay in the completion of investigation, would amount to non-application of mind, as is essential for seeking such extension of time by the public prosecutor, as has been held by the Supreme Court.

(13) Though, it would be immaterial in the context of an application moved under Section 167(2) Cr.P.C., however, I find it necessary to also mention that, upon enquiry from the learned State Counsel, Mr. Sidhu has stated, on instructions, that the petitioner is not a habitual offender.

(14) In view of the above, the petition is allowed. The petitioner would, consequently, be released on bail upon providing adequate bail and surety bonds to the satisfaction of the learned trial Court.

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*J.S. Mehndirata*