Kaka Singh Vs State of Punjab

CRM M-22760 of 2014

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 12, 2014

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 167(2)#Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€" Section 36A(4)

Hon'ble Judges: M.M. Singh Bedi, J

Bench: Single Bench

Advocate: J.S. Sandhu, Advocate for the Appellant; Ankur Jain, AAG, Advocate for the Respondent

Final Decision: Dismissed

Judgement

M.M. Singh Bedi, J.
Petitioner seeks the concession of regular bail in a case registered on the basis of secret information that the petitioner

was habitual of selling intoxicating pills to college going students. He was apprehended near the campus of college with 5000 tablets of phenotil,

210 tablets of Tramacet, 1600 tablets of lomotil, 700 tablets of Alprazolam and two bottles of rexcof on March 29, 2013. 180 days required to

present challan expired on September 24, 2013. As an abundant caution, the prosecution agency had moved an application for extension of time

u/s 36A(4) of the NDPS Act, for short "the Act", on September 21, 2013 as the report of the Forensic Science Laboratory had not been

received. The petitioner also sought bail by moving an application u/s 167(2) Cr.P.C. on September 24, 2013. Application for extension of the

time for presentation of challan was allowed on September 27, 2013. The application for bail filed by the petitioner on expiry of 180 days was

dismissed on October 9, 2013 on presentation of challan.

2. Counsel for the petitioner has contended that indefeasible right has accrued to the petitioner on expiry of 180 days and that said indefeasible

right could not have been defeated by delaying in adjudication of application u/s 167(2) Cr.P.C. giving an opportunity to prosecution agency to

present challan.

3. I have heard learned counsel for the petitioner. In a judgment passed by this Court in Hardeep Singh Vs. State of Punjab, CRM M-17260 of

2014 granting bail in similar circumstances vide order dated May 29, 2014, this Court has observed that whenever any application u/s 36A(4) of

the Act was filed by the prosecution agency seeking authorization of detention of an accused in custody beyond the period of 180 days, said

application should be decided expeditiously. Similarly, the Apex Court in the case of Union of India through CBI Vs. Nirala Yadav @ Raja Ram

Yadav @ Deepak Yadav, 2014(4) RAJ 265 has issued directions that an application u/s 167(2) Cr.P.C. filed on behalf of the accused should be

decided by the Magistrate on the same day. The petitioner in the present case seeks to take advantage of the following lapses:-

i) lapses on the part of the FSL in sending the report expeditiously pertaining to the narcotic medicines recovered from the petitioner;

ii) default on the part of the prosecution agency to present challan on account of above said lapse;

iii) lapse on the part of the trial Court in not deciding the application filed by Public Prosecutor on September 21, 2013 prior to the expiry of 180

days u/s 36A(4) of the Act;

iv) Lapse on the part of the Court in not deciding the application u/s 167(2) Cr.P.C. which was filed on September 24, 2013.

4. The petitioner seems to have acquired an indefeasible right to be released on bail on the basis of the above said circumstances, as the statue

confers a right upon him to be released after expiry of 180 days but at the same time, it is not out of place to observe here that as an abundant

caution, the prosecution agency in order to prevent the release of accused had filed an application u/s 36A(4) of the Act on September 21, 2013

which application could have been decided after issuing notice to the petitioner in jail by September 24, 2013 before expiry of period of 180 days.

Had that application been decided by passing a speaking order in accordance with law, the petitioner would not have got an opportunity to seek

the advantage of default of the prosecution agency in presentation of challan by moving an application u/s 167(2) Cr.P.C.

5. It is also not out of place to observe here that the petitioner is accused of being habitual of selling intoxicating pills to the college going students.

The petitioner was found in possession of commercial quantity of salts prohibited under the provisions of the Act. Release of petitioner in the

present social scenario spoiling of youth by putting them to drugs is the most heinous crime in the Society. Granting bail to the petitioner for the fault

of the Court in delaying the adjudication of application u/s 36A(4) of the Act does not appeal to the conscious of this Court taking into

consideration the principle of law as laid down in Sastri Yagnapurushadji and Others Vs. Muldas Bhudardas Vaishya and Another, holding that it

is elementary rule of justice that no party should suffer for the mistake of the Court or its office. The prosecution agency having filed an application

and availed the statutory remedy u/s 36A(4) of the Act for extension of time within the prescribed limit i.e. prior to expiry of 180 days, cannot be

said to be at fault. The petitioner in view of accused of above said heinous crime cannot be permitted to take the advantage of irregularity

committed by the Court.

6. Petition for bail is dismissed again reiterating the directions issued in Hardeep Singh''s case (supra) that the Courts dealing with the cases under

Act should expeditiously decide the applications u/s 36A(4) of the Act preferably prior to the expiry of the period of 180 days in case this is filed

before the expiry of above said period. At the same time it is also expected that the law laid down by the Apex Court in Nirala Yadav''s case

(supra) directing application u/s 167(2) Cr.P.C. should be disposed of by the concerned Magistrate on the same day, shall be complied with.