

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No.M-21390 of 2017

Date of Decision: 05.07.2017

Sukhdev

... Petitioner

Versus

State of Haryana

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. DS Virk, Advocate,
for the petitioner.

Mr. Surender Singh, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

Prayer is for grant of regular bail in case bearing FIR No.284 dated 14.11.2016 registered under Sections 15/18/29/61/85 of NDPS Act at Police Station Cheeka, District Kaithal.

It is a case of recovery of 1 Kg poppy husk and 3 Kg 10 gram opium from possession of the petitioner. The petitioner was arrested on 14.11.2016 and was remanded to judicial custody on 19.11.2016. The period of 180 days for filing FSL report has been expired on 19.5.2017 while the challan was presented on 15.3.2017 without FSL report.

Mr. Virk relies on the decision of this Court in **CRR No.791 of 2016**, titled 'Gurpal Singh and another v. State of Punjab', decided on 23.4.2016, where this Court observed as follows:-

“Following the judgment of Apex Court in **Satya Narain Musadi’s** case (supra) which has been followed by the High Court of Andhra Pradesh in **Matchumari China’s** case (supra), and by Calcutta High Court in **Raghubirsaran Jain and another Vs. State and another**, 1995 CrLJ 4117, I am of the considered opinion that the petitioners herein

should have been released, in peculiar circumstances of this case, as indefeasible right had accrued to them under Section 167 (2) Cr.P.C. On presentation of incomplete challan without the report of chemical examiner and the prosecution agency having not availed the benefit of Section 36 A (4) of the NDPS Act within a period of 180 days. In a case under the NDPS Act, a right of bail under Section 167 (2) Cr.P.C. of an accused can be defeated by the prosecution agency by availing the remedy under Section 36 A (4) of the NDPS Act subject to the fulfillment of the statutory requirement of Section 36 A (4) of the NDPS Act which is to be considered in each case on individual merits by the concerned trial Court/ Special Judge. The right under Section 167 (2) Cr.P.C. cannot be defeated by merely filing an incomplete challan. It is pertinent to observe here that all observations made in this judgment are in context to the offences under the NDPS Act.

It is not out of place to observe here that the judgment of **Narendra Kumar Amin's case** (supra) relied upon by the trial Court is not applicable to the facts of the present case. In **Narendra Kumar Amin's case** (supra), default bail under Section 167 (2) Cr.P.C. had been declined by the CBI Court as well as by the Gujarat High Court, as the challan had been presented on the last date of expiry of 90 days. In the said case, the prosecution had sought extension of detention for custody prior to the expiry of 90 days and period of remand had been extended beyond the period of 90 days. In the said case, the period of remand was extended till July 5, 2013 and the challan had been presented on July 3,

2013. The Apex Court had held that filing of the police report as required under Section 173 (2) Cr.P.C. was within the period of 90 days. So far as the material which forms part of the report under Section 173 (2) Cr.P.C. is concerned, the High Court had observed in para 10.1 of its judgment that the contents of the charge sheet set in its prefatory details, showed the revelations in the investigation. The Investigating Officer mentioned the role played by the accused persons and he opined on the basis of the material collected by him during the investigation that the prima-facie commission of offence in his view was made out. The High Court had observed that it was evidently clear that the charge sheet as presented, incorporated all the necessary details required under Section 173 (2) including that whether offence was committed and by whom, which was in terms of clause (d) of Section 173 (2).”

Learned State counsel is unable to deny that prosecution did not file an application under section 36A (4) NDPS Act praying for extension of time to await the FSL report. The factual position is that on 15.3.2017, an incomplete challan was filed which flaw is incurable in view of law in *Gurpal Singh's case (supra)* and other cases. This petition was filed on 5.6.2017.

Mr. Surender Singh, AAG, Haryana, says that FSL report has now been received from Madhuban Karnal on 15.6.2017.

FSL report is available after the period of 180 days fixed by the legislature in the Act. Therefore, keeping in view the facts and circumstances of the present case, and without expressing any opinion on the merits of the case, I have no option but to allow this petition and the petitioner is ordered

to be released on bail, subject to the satisfaction of the concerned trial Court/Illaqa Magistrate.

05.07.2017
monika

(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>