

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

CRM-M-37583 of 2016 (O&M)

Date of decision : 30.01.2017

Pargat Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. D.S. Virk, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana

JITENDRA CHAUHAN, J. (Oral)

The present petition has been filed under Section 439 and 167 (2) of the Code of Criminal Procedure (for short, 'the Cr.P.C.') read with Section 36A(4) of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act'), seeking regular bail in FIR No.46 dated 03.03.2016, registered under Section 21C of the Act, at Police Station Kalanwali, District Sirsa.

It is contended by the learned counsel for the petitioner that the challan/report under Section 173 Cr.P.C was filed before the Court without attaching the report of FSL. It is further contended that without the FSL report, the challan cannot be said to a complete challan. In the absence of report from the FSL, it cannot be said that the substance recovered from the

accused is a prohibited substance under the Act.

On the other hand, the learned State counsel has furnished the copy of interim orders of the trial Court, which are taken on record as Mark 'A' and stated that FSL report in the matter has already been received.

Heard.

The question raised at the hands of the petitioner in the instant petition is as to whether the challan/report filed under Section 173 Cr.P.C without the FSL report can be said to be complete or not. The question was considered in '**Dr. Ravdeep Kaur vs. State of Punjab**' 2006(4) RCR (Criminal) 328 and '**Kishan Lal vs. State**' 1989(2) RCR (Criminal) 656. In Kishan Lal's case, it was held as under:-

“Now to advert to the main plea, it is contended that for offences under the Narcotic Drugs and Psychotropic Substances Act, the report under Section 173(2) of the Code, which in law is complete (the investigating officer having carried out all his mandatory duties) is to be considered “incomplete” in the absence of the opinion of the expert. In our view the submission is entirely misconceived. Apparently the power of the Magistrate to take cognizance of offences upon a police report is being related to the duty of the SHO to forward a report on completion of investigation. The duty of the Investigating Officer under the Code is to complete the investigation without unnecessary delay. On its completion which necessarily means that the witnesses acquitted with the circumstances of the case have been examined, the officer incharge of the police station has to forward a police report in a prescribed form to a Magistrate empowered to take cognizance of the offence. However, no duty is cast on the Magistrate to take cognizance of the offence on a report which although complete except for the expert's opinion, does not make out an offence. While exercising his judicial discretion it is open to the Magistrate to seek a copy of the expert's opinion. There may even be cases under the

Narcotic Drugs and Psychotropic Substances Act where no public witnesses have been cited but that fact by itself would not show that till such time the Government expert's opinion is received, the investigation is incomplete. The police report if filed in accordance with the provisions of Section 173(2) of the Code would be complete report but the Magistrate in his judicial discretion may not take cognizance of the offence. Thus the provisions of Section 173(2) of the Code have to be considered separate and distinct from Section 190(1)(b) of the Code.”

In view of the proposition of law considered and held in **Kishan Lal's** case (supra), this Court unhesitatingly holds that mere non-filing of the FSL report would not make the charge-sheet incomplete. Further, on perusal of the interim orders of the trial Court, it reveals that the FSL report has been received and the charges have been framed. Consequently, finding no merit, the present bail application is dismissed.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

30.01.2017

ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No