

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

217

CRM-M-45365-2018

Date of Decision:17.11.2018

Ashok and others

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Mr. Rajat Mor, Advocate,
for the petitioners.**

Mr. Manish Bansal, D.A.G., Haryana.

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is to quash the order dated 04.07.2018 (Annexure P-2) and dated 05.07.2018 (Annexure P-3) passed by learned Additional Sessions Judge, Hisar, whereby while granting the concession of bail to the petitioners under Section 167(2) Cr.P.C. in FIR No.525 dated 21.12.2017 under Section 15 of the NDPS Act (the offence punishable under Section 27 of the NDPS Act was added later on), registered at Police Station Barwala, the trial court has put a condition that on receipt of FSL report in the case and on the basis of FSL report, the alleged recovery from the petitioners makes out an offence under the NDPS Act, they shall be taken in custody.

Learned counsel for the petitioners has argued that after registration of the case, challan has been presented though without the FSL report. The prosecution has not filed any application seeking extension of time beyond 180 days and it is in these circumstances, the trial court while

allowing the application filed by the petitioners under Section 167(2) Cr.P.C. had allowed the concession of bail. However, while admitting the petitioners on interim bail, learned trial court has observed that on receipt of chemical examination report, the petitioners would be required to surrender in the event alleged recovery is found in contravention of provision of NDPS Act. He has further argued that on the basis of the application filed by the petitioners under Section 167(2) Cr.P.C., the petitioners were granted default bail as on the date of submission of challan and even after expiry of 180 days, chemical analysis report was not attached with the challan. Thus, once bail has been granted, it is deemed to continue till the conclusion of trial as indefeasible right has occurred.

On the other hand, learned State Counsel has argued that considering the huge contraband so recovered from the petitioners, learned trial court has rightly put a condition that on receipt of FSL report if contraband found an offence under NDPS Act, the petitioners would be taken into custody, though at the time when the challan was presented, analysis report in the case was not received. Moreover, there is another case against petitioner No.3 under the NDPS Act and he was convicted for 04 years.

I have heard learned counsel for the parties.

The short question which requires consideration in the instant petition is as to whether once challan has been presented as provided under Section 173 Cr.P.C. without the FSL report and on an application filed by the petitioners under Section 167(2) Cr.P.C., the petitioners are admitted on bail, can the trial court put a condition that on receipt of FSL report wherein the recovery is found in contravention of NDPS Act, the petitioners would

surrender before the court.

Admittedly, it is after expiry of 180 days and that too after presentation of challan, as challan was incomplete being without the FSL report, the trial court has admitted the petitioners on bail. The petitioners have filed the application under Section 167(2) Cr.P.C. after 180 days during which the report could not be made available. It is not out of place to mention here that FSL report has not been received even till date and therefore, this Court finds that an indefeasible right has certainly accrued to the petitioners after expiry of 180 days as a very crucial document i.e. the FSL report had not been attached with the challan during 180 days. Since the said report has not been received, the trial court could not proceed in the matter as charge could not be framed. Once challan is presented without the FSL report and the petitioners have been in custody beyond 180 days, the court cannot form an opinion that the petitioners are *prima facie* guilty for having committed the offence under the NDPS Act. Therefore, this Court finds that the condition imposed by the trial court vide orders 04.07.2018 (Annexure P-2) and 05.07.2018 (Annexure P-3) that on receipt of FSL report, the petitioners would surrender, is not sustainable. On expiry of 180 days, an indefeasible right has accrued to the petitioners, which will remain in force unless they commit default in the proceedings or misuse the benefit of bail.

Reliance can be placed on the judgments passed by this Court in CRR No.791 of 2016 (Gurpal Singh and another Versus State of Punjab), decided on April 23, 2016, Parshant Versus State of Haryana, 2016(5) R.C.R. (Criminal) 16 and Sonu Versus State of Punjab, 2014(39) R.C.R. (Criminal) 778.

Accordingly, the present petition is allowed and the orders dated 04.07.2018 (Annexure P-2) and 05.07.2018 (Annexure P-3), whereby learned trial court has put a condition that on receipt of FSL report in the case, the petitioners would be taken into custody, is set aside. The accused shall not indulge in any criminal activity especially under NDPS Act. They also shall not directly or indirectly make any contact with any of the witnesses, acquainted with the facts of the case so, as to influence them.

However, it is made clear that the observations made hereinabove shall not be construed as an expression on the merits of the case.

November 17, 2018
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No