

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

Date of decision: 03.05.2019

1. CRM-M No.677 of 2019 (O&M)

Baltej Singh @ Chiri

....Petitioner

Versus

State of Haryana

....Respondent

2. CRM-M No.606 of 2019 (O&M)

Kulwinder @ Kindi

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Deepshikha Chauhan, Advocate
for the petitioner (in both the petitions)

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in these petitions is for grant of anticipatory bail to the petitioners namely Baltej Singh @ Chiri son of Harnek Singh and Kulwinder @ Kindi son of Darshan Singh in FIR No.130 dated 29.05.2018 registered under Section 15 of the Narcotic Drug and Psychotropic Substances Act, 1985 (in short 'NDPS Act) and 120-B of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Sadar Dabwali, District Sirsa.

Learned counsel for the petitioners has submitted that as per allegations in the FIR, on receiving a secret information that two

trucks bearing registration No.PB-05M-9351 and PB-05Y-5637 had gone to Rajasthan and would return with contraband, the police laid barrier and stopped the truck bearing registration No.PB-05Y-5637. The driver of the said truck disclosed his name as Jagjeet Singh (petitioner) and the conductor disclosed his name as Kulwinder Singh @ Kindi son of Gurdeep Singh. On checking the truck, the same was found filled with big size gas cylinders and during the investigation, the driver and conductor informed that another truck bearing registration No.PB-05M-9351, which is 4-5 kilometers behind them, is coming and huge quantity of contraband is kept in that truck. After some time, the said truck reached the spot and the same was also stopped. The name of the driver was Kulwinder @ Kindi and conductor's name was Baltej. After issuance of notice under Section 50 of the NDPS Act to the aforesaid driver and conductor of truck No.PB-05M-9351, 440 kgs poppy husk was recovered.

Learned counsel for the petitioners has further submitted that the police submitted the report under Section 173 Cr.P.C., without the report of the Forensic Science Laboratory (FSL) on 17.11.2018 and the FSL report was submitted only on 18.04.2019, therefore, incomplete challan was submitted and, thus, the petitioners are entitled for default bail under Section 167(2) Cr.P.C. It is further submitted that both the petitioners are in custody since 30.05.2018 and are not involved in any other case. Learned counsel for the petitioners has further submitted that one of the co-accused of the petitioners namely Jagjeet Singh has already been granted the concession of regular bail vide order dated 21.09.2018 passed by this Court in CRM-M No.41030 of 2018.

Learned counsel for the petitioners has further argued that since incomplete challan was submitted without the FSL report, therefore, in view of the Proviso to Section 167(2) Cr.P.C. wherein *an indefeasible right is given to an accused that on account of default by the prosecution agency in not completing the investigation within the prescribed time or extended time (on an application of the prosecution), an accused after the expiry of 180 days from the date of his arrest becomes entitled to bail irrespective of nature of offence for which he is charged.*

Learned counsel for the petitioners has also submitted that since the incomplete challan was presented on 17.11.2018 and the FSL report was submitted on 18.04.2019, thus, by computing the period of 180 days from the date of arrest/FIR on 29.05.2018, a period of 180 days has elapsed and therefore, the petitioners are entitled to default bail.

Learned counsel for the petitioners has relied upon the judgment ***“Rakesh Kumar Paul vs State of Assam”, 2017(15) SCC 67*** wherein the Hon'ble Supreme Court has held that *if the charge-sheet is not filed and right for default bail has ripen into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext.*

Similar view has been taken by this Court in para No.7 of CRR No.4855 of 2017, which reads as under:-

“[7]. In the light of observations made in Ravinder @ Binder vs. State of Haryana, 2015(4) R.C.R. (Criminal) 441 and Parshant vs. State of Haryana, 2016(5) R.C.R. (Criminal) 16, receipt of FSL report on

28.11.2017 would imply that incomplete challan was filed on 06.11.2017, which has the necessary consequence of accruing of indefeasible right in favour of the petitioner under Section 167(2) Cr.P.C. Similar observations were made in CRM-M No.33931 of 2014 titled 'Ram Kishan vs. State of Punjab' decided on 13.10.2014 and CRM-M No.10978 of 2015 titled 'Ranjit Singh @ Rana vs. State of Punjab' decided on 20.04.2015 by the Co-ordinate Bench of this Court.”

Learned counsel for the petitioners has also relied upon Section 36-A (4) of the NDPS Act wherein similar provision has been provided.

Learned counsel for the State, on instructions from ASI Ishwar Singh, could not dispute the factual position that the incomplete challan was presented on 17.11.2018 and the FSL report was submitted on 18.04.2019.

In view of the above, both these petitions are allowed and the petitioners are ordered to be enlarged on bail in terms of Section 167(2) Cr.P.C., subject to their furnishing adequate bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioners, in case they are found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

03.05.2019

yakub

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No