

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

211

CRM-M-47630-2018

Date of Decision: March 20, 2019

Ramandeep

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE GURVINDER SINGH GILL

Present: Mr. Anter Singh Brar, Advocate
for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner seeks grant of regular bail in case FIR No.74 dated 31.08.2018, under Sections 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Rori, District Sirsa.
2. The allegations are to the effect that the petitioner was found in possession of 400 tablets of *Tramadol* stated to be weighing 422 grams.
3. At the last date of hearing, it had specifically been submitted by learned counsel for the petitioner that although challan has been presented but the report of the Chemical Examiner had not been filed so far. However, since the learned State counsel had submitted that the prescribed period of 180 had not elapsed therefore, the matter was adjourned.
4. Today learned State counsel, upon instructions from ASI Inder Saini, has informed that in fact till date, the report of FSL has not been received in the present case.

5. This matter came to be considered recently by Division Bench of this Court in Ajit Singh alias Jeeta and another Vs. State of Punjab, CRR-4659 of 2015, decided on 30.11.2018 wherein the following question was referred to the Division Bench:

“Whether the presentation of report under Section 173(2) Cr.P.C. by the police without the report of Chemical examiner/Forensic Science Laboratory amounts to incomplete challan and in the absence of any extension of time under Section 36-A(4) of the N.D.P.S. Act, the accused is entitled to bail under Section 167(2) Cr.P.C. ?”

6. The Division Bench, upon considering the aforesaid matter, returned its findings as under:

“For this reason as well, it is essential that the report of the Chemical Examiner be included in the report under Section 173 Cr.P.C. and without which it can at best be termed to be an incomplete challan depriving the Magistrate of relevant material take cognizance and if it is not submitted within the requisite period of 180 days, it would essentially result in a default benefit to the accused unless an application is moved by the Investigating Agency apprising the Court of status of investigation with a prayer for extension of time to the satisfaction of the Court.

We emphasize on the stringent aspect of the N.D.P.S. Act which would compellingly persuade us to take the aforesaid view. Without determining the nature and content of the contraband, it would be draconian to propel an accused into the throes of a trial. The liberty of an individual would constantly be imperiled at the hands of dubious officials of the police who may venture to falsely implicate a person.

It is for this reason that we would unhesitatingly conclude that the Chemical Examiner's report is an essential ; integral and inherent part of the investigation under the N.D.P.S. Act

as it would lay the foundation of an accused's culpability without which a Magistrate would not be enabled to form an opinion and take cognizance of the accused's involvement in the commission of offence under the Act.”

7. In view of ratio of the above referred judgment delivered by Division Bench of this Court and the fact that even in the present case the report of the chemical examiner had not been filed before the trial Court when the challan was filed and has not even been filed till date, although, a period of more than 180 days has elapsed, the petitioner is entitled to be released on bail in terms of provisions of Section 167(2) Cr.P.C.
8. The petition, as such, is accepted and petitioner-Ramandeep is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

March 20, 2019
sonia arora

[GURVINDER SINGH GILL]
JUDGE

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No