

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-49435-2018 (O&M)

Reserved on 14.1.2019

Date of Decision:- 29.1.2019

Abdul Kadir	Versus	... Petitioner
State of Haryana		... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Lalit Kumar, Advocate, for the petitioner.

Mr. Ashok Singh Choudhary, Addl. A.G. Haryana.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner seeks grant of regular bail in respect of a case registered against him vide FIR No.33, dated 30.3.2018, registered at Police Station MDC, Panchkula, under Section 22 of NDPS Act and Section 18(a), (iii) of the Drugs and Cosmetics Act.
2. The case of the prosecution, in nutshell, is that on 30.3.2018 when a police party, headed by SI Mange Ram was patrolling in the area near Ram Mandir, Saketri road, Panchkula, then two persons were seen coming on a scooter bearing registration No. CH01-X-3805 and who upon noticing the police, tried to turn back. The said two persons were nabbed by the police and upon inquiry the driver of scooter disclosed his name as Hans Raj alias Happy while the other disclosed his name as Abdul Qadir. A

black coloured bag was kept in between the two persons and upon opening the same, 891 strips with 'LOMOTIL' written on the same were recovered. Each of the strip contained 20 tablets and thus the total recovered tablets were 17,820. Another small bag was recovered from the basket, provided on the front side of the scooter and from which 600 strips of 'LOMOTIL' were recovered. Each of the said strip contained 20 tablets and thus the total tablets recovered in the small bag were 12,000. In other words, the entire recovery amounted to 29,820 tablets.

3. Sh. Parveen Kumar, District Drug Controller, was called at the spot, who opined as follows:

“In reference to your letter dated 30.3.2018 from opinion- as per label CBIN Lomofit Tasler Condain Diphenoxylate 2.5 mg and Atropine Sulphak-0.025 mg disphenoxylake falls under NDPS Act at S.No.44, Total WT of the tablet is 1.908 KG. This is for your information N.A”

4. Since the apprehended persons could not produce any licence or permit to justify their possession, therefore, the present FIR was lodged against them.
5. Learned counsel for the petitioner has submitted that the entire case of prosecution is based on the opinion of District Drug Controller, who had in fact given his opinion without conducting any chemical examination, merely on the basis of the ingredients mentioned on the strips and which cannot be taken to be gospel truth. Learned counsel has further submitted that in fact the

report of chemical examiner had not been received and that although a challan had been filed in the present case on 14.9.2018 but the same had been filed without the report of chemical examiner and as such the same being an incomplete challan, the petitioner was entitled to be released on bail in terms of provisions of Section 167(2) of Cr.P.C. Learned counsel has submitted that in fact a specific ground had been canvassed before the trial Court regarding the challan being incomplete but the learned trial Court chose to rely upon the opinion of District Drug Controller which in fact cannot be relied upon in a case under the NDPS Act which entirely depends on ingredients of contraband allegedly recovered and where stringent provisions in the matter of sentence have been provided.

6. I have considered rival submissions addressed before this Court.
7. It is not disputed that in the present case while the recovery was effected on 30.3.2018, challan was presented on 14.9.2018, although report of FSL was not available at that time. So much so, even when the bail application was dismissed by the learned trial Court on 18.10.2018, the FSL report had not been received. In other words despite a period of 180 days having elapsed, report of FSL was not available and an incomplete challan had been filed.
8. 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. ?”

9. 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.”

9. 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 had not even been filed when the bail application was being considered, although, a period of more than 180 days had elapsed, the petitioner is entitled to be released on bail in terms of provisions of Section 167(2) Cr.P.C.
10. The petition, as such, is accepted and petitioner-Abdul Kadir 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.

January 29, 2019

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**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No