

S.No.248

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

CRR No.2707 of 2018 (O&M)

Date of Decision:27.02.2019

Tarsem Singh Petitioner

Vs.

State of Haryana Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Navneet Jindal, Advocate
 for the petitioner.
 Mr. Vikas Malik, DAG, Haryana.

Rajbir Sehrawat, J.(Oral)

This is a petition challenging the order dated 01.08.2018, whereby the application filed by the petitioner under Section 167(2) Cr.P.C for releasing the petitioner on default bail; on account of the Police not having filed the final report within prescribed time, was declined by the trial Court.

The brief facts leading to the arrest of the petitioner are that the petitioner was arrested on 24.01.2018 with 144 kg. 920 grams of alleged poppy husk. Although the report under Section 173 Cr.P.C was filed by the Police on 23.02.2018, however, the FSL report was not filed along with the police report; to indicate the fact that the material recovered from the petitioner was, in fact, the poppy husk.

Taking advantage of the deficiency in the challan, the petitioner preferred an application for releasing him on bail, under Section 167(2) Cr.P.C; with a plea that the challan filed against him is incomplete. The trial Court dismissed the application by observing that even if the challan is filed without the FSL report, the same would be sufficient compliance of 173 Cr.P.C, qua filing of the police report and that filing of the FSL report

is not a sine qua non for filing of challan by the Police. Accordingly, the trial Court held that if the challan is filed, even though without the FSL report; then also the accused cannot avail the default bail under Section 167 (2) Cr.P.C.

However, learned counsel for the petitioner has referred to a judgment of a Division Bench of this Court; dated 30.11.2018; passed in CRR No.4659 of 2015; wherein the Division Bench has specifically considered this aspect and have held 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.”

In view of the above, this Court finds that the case of the petitioner is squarely covered by the judgment rendered by the Division Bench. Hence, the present petition is allowed and the impugned order is set aside. The trial Court is directed to release the petitioner on bail pending trial; on his furnishing bonds/sureties to the satisfaction of the trial Court.

February 27, 2019**renu****(RAJBIR SEHRAWAT)****JUDGE**

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No