

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

CRR-1731-2019 (O&M)
Date of decision : 16.10.2019

Akash Kumar @ Sunny

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Navneet Jindal, Advocate for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

ANIL KSHETARPAL, J.

Question which this Court is called upon to answer is “whether in absence of analysis report of Forensic Science Laboratory having been attached with the police report filed in the Court under Section 173 Code in a criminal case under Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the Act of 1985”) within the period specified under Section 36(A) of the Act of 1985, the accused shall be entitled to default bail under Section 167(2) of the Code of Criminal Procedure, 1973 (hereafter to be referred as “the Code)?”

As per the case of the prosecution, petitioner was found in

possession of 500 tablets of Tramadol and 450 tablets of Alprazolam which as per the Code, falls in commercial category as notified under the Act of 1985. The police report, as defined in Section 2(r) of the Code, was filed on 28.03.2019. Petitioner is in custody since the date of occurrence i.e. 08.01.2019. Hence, it is the case of the petitioner that since the police report under Section 173(2) of the Code was incomplete because the analysis report of the Forensic Science Laboratory was not attached alongwith the police report, hence, the petitioner is entitled to bail under Section 167(2) of the Code which is commonly known as default bail.

Learned counsel for the petitioner relies upon a Division Bench judgment of this Court in the case of **Ajit Singh @ Jeeta and another Vs. State of Punjab, and other connected cases, decided on 30.11.2018.**

On the other hand, learned counsel for the State opposed the prayer and submitted that the investigations have been completed. However, because of huge backlog, the analysis report by the Forensic Science Laboratory has not be received. He further submitted that the petitioner is an accused in a heinous crime which is adversely affecting the society at large and, therefore, the Court should not order release of the petitioner on default bail.

This Court has carefully gone through the judgment passed by the Division Bench of this Court in the case of Ajit Singh @ Jeeta and another (Supra). No doubt, the Hon'ble Division Bench, after interpreting

the provisions of Sections 167(2) and 173 of the Code and Section 36(A) of the Act of 1985, have held that without the analysis report of Forensic Science Laboratory, the final report submitted by the prosecuting agency is incomplete and if the Public Prosecutor has failed to seek extension as envisaged by proviso to Section 36(A) of Act of 1985, the accused shall be entitled to default bail.

The attention of the Division Bench was not drawn to two Supreme Court judgments interpreting this very question of default bail in absence of report from Forensic Science Laboratory or similar agencies. First judgment is in the case of **Narender Kumar Amin Vs. Central Bureau of Investigation and another, (2015) 3 SCC 417**. In the aforesaid case, same question arose before the Hon'ble Supreme Court. Hon'ble the Supreme Court while dealing with the various provisions of the Code of Criminal Procedure, found that additional documents can be filed by the police and, therefore, in Section 173(5) of the Code, the word “shall” is not to be read as mandatory but directory. Hence, it was held that once the police report has been filed, as defined in Section 2(r) of the Code read with Section 173(2) of Code, accused cannot claim that since alongwith the police report some documents have not been attached, hence, the accused is entitled to bail under Section 167(2) of the Code. Second judgment to which the attention of Hon'ble Division Bench was not drawn is, of course, a short order passed by the Hon'ble Supreme Court in case of **Abdul Azeez P.V. and others Vs. National Investigation Agency, (2014) 16 SCC 543**, relied upon by the learned Special Court.

It may be noted here that keeping in view the seriousness of the crime under the Act of 1985, the legislature made a provision for substituting the time for presentation of the police report from 90 days to 180 days with a further provision for extension of the time upto the period of one year. The purpose sought to be achieved by incorporating Section 36(A) of the Act of 1985 is to ensure that the accused under the Act of 1985, does not get default bail in case there is some delay in the completion of investigation or in the receipt of report from the Forensic Science Laboratory. Section 2(r) defines police report, which is extracted as under:-

“2(r) “police report” means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173;”

Sub-Section 2 of Section 173 of the Code provides that as soon as the investigations under Chapter XII of the Code are complete, the officer in charge of the Police Station shall forward to a Magistrate empowered to take cognizance of the offence on a police report and police report in the form prescribed by the State Government has to state things specified therein. Section 173(2) of the Code envisages that the police report has to state following:-

“173. Report of police officer on completion of investigation:- (1) xxx xxx

(2) (i) xxx xxx

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted

with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376B, 376C, [376D or section 376E of the Indian Penal Code (45 of 1860)].”

The police report which includes the above noted constituents is nonetheless a report as required to be filed under Section 173(2) of the Code and, therefore, it would not be appropriate to hold that in absence of report of the chemical examiner from the Forensic Science Laboratory or such like agencies, the accused is entitled to default bail. If such a view is taken, it would be fraught with danger. It is common knowledge that report from the Forensic Science Laboratory due to huge backlog are received during the pendency of the trial. The investigations by the police are complete. The report has been filed. Only analysis report of the Forensic Science Laboratory with respect to contents of the narcotics or psychotropic substance is to be produced by the prosecution which can be produced during the pendency of the trial. Still further, it must be noticed here that a full Bench of this Court in the case of **State of Haryana Vs. Mehal Singh and others, 1978 AIR (Punjab) 341**, while relying upon the judgment passed by the Hon'ble Supreme Court in the

case of **Tara Singh Vs. The State, AIR 1951 SC 441**, have held that if some documents have not been attached or appended, the default bail as envisaged under Section 167(2) of the Code shall not be available to the accused. The Full Bench of this Court has specifically dealt with the reports of experts like Forensic Science Laboratory, Ballistic Expert or report of the Chemical Examiner.

In view of the aforesaid, it is held that the judgment passed by the Hon'ble Division Bench is “per incuriam” as attention of Hon'ble Division Bench was not drawn to two judgments of Hon'ble the Supreme Court noted above. Therefore, no ground to release the petitioner on bail is made out.

Accordingly, the present petition is dismissed.

16.10.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No