

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

CRR-1016-2020(O&M)

Date of decision:-21.12.2020

Rahul

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Varun Sharma, Advocate
for the petitioner.

Mr.J.S. Ghuman, DAG, Punjab.

H.S. MADAAN, J.

Case taken up through video conferencing.

This revision petition is directed against the order dated 15.6.2020 passed by Judge, Special Court, Jalandhar vide which application for bail filed on behalf of petitioner/accused Rahul and his co-accused Kuldeep alias Illu under Section 167(2) Cr.P.C. in FIR No.128 dated 14.12.2019 was dismissed.

Briefly stated, facts of the case are that petitioner/accused Rahul along with his co-accused Kuldeep alias Illu was apprehended by a police party from Police Station Jalandhar Cantt. on 14.12.2019 and Rahul

was found in possession of 30 bottles of Avil weighing 10 ML each and 30 injections make Rexogesic weighing 2 ML each. The contraband was also recovered from his co-accused. Both of them were arrested in this case. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court on 28.5.2020. Both the petitioners had moved an application for grant of bail to them under Section 167(2) Cr.P.C. for the reason that report from Forensic Science Laboratory had not been attached with challan, in that way challan filed was incomplete entitling the accused to default bail. Their such application was however dismissed by learned Judge, Special Court, Jalandhar.

Feeling aggrieved by that order, petitioner/accused Rahul has knocked at the door of this Court by way of filing the revision petition, which is being opposed by the State counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has referred to a judgment passed by Division Bench of this Court in **CRR No.4659 of 2015** decided on 30.11.2018 and by Single Benches of this Court in cases **Baltej Singh @ Chiri and another Versus State of Haryana and another, 2019(4) RCR(Criminal) 744, Bhupinder Kumar @ Bindfer Versus State of Haryana, 2019(2) RCR(Criminal)376 and Sukhchain Singh @ Chaina Versus State of Punjab, 2015(4) RCR(Criminal)518.**

The operative part of the order passed by Judge, Special Court, Jalandhar runs as under:

7. In fact Ajit Singh @ Jeeta (supra) was decided on 30.11.2019 and in Akash Kumar @ Sunny Vs. State of Haryana Law Today live document ID 14977 (CRR) 1731 of 2019 decided on 16.10.2019 by our own Hon'ble High Court, in which it has been held that 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 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 (SC) 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 the the learned Special Court.

8. In view of aforesaid findings of the our own High Court in Akash Kumar @ Sunny Vs. State of Haryana (supra), relying upon the aforesaid judgments of Hon'ble Apex Court, the accused/ applicant is not entitled to bail under section 167 (2) CrPC, by merely not filing the report of FSL alongwith police report. Therefore, the bail application under section 167 (2) CrPC and interim bail application, being the alleged recovery is a commercial quantity and there is no provision of interim bail in bail application under section 167 (2) CrPC, are dismissed.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse and not otherwise.

In the present case, I do not find any such illegality or infirmity with the impugned order much less apparent on the face of it. The order is certainly not in violation of settled principles of criminal jurisprudence. I do not see any reason to upset the impugned order.

Finding no merits in the present revision petition, the same stands dismissed.

21.12.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No