

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

**CRM-M-26199 of 2020
Date of Decision : 28.09.2020**

Delsad Sekh

...Petitioner

Versus

State of Haryana

...Respondent

(Through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjeev Majra, Advocate,
 for the petitioner.

 Ms. Safia Gupta, AAG, Haryana.

Harsimran Singh Sethi, J. (Oral)

On the last date of hearing, the following order was passed by
this Court: -

“The allegations in the present case is with regard to the recovery of 680 grams of smack. The quantity, which has been recovered from the petitioner of the banned drugs is of commercial nature but learned counsel for the petitioner submits that the challan, which has been presented by the police, is under Section 21 (1b) of the NDPS Act.

Before the claim of the petitioner for the grant of bail is considered, let the respondent-State file a reply as to why the challan has been presented under Section 21 (1b) of the NDPS Act when the recovery of the banned drugs done from the petitioner is of commercial quantity.

Let the reply be filed before the next date of hearing positively.

Adjourned to 28.09.2020.”

Today, the respondents-State has filed the reply, in which, it has been stated that the challan has been filed under the wrong provisions inadvertently by the investigating officer and a show-cause notice has been issued to him. It has been further mentioned in the reply that the investigating officer was instructed by the learned public prosecutor to file the challan under the particular provision. The relevant part of the said reply is as under: -

“4. That thereafter, the challan of the case was prepared and the same was got checked through the Ld. Public Prosecutor. At the time of checking of challan, the Ld. Public Prosecutor advised the investigating officer to mention the sub-section of Section 21 NDPS Act. The investigating officer mentioned Section 21(1b) in the challan inadvertently and the same was forwarded to the court on 20.08.2020 for trial.

5. That the Ld. ASJ, Gurugram dismissed the bail application of the petitioner vide order dated 26.08.2020. Thereafter, the petitioner approached this Hon'ble High Court for grant of regular bail and this Hon'ble High Court, vide order dated 15.09.2020, raised the query that as to why the challan has been presented under Section 21(1b) of the NDPS Act when the recovery of the banned drugs done from the petitioner is of commercial quantity.

6. That after the receipt of the said order through the Ld. Assistant Advocate General, Haryana, a show cause notice has been served to the investigating officer to explain his position as to why the challan was not presented in the court u/s 21(c) of NDPS Act.

7. That now, the supplementary challan u/s 173(8) Cr.P.C. has been submitted in the competent court on 22.09.2020, after rectification by mentioning u/s 21(c) of NDPS Act. Now, the trial is pending in the Court of Sh. Abhishek Phutela, Ld. ASJ, Gurugram and is fixed for 13.10.2020 for appearance. The charge is yet to be framed and supplementary challan has been submitted in

the court by mentioning Section 21(c) of NDPS Act.”

The matter is serious and needs thorough investigation as to how and why despite recovery of the banned drugs of commercial quantity, the challan was not filed under the relevant provisions of law. This act, if committed intentionally and willfully, amounts to interference in the judicial process, which cannot be permitted under any circumstances. The assertion that the act was inadvertent, prima facie, is not correct and has been mentioned to escape the responsibility and needs thorough probe by an officer of higher rank i.e. Superintendent of Police, Gurugram. Outcome of the said probe be placed on record before this Court within a period of one month from today. In case, anything incriminating is found during the said probe, the action needed, be also taken, including conducting of disciplinary proceedings against the erring officials, expeditiously.

While conducting the probe, statement of the investigating officer that the challan was presented under the instructions of learned public prosecutor be also verified and if these allegations are prima facie correct, then, proper disciplinary proceedings be held against the erring investigating officer and public prosecutor and the outcome of those proceedings be also placed before this Court.

With regard to the prayer of the petitioner in the petition seeking regular bail, learned counsel for the petitioner prays that he be allowed to withdraw this petition.

As prayed for, dismissed as withdrawn.

Let the status report be filed within a period of eight weeks from today.

September 28, 2020
aarti/naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable :</i>	<i>Yes/No</i>