

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No.1150 of 2020
Date of Decision: November 03, 2020.

Rinku

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.Aditya Sanghi, Advocate, for the petitioner.

Mr.Amrik Singh Narwal, DAG, Haryana.

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(This case has been taken up through video conferencing on account of Covid -19 Pandemic).

Vivek Puri, J.

[1] The present petition has been directed against the order dated 08.09.2020 passed by the learned Additional Sessions Judge, Fatehabad, vide which the bail application filed by the petitioner under Section 36-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act'), read with Section 167(2) Cr.P.C. was dismissed.

[2] Briefly, the FIR has been registered in pursuance of the recovery of 1300 tablets of Alprozolam and 1000 tablets of Tramadol Hydrochloride from the possession of the petitioner.

[3] The FIR has been registered on 08.03.2020 and it has been stated that on the same day, the petitioner was arrested and produced for the first time in the Court for remand. The challan has been presented on 04.09.2020. However, the challan was not accompanied with the report of Forensic Science Laboratory. It has also been pointed out that no permission of the learned Special Court was sought for extension of time in

petitioner had instituted the aforesaid bail application seeking concession of bail. The bail application has been dismissed vide the impugned order dated 08.09.2020. Aggrieved by the said order, the present petition has been instituted.

[4] Learned counsel for the petitioner has placed reliance on a Division Bench judgment of this Court in ***Ajit Singh alias Jeeta and another versus State of Punjab, Criminal Revision No.4659 of 2015***, decided on 30.11.2018, wherein it has been held that a challan presented without the report of the Chemical Examiner has to be termed as incomplete challan which deprived the Magistrate of relevant material to take cognizance. The submission of incomplete challan within the requisite period of 180 days would essentially result in default benefit to the accused unless an application is moved by the Investigating Agency apprising the Court about the status of investigation with a prayer for extension of time to the satisfaction of the Court. It has been further pointed out that in a subsequent Single Bench decision of this Court in ***Akash Kumar @ Sunny versus State of Haryana, Criminal Revision No.1731 of 2019***, decided on 16.10.2019, the Division Bench judgment in ***Ajit Singh @ Jeeta's case (supra)***, has been declared to be per incuriam. The said judgment was also followed in another Single Bench judgment of this Court in ***Shankar versus State of Haryana, CRM-M-44412 of 2019***, decided on 20.12.2019.

[5] Thereafter, the same controversy also cropped up in a Single Bench decision in ***Julfkar versus State of Haryana, Criminal Revision No.1125 of 2020***, decided on 16.09.2020 and the matter has been sought to be referred to a Division Bench for consideration and the accused was ordered to be released on bail.

[6] On the contrary, it has been pointed out by the learned State counsel that the report of the Forensic Science Laboratory has been subsequently submitted in the Court on 20.10.2020 and the contents of the contraband can be verified from the label.

[7] In *Ajit Singh alias Jeeta and another's case (supra)*, in a bunch of seven cases, the Division Bench of this Court was called upon to answer the question set herein-below:-

“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 be entitled to bail under Section 167(2) Cr.P.C.?”

[8] While making aforesaid reference, Single Bench had framed two questions in the order dated 28.01.2016, which are reproduced herein-below:-

- “1. Whether the presentation of report under Section 173 (2) Cr.P.C., by the police without the report of chemical examiner/FSL amounts to incomplete challan and in the absence of any extension of time under Section 36-A (4) of the NDPS Act, the accused is entitled to bail under Section 167(2) Cr.P.C.?”
2. If the reply is in the affirmative, then what is the position regarding commonly used substances like opium and poppy husk etc., which can be easily identified by the police officer from visual inspection, smell or taste?”.

[9] The Division Bench came to the conclusion and held as following:-

“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 about the status of investigation with a prayer for extension of time to the satisfaction of the Court.”

[10] Considering a different view taken in subsequent two Single Bench decisions in *Akash Kumar @ Sunny (supra)* and *Shankar's case (supra)*, the Single Bench in another case titled as *Julfkar versus State of Haryana (supra)*, observed as following:-

“I am now faced with a situation where I am confronted with two Single Bench judgments in **Akash Kumar alias Sunny (supra) and Shankar (supra)** and a binding Division Bench judgment in **Ajit Singh alias Jeeta (supra)**. By virtue of the doctrine of stare decisis, the Single Bench judgments in **Akash Kumar alias Sunny (supra) and Shankar (supra)** are binding on me as they lay down a proposition of law although at variance with the law laid down by the Division Bench in **Ajit Singh alias Jeeta supra**). However, I express my respectful disagreement with the aforementioned Single Bench judgments on the ground that a smaller Bench could have not declared the judgment of a larger Bench to be per incuriam in view of the doctrine of stare decisis and also that the principle of per incuriam has been applied erroneously. Judicial discipline demands that a reference be made to a Division Bench regarding the validity and correctness of the aforementioned Single Bench judgments. The file of this case be, thus, placed before Hon'ble the Chief Justice with a request to constitute a Division Bench for consideration of this matter.

Since the law has been unsettled and is leading to confusion amongst the trial Courts, the matter may be considered urgently.

Meanwhile, it is directed that the petitioner be released on bail on furnishing bail and surety bonds to the satisfaction of the trial Court.”

[11] In these circumstances, it emanates that a request has been made to the Hon'ble Chief Justice to constitute a Division Bench for consideration of the matter. Meanwhile, it was also directed that the accused be released on bail.

[12] It shall not be out of place to mention here that in another Single Bench decision rendered in ***Melody Yodhanpuri versus State of Punjab, Criminal Revision No.983 of 2020***, decided on 12.10.2020, the accused was granted default bail after the expiry of 180 days as the challan was not accompanied with the report of the Chemical Examiner and reliance was placed upon a Division Bench decision in **Ajit Singh's case (supra)**.

[13] The argument of the learned State counsel that the contents of the tablets are identifiable from the label, cannot be accepted particularly because in the case of **Ajit Singh (supra)**, it has been held as following:-

“With respect to the question posed by the learned Single Judge regarding some of the contraband being identifiable through naked eye, inspection based on experience and knowledge, would be a great fallacy and we would respectfully state that it would be grossly unsafe to rely upon such an opinion based on naked eye inspection backed by experience or knowledge to arrive at a prima facie opinion of the commission of an offence to submit an accused to the rigors of trial by the Magistrate in the exercise of its powers under Section 190 Cr.P.C.

The only way that it can be done is to establish the

nature of contraband on the basis of the Chemical Examiner's report and for this reason, the Chemical Examiner's report assumes an immense significance for the trial Court, to formulate an opinion as the very cognizance of an offence would depend on it. Non-inclusion of the Chemical Examiner's opinion in the report under Section 173 Cr.P.C., would expose the accused to unfounded dangers imperiling and endangering his liberty since the provisions of the N.D.P.S Act in its applicability to a trial and conclusion are stringent in consequence.”

[14] Moreover, subsequent presentation of the report of FSL after submission of bail application, will not extinguish the right of the petitioner to seek a default bail and in this regard, reference can be made to the Hon'ble Supreme Court decision in *M.Ravindran versus The Intelligence Officer, Directorate of Revenue Intelligence, Criminal Appeal No.699 of 2020*, decided on 26.10.2020. The report of FSL is stated to have been submitted on 20.10.2020, i.e., after the presentation and disposal of the application in the learned Special Court and during the pendency of the present revision petition. As such, it cannot be said that the right to default bail stands extinguished.

[15] Keeping in view the entire circumstances emerging in the instant case, it emanates that an incomplete challan was presented in the Court. No request was submitted to the said Court by the Investigating Agency seeking extension of time for the purpose of investigation of the case. On the expiry of a period of 180 days, the accused has invoked the jurisdiction of the Court seeking default bail. The matter has been delved upon a Single Bench judgment of this Court in **Julfkar versus State of Haryana (supra)** wherein, the matter has been directed to be placed before

consideration of the matter and furthermore, the accused has been ordered to be released on bail.

[16] In these set of circumstances, the petitioner in the instant case is also entitled to the benefit of default bail on account of the lapse on the part of the prosecution in submission of the challan which was not accompanied with the report of the Chemical Examiner/Forensic Science Laboratory, within the stipulated time period.

[17] For the aforesaid reasons, the petition is allowed and the order dated 08.09.2020 passed by the learned Additional Sessions Judge, Fatehabad, is set-aside. The petitioner is directed to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court.

November 03, 2020
mohinder

(VIVEK PURI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No