

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

231-2

CRR-1274-2020

Date of decision :-17.12.2020

Kor @ Kaur Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

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

Mr. Rajiv Sidhu, DAG, Haryana for the respondent-State.

SUVIR SEHGAL, J.

This Court has been convened through video conferencing on account of outbreak of Coronavirus (Covid-19) pandemic.

Instant petition has been filed impugning the order dated 02.09.2020 passed by the learned Additional Sessions Judge, Sirsa whereby application filed by the accused-petitioner seeking default bail under Section 167 (2) of the Code of Criminal Procedure in FIR No.58 dated 25.02.2020 under Section 22 (C) of the NDPS Act, registered at Police Station Nathusari Chopta, District Sirsa, has been dismissed.

Facts, in brief, FIR was registered against the petitioner as he was apprehended with a bag containing 5880 tablets, out of which 1590 tablets were containing Alprazolam and 3990 tablets were containing salt of Tramadol Hydrochloride. After completion of investigation, the challan was presented before the trial Court on 25.06.2020 without the FSL report. The petitioner filed the application seeking compulsive/default bail under Section 167(2) of the Code of Criminal Procedure on 31.08.2020 on the ground that

the challan without the FSL report was an incomplete challan and the

petitioner is entitled to be enlarged on bail. The said application was dismissed by the trial Court vide impugned order dated 02.09.2020.

Counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in M.Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence, Criminal Appeal No.699 of 2020, judgments of this Court passed by a Division Bench in CRR-4659 of 2015 titled as Ajit Singh alias Jeeta and another versus State of Punjab decided on 30.11.2018; CRR-1125 of 2020 titled as Julfkar versus State of Haryana decided on 16.09.2020; CRR-1150 of 2020 titled as Rinku versus State of Haryana decided on 03.11.2020 and CRR-1135 of 2020 titled as Suresh versus State of Haryana decided on 18.11.2020. He contends that the petitioner is not involved in any other criminal case and the trial is not progressing due to spread of Coronavirus (Covid-19) pandemic.

Opposing the petition, State counsel has relied upon the Full Bench judgment of this Court in the case of State of Haryana versus Mehal Singh and others, 1978 PLR 480 and a Single Bench decision of this Court in CRM-M-44412 of 2019, Shankar versus State of Haryana, dated 20.12.2019, to contend that without the FSL Report, the challan cannot be said to be incomplete.

I have heard the counsel for the parties and perused the paper book with their able assistance.

The entire plethora of case law on the subject has been considered by a Coordinate Bench of this Court in Suresh's case (supra). Vide judgment dated 18.11.2020, this Court has held as under:-

“9. In the given circumstances, this Court is also of the view that at this stage the Petitioner ought to be granted Bail in any case since he has already remained in detention for more than 8½ months now and there is no

record of his involvement in any other case under the NDPS Act, and on account of on-going Covid-19 Pandemic, the trial which could not commence is likely to take a considerable time in its completion. Further, the validity of the decision in disregarding the Division Bench's decision in Ajit Singh alias Jeeta's case (supra) cannot at this stage be said to be altogether beyond controversy, since the matter has now been referred for consideration afresh in view of the decision in Julfkar's case (supra) which has subsequently been followed in the case of Rinku vs. State of Haryana (supra).

10. Taking into account all the above circumstances, the Criminal Revision Petition is allowed at this stage and the Petitioner is permitted to be conditionally released on bail to the satisfaction of the Ld. Trial Court concerned. It is however clarified that in case of any different result coming forth from that in the decision in Ajit Singh alias Jeeta's case (supra), the State would be at liberty to seek cancellation/modification of this order, if warranted at that stage."

The judgment of the Full Bench of this Court in Mehal Singh's case (supra) has been distinguished by the Division Bench in Ajit Singh @ Jeeta's case (supra). It has been observed by the Division Bench that the Court has interpreted the scope of Code of Criminal Procedure in the backdrop of general offences confined to the Indian Penal Code and other statutes, but the Courts were not seized of a matter relating to a special Act, such as NDPS Act.

Following the dictum of this Court in Suresh's case (supra) considering the fact that the petitioner, who has unblemished antecedents, is in custody for the last more than two years, and that the trial is not progressing due to the spread of the contagion, the revision petition is disposed of. The impugned order dated 02.09.2020 passed by the learned

Additional Sessions Judge, Sirsa is set aside. The petitioner, Kor alias Kaur Singh, is ordered to be released on bail on his furnishing heavy bail bonds/surety to the satisfaction of the learned trial Court/Chief Judicial Magistrate/ Duty Magistrate concerned. The petitioner would furnish an undertaking to the effect that he will not indulge in sale, purchase or trade of prohibited substance.

Liberty is granted to the State to seek modification of this order or cancellation of bail, in case the outcome of the case in the reference in Julfkar's case (supra) is different than the decision in Ajit Singh alias Jeeta's case (supra).

Disposed of.

17.12.2020
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No