

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

(105)

CRR-37-2021

Date of decision: 19.01.2021

Dilawar Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Rajinder Goyal, Advocate
for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

...

SUVIR SEHGAL, J. (Oral)

The Court has been convened through video conferencing due to Covid-19 pandemic.

Instant petition has been filed impugning the order dated 14.08.2020 passed by the learned Additional Sessions Judge, Jind, whereby application filed by the accused-petitioner seeking default bail under Section 167 (2) of the Code of Criminal Procedure, 1973, in FIR No.29 dated 11.02.2020, under Sections 20, 25, 27-A, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), registered at Police Station City Safidon, District Jind, has been dismissed.

Facts, in brief, leading to the registration of the FIR are that the petitioner along with co-accused – Bijender and Narender was apprehended and 9 Kgs. 20 grams Charas/Sulpha was recovered from boot of the car in which they were travelling, which fall within the ambit of commercial quantity. The petitioner was arrested on 11.02.2020. Investigation was completed and challan under Section 173 Cr.P.C. was presented on 10.04.2020 without the report of the Forensic Science Laboratory (FSL). The petitioner filed an application under Section 167(2) of the Code of Criminal Procedure on 13.08.2020 after expiry of the period prescribed in the Code for presentation of challan, seeking compulsive/default bail on the ground that the challan without the FSL report was an incomplete challan and the petitioner is entitled to be enlarged on bail. This application has been dismissed by the trial Court, vide the impugned order dated 14.08.2020.

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, 2020 (4) RCR (Criminal) 800**; 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 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 Court was 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) and considering the fact that the petitioner, who has unblemished antecedents, is in custody since more than nine months and that the trial is likely to take

time to conclude, the impugned order dated 14.08.2020 passed by Learned Additional Sessions Judge, Jind is set aside. The petitioner, Dilawar Singh is ordered to be released on bail on his furnishing heavy bail bonds/surety to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned. The petitioner shall 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.

(SUVIR SEHGAL)
JUDGE

19.01.2021
Pardeep

Whether speaking/reasoned Yes/No

Whether reportable Yes/No