

**CRR-81-2021 and
CRR-297-2021**

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

Date of decision: 30.09.2021

1. CRR-81-2021 (O & M)

Laxman Singh

...Petitioner

Versus

State of Haryana

.....Respondent

AND

2. CRR-297-2021

Sanjay Kumar @ Monu

...Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Aditya Sanghi, Advocate,
for the petitioner in CRR-81-2021.

Mr. D.N.Ganeriwala, Advocate,
for the petitioner in CRR-297-2021.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

HARNARESH SINGH GILL, J. (ORAL)

Both the cases are taken up for hearing through video conferencing.

Challenge in the present revisions is to the order dated 27.01.2021 passed by the learned Additional Sessions Judge, Sirsa, whereby an application filed by the petitioners seeking concession of bail

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under Sections 167(2) Cr.P.C., in case bearing FIR No.251 dated 26.07.2020, under Section 22-C NDPS Act, registered at Police Station Sadar Sirsa, has been dismissed.

In a nutshell, the facts of the prosecution case are that a police party headed by Somit Kumar, ASI, while on patrolling duty, had apprehended both the petitioners on suspicion when they were coming on a scooty; that after complying with the provisions of Section 50 NDPS Act, the search of a bag dangling on the handle of Jupiter Scooty No.HR-24-AA-3028 was conducted which had led to the recovery of 920 intoxicant capsules, and that the recovered intoxicant capsules were sealed in a separate parcel and taken into police possession.

Learned counsel for the petitioners contend that the challan report under Section 173(2) Cr.P.C. against the petitioners was filed on 29.10.2020 i.e. within the period of 180 days, but without annexing the FSL report. The petitioners were arrested on 26.07.2020 and were produced on 27.07.2020 and the total investigation period as prescribed under the law for submission of the report under Section 173 Cr.P.C. is 180 days, which had already elapsed before 22.01.2021. On 23.01.2021, the petitioners filed an application seeking concession of bail under Section 167(2) Cr.P.C. However, after the expiry of 180 days, the prosecution did not opt to move any application under Section 36-A NDPS Act, for extension of time to produce the FSL report.

While relying upon the judgments of the Coordinate Benches in CRM-M-25600-2021 - State of Haryana Vs. Dildar Ram @ Dari, decided on 15.07.2021, and CRR-361-2021 – Jagvinder Singh Vs. State of

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Haryana, decided on 09.08.2021 and of this Court in CRR-1319-2020 – Naginder Singh @ Babbu Vs. State of Haryana, learned counsel for the petitioners contends that as the point in issue in both the cases, is squarely covered by the said judgments, the petitioners may be released on bail under Section 167(2) Cr.P.C.

On the other hand, learned State counsel submits that the petitioners were apprehended with the contraband; that the FSL report was filed in August, 2021 and that no illegality has been committed by the learned trial Court while dismissing the application filed by the petitioners under Section 167(2) Cr.P.C.

I have heard the learned counsel for the parties.

Admittedly, the challan report under Section 173(2) Cr.P.C. was filed within the stipulated period, but without any FSL report. Even no application was ever moved by the prosecution for extension of time in filing the FSL report.

The petitioners are claiming the concession of bail under Section 167(2) in view of the aforesaid judgments of the Coordinate Benches and this Court also wherein a threadbare discussion has been made with regard to various judgments of the Division Bench(es); Coordinate Benches of this Court and the Hon'ble Apex Court.

It may be noticed that a Coordinate Bench of this Court in Julfkar Vs. State of Haryana, CRR-1125-2020 decided on 16.09.2020, while referring the matter to the Division Bench, for its authoritative pronouncement on the issue, has also observed that in the event of the question being answered against the accused i.e. the challan filed without

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the FSL report is complete, the prosecution would be at liberty to move an application for cancellation of bail.

It may further be noticed that the Coordinate Benches in Dildar Ram @ Dari and Jagvinder Singh's case (supra) and this Court in Naginder Singh @ Babbu (supra), have examined in extenso, similar submissions made on behalf of the counsel representing the petitioners therein and it was only thereafter, that the concession of regular bail under Section 167(2) Cr.P.C. was granted to the accused-petitioners therein.

In view of the above, both the criminal revision petitions are allowed. The impugned order dated 27.01.2021 passed by the learned Additional Sessions Judge, Sirsa, is set aside and the petitioners are ordered to be released on bail under Section 167(2) Cr.P.C., subject to them furnishing the bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

The petitioners shall also faithfully attend the hearing of the case during the trial on each and every date, besides, abide by the conditions as contained in Section 437(3) Cr.P.C. and in case of violation of any of the conditions or involvement in any other case under the NDPS, Act, 1985 during the period the petitioners are on default bail, the prosecution would be at liberty to move an application for cancellation of bail granted to the petitioners in the instant case.

30.09.2021
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No