

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

105

CRR-596-2021

Date of Decision: October 07, 2021

TAJUDIN ALIAS ROHTASH

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. R.K. Lathwal, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI. J. (Oral)

The present Revision Petition has been filed challenging the order passed by the learned Addl. Sessions Judge, Rohtak dated 02.04.2021 wherein the application filed by the petitioner for the grant of bail under Section 167(2) of Cr.P.C. read with Section 439 of Cr.P.C. has been dismissed.

As per the FIR, on 17.07.2020, a secret information was received that Tajudin @ Rohtash (petitioner), Ram Rattan @ Kala and Arvind Raut are carrying *charas* in a vehicle, which was a Maruti Swift car and thereafter, the police party after making a report under Section 42 of the NDPS Act reached the spot and the vehicle was stopped. In the vehicle, the driver disclosed his name as Tajudin @ Rohtash, who is the present petitioner and the person who was sitting next to him disclosed his name as Ram Rattan @ Kala and the third person disclosed his name

as Arvind Raut. Thereafter, the procedure is stated to be followed under Section 50 of the NDPS Act. There was alleged recovery from a bag in the vehicle which contained 20 packets of *charas* and its total weight was found to be 10 Kg. 200 grams.

The subject matter of the present Revision Petition pertains to the prayer for grant of default bail to the petitioner under Section 167(2) of the Code of Criminal Procedure. The petitioner was arrested on 17.07.2020 and after the investigation of the case, report under Section 173 of Cr.P.C. was presented on 05.10.2020. Although the report was presented within a period of 180 days, but it was not accompanied with the FSL report. The FSL report was ultimately filed in the Court on 02.04.2021, which was beyond the period of 180 days. Nothing has been brought on record or to the notice of this Court with regard to the filing of any application for extension of time.

The learned counsel for the petitioner has submitted that since the presentation of report under Section 173 of Cr.P.C. was in the nature of incomplete challan as the FSL report was filed after the expiry of 180 days, he may be granted default bail under Section 167(2) of the Code of Criminal Procedure. He submitted that the impugned order dated 02.04.2021 passed by the learned Addl. Sessions Judge, Rohtak is not only erroneous but it is also contrary to the law laid down by a Division Bench of this Court in *Ajit Singh @ Jeeta and another Vs. State of Punjab*, CrI. Revision No.4659 of 2015. He further submitted that once a question of law pertaining to the grant of default bail under the NDPS Act has been decided by a Division Bench of this Court, the learned

Addl. Sessions Judge, Rohtak ought to not have dismissed the bail application of the petitioner once the factual position was clear that an incomplete challan was presented before the learned trial Court and it was only after the expiry of 180 days that the FSL report was filed. He submitted that the right of the petitioner was a statutory right and, therefore, even if the FSL report has been filed after the expiry of 180 days, the right still vests in the petitioner by the operation of law which has been provided by the Statute. He further submitted that after the passing of the aforesaid judgment by the Division Bench of this Court in *Ajit Singh @ Jeeta's case (Supra)*, this issue also came up before learned Single Judges of this Court in many other cases and in one of those cases, i.e. *Julfkar Vs. State of Haryana*, CrI. Revision No. 1125 of 2020 the matter has also been referred again to the larger Bench. He submitted that, however, be that as it may, as of today, the law laid down by the Division Bench of this Court in *Ajit Singh@ Jeeta's case (Supra)* is in operation and, therefore, he may be granted the benefit of default bail under Section 167 (2) of the Code of Criminal Procedure.

The learned counsel further submitted that another ground on the basis of which his application under Section 167(2) of Cr.P.C. was declined by the learned Addl. Sessions Judge, Rohtak was that since the recovery in the present case pertains to a commercial quantity, the case of the petitioner was hit by the bar contained under Section 37 of the NDPS Act and, therefore, the petitioner was not entitled to default bail. He submitted that the bar contained under Section 37 of the NDPS Act will not apply in the present case once the petitioner is entitled to statutory

bail under the Code of Criminal Procedure. Therefore, he prayed that the order dated 02.04.2021 passed by the learned Addl. Sessions Judge, Rohtak may be set aside.

On the other hand, Mr. Panwar, learned DAG, Haryana has submitted that the seized quantity was a commercial quantity and the petitioner was caught on the spot. He further submitted that it is correct that the petitioner was arrested on 17.07.2020 and the report under Section 173 of the Cr.P.C. was presented on 05.10.2020, which was within the period of 180 days but it was not accompanied by the FSL report. He submitted that it is also correct that the FSL report was filed on 02.04.2021, which was after the expiry of period of 180 days. He submitted that the filing of the report under Section 173 Cr.P.C. without the FSL report cannot be considered as incomplete challan because ultimately the FSL report has now been filed and, therefore, the petitioner is not entitled for the grant of default bail under Section 167(2) of the Code of Criminal Procedure. He has relied upon a judgment of Single Bench of this Court in ***Balkar Singh @ Lali Vs. State of Haryana***, CrI. Revision No. 809 of 2021 in this regard.

I have heard learned counsels for the parties.

The factual position with regard to the dates is not in dispute. Admittedly, after the arrest of the petitioner, the challan was presented within a period of 180 days but it was not accompanied by FSL report and the FSL report was submitted only after the expiry of 180 days. A Division Bench of this Court in Ajit Singh @ Jeeta's case (Supra) has specifically dealt with this issue that as to whether such a challan under

Section 173 of the Cr.P.C. under NDPS Act without FSL report is an incomplete challan and then what would be the effect of the same for the grant of default bail. It was held that if a report under Section 173 of the Cr.P.C. has been filed without the FSL report, it can at best be termed to be an incomplete challan depriving the Magistrate of relevant material to 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 of status of investigation with a prayer for extension of time to the satisfaction of the Court. It has been further held that the chemical examiner report is an essential, integral and inherent part of investigation under the NDPS Act. The relevant portion of the judgment of the Division Bench of this Court in Ajit Singh @ Jeeta's case (Supra) is reproduced as under:

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

We emphasize on the stringent aspect of the N.D.P.S. Act which would compellingly persuade us to take the aforesaid view. Without determining the nature and content of the contraband, it would be draconian to propel an accused into the throes of a trial. The liberty of an individual would constantly be imperiled at the hands of dubious officials of the police who may venture to falsely

implicate a person.

It is for this reason that we would unhesitatingly conclude that the Chemical Examiner's report is an essential ; integral and inherent part of the investigation under the N.D.P.S. Act as it would lay the foundation of an accused's culpability without which a Magistrate would not be enabled to form an opinion and take cognizance of the accused's involvement in the commission of offence under the Act.

We are conscious of the fact that these issues have arisen largely on account of the inability of the State to provide the Chemical Examiner's report in time ostensibly for the reason that it is not equipped with enough laboratories to examine the contraband but for that, it is the State which has to be faulted and it would do well to hone up its own infrastructure so that the accused who deserves punishment, does not get the benefit of law and go scot free and gain access to a undeserving liberty.”

In the present case, no application has been made for the extension of time. Although after the passing of the aforesaid judgment by the Division Bench of this Court, the matter has again been referred to a larger Bench but the judgment passed by the Division Bench of this Court would be binding upon this Court. The argument raised by the learned State counsel and one of the reasons given by the learned Addl. Sessions Judge, Rohtak that Section 37 of the NDPS Act will come into play and would also have no effect on the right, which emanates to petitioner under Section 167(2) of the Code of Criminal Procedure, would also be not sustainable in view of the Full Bench judgment of this Court in **Janta Singh Vs. State of Punjab, 1996(1) RCR (Criminal) 1**, wherein it was held that the provisions of Section 37 of the NDPS Act relating to the grant of bail did not over ride the right of the petitioner under Section 167 (2) of the Code of Criminal Procedure. Para 25 of the

aforesaid judge is reproduced as under

“25. So far as the other question is concerned it is needless to refer to the authorities relied upon before the Division Bench as the Apex Court in Thamisharasi's case (supra) has held:

“13. Accordingly, provision in Section 37 to the extent it is inconsistent with Section 437 of the Code of Criminal Procedure supersedes the corresponding provision in the Code and imposes limitations on granting of bail in addition to the limitations under the Code of Criminal Procedure as expressly provided in sub-section (2) of Section 37. These limitations on granting of bail specified in sub-section (1) of Section 37 are in addition to the limitation under Section 437 of the Code of Criminal Procedure and were enacted only for this purpose; and they do not have the effect of excluding the applicability of the proviso to sub-section (2) of Section 167 Criminal Procedure Code, 1973 which operates in a different field relating to the total period of custody of the accused permissible during investigation.” ”

Therefore, in view of the aforesaid position, the impugned order dated 02.04.2021 passed by the learned Additional Sessions Judge, Rohtak is hereby set aside. The petitioner is entitled to a Statutory right of default bail under Section 167(2) of the Code of Criminal Procedure. The petitioner shall be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

Needless to say that since the issue of law has again been referred to the larger Bench, the State shall always be at liberty to make an appropriate application, in case need so arises, for seeking an appropriate relief in accordance with law.

October 07, 2021
ajay-1/rajender

(JASGURPREET SINGH PURI)
JUDGE

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