

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

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CRM-M-25600-2021

DATE OF DECISION: 15.07.2021

STATE OF HARYANA

... Petitioner(s)

Versus

DILDAR RAM @ DARI

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Deepak Bhardwaj, DAG, Haryana.

ANUPINDER SINGH GREWAL, J. (ORAL)

Heard through video conferencing.

The petitioner has challenged the order of the Sessions court whereby the respondent had been granted default bail in terms of Section 167 (2) Cr.P.C. due to the failure of the prosecution in filing the FSL report with the challan under Section 173(2) Cr.P.C.

Learned State counsel contends that merely on the basis of non-filing of the FSL report, even though challan had been filed within the stipulated period, the accused cannot be released on default bail. In support of his submissions, he has relied upon the judgments of the Supreme Court in the cases of **Narendra Kumar Amin Vs. CBI, 2015 (1) RCR (Criminal) 566** and **Abdul Azeez P.V. Vs. NIA, 2014 (3) ACR 3335**, Full Bench of this court in **State of Haryana Vs. Mehal Singh and others, 1978, PLR 480**, and the judgments passed by the coordinate benches of this court in **Rahul Vs. State of Punjab, CRR No.1016-2020, decided on 21.12.2020**, **Azuka Vs. State of UT, Chandigarh, CRR-765-2020, decided on 13.03.2020**, **Shankar Vs. State of Haryana, CRM-M-44412-2019, decided on 20.12.2019** and **Akash**

Kumar @ Sunny Vs. State of Haryana, CRR No.1731-2019 decided on 16.10.2019.

Heard.

In the instant case, FIR No.42 was registered on 21.02.2021 under Sections 21 (b), 15 (a) and 29 of the NDPS Act, Police Station Guhla, District Kaithal and the accused was arrested on 21.02.2021. The investigation was completed and the challan was filed in court on 15.04.2021. It was alleged that 15.1 grams of smack was allegedly recovered from the petitioner. The challan was filed within the stipulated period on 15.04.2021, but without the report from the forensic laboratory with regard to the nature of the recovered substance.

The specific question with regard to the significance of filing a challan under Section 173(2) Cr.P.C. without the FSL report in a case under the NDPS Act had been referred to a Division Bench of this court. The Division Bench of this court in the case of **Ajit Singh @ Jeeta and another Vs. State of Punjab, CRR No.4659 of 2015** held that the report of the FSL with regard to the nature of the recovered substance would go to the root of the matter and, therefore, a challan filed without the FSL report with regard to the nature of the substance would be an incomplete challan and would not satisfy the requirement envisaged under Section 167(2) Cr.P.C. The accused, in such circumstances, would be entitled to be released on default bail. The relevant extract of the judgment is reproduced hereunder:-

“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.”

Subsequently, the coordinate Benches of this court in the cases of **Rahul Vs. State of Punjab, CRR No.1016-2020, decided on 21.12.2020, Azuka Vs. State of UT, Chandigarh, CRR-765-2020, decided on 13.03.2020, Shankar Vs. State of Haryana, CRM-M-44412-2019, decided on 20.12.2019 and Akash Kumar @ Sunny Vs. State of Haryana, CRR No.1731-2019 decided on 16.10.2019**, had held that the challan under Section 173(2) Cr.P.C. having been filed even without the FSL report would not entitle the accused to be released on default bail under Section 167(2) Cr.P.C. However, different view had been taken by the coordinate benches and the coordinate Bench of this court in the case titled **Julfkar Vs. State of Haryana, CRR-1125-2020** decided on 16.09.2020 had referred the matter to the division bench in view of the conflict in judgments. It was also observed by a coordinate Bench in **CRR-1135-2020**, decided on 18.11.2020 titled **Suresh Vs. State of Haryana**, that in the event of the division bench opining that the challan filed without FSL report would be a complete challan, the State would be at liberty to prefer an application for cancellation of bail. Another coordinate Bench of this court in **CRR-1150-2020**, titled **Rinku Vs. State of Haryana** vide order dated 03.11.2020, had also opined that as the

matter had been referred to the larger bench, in the meantime, the accused would be entitled to be released on default bail.

The learned Additional Sessions Judge, in the impugned order dated 04.05.2021 (Annexure P-1), while granting default bail to the respondent, placed reliance upon the judgment of the division bench of this court in the case of **Ajit Singh @ Jeeta and another Vs. State of Punjab(supra)**.

The judgments of the Supreme court and Full bench of this court which are cited by the learned counsel for the State are distinguishable on facts from the instant case. The judgment of the Supreme court in the case of **Narendra Kumar Amin Vs. CBI (supra)** is distinguishable from the facts of the instant case as it did not pertain to a case under the NDPS Act. In that case, complete set of documents had not been filed along with the challan and it was in such circumstances it was held that merely these documents were not filed, the accused would not have right to be released on default bail. In the case of **Abdul Azeez P.V. Vs. NIA (supra)**, although challan has been filed but foreign bank transaction details were yet to be collected and call data records had to be analysed and, therefore, further investigation was sought. It was not a case under the NDPS Act.

The Full Bench of this court in the case of **State of Haryana Vs. Mehal Singh and others, 1978, PLR 480**, decided on 12.04.1978, had held that the challan without the report of experts including chemical examiner, serologist, ballistic and finger print expert would be considered to be a complete challan for the purposes of deciding concession of default bail under Section 167(2) Cr.P.C. This case also did not pertain to an offence under the NDPS Act and, therefore, it would not be applicable to the facts of this case.

The aforementioned judgment of Full Bench has also been distinguished by the Division Bench in the case of **Ajit Singh @ Jeeta and another Vs. State of Punjab** (supra) which had been constituted to answer the specific question with regard to concession of default bail under Section 167(2) Cr.P.C. if a challan is filed without the FSL report of an offence under the NDPS Act. It was held by the Division Bench that the Full Bench was interpreting the provisions and scope of Cr.P.C. in the backdrop of general offences pertaining to IPC and other statutes but was not seized of the NDPS Act.

The Division Bench distinguished the judgment in **State of Haryana Vs. Mehal Singh and others** (supra) with the following observation:

“Evidently, the Court while making the afore-extracted observations, did so while strictly interpreting the provisions and scope of the Cr.P.C. and in the backdrop of general offences confined to the I.P.C. or some other statutes but was not seized of a Special Act as the N.D.P.S. Act, which though brings out the same conflict in view of certain provisions contained therein but is lending a new dimension that demands an answer through an incisive insight to the provisions of the Act despite the authoritative pronouncement of the Full bench in State of Haryana v. Mahal Singh and others (supra) and that of the Hon'ble Supreme Court in Tara Singh's case (supra).”

Therefore, it is apt to reiterate that the FSL report, especially in NDPS cases, goes to the root of the matter and is the very basis and foundation of a charge under the NDPS Act. If courts permit filing of the challan under Section 173(2) Cr.P.C. without the FSL report, without scientifically confirming the type of contraband involved, it would invariably

lead to the violation of the fundamental right to life and liberty of the citizens guaranteed by Article 21 of the Constitution of India. There have been several instances of challans having been filed without the FSL report and after receipt of the FSL report, it was found that the recovered substance was neither a narcotic nor a psychotropic substance. Reference can be made to the judgment in the case bearing **CRM No.M-20140-2021, titled Robin Singh Vs. State of Punjab**, decided on 30.06.2021, wherein this court had granted bail after it was found that FSL report did not find any incriminating substance.

Consequently, I do not find any merit in this petition which stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

15.07.2021
SwarnjitS

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No