

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

CRR-712-2021 (O&M)

Date of Decision:- 14.10.2021

Vinay Kumar @ Vicky

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Aditya Sanghi, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana
assisted by SI Ram Chander.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 5.7.2021 passed by learned Additional Sessions Judge, Sirsa vide which an application filed by the petitioner under provisions of Section 167(2) Cr.P.C. for grant of bail has been declined.
2. A few facts necessary to notice for disposal of this petition are that as per case of prosecution on 20.12.2020 when a police party headed by ASI Ashok Kumar was patrolling in the area of village Jandwala Bishnoian, then a tractor was seen coming on the road and the driver of the said tractor upon noticing the police party abruptly tried to turn his tractor towards the fields but in the said process, his tractor stopped. The said person was apprehended and upon enquiry, he disclosed his name as Vinay Kumar @ Vicky. Upon checking a plastic bucket tied with the mudguard of the tractor, 7000 tablets of 'Clovidol-10 SR' (Tramadol Hydrochloride) were recovered.

3. The matter was investigated by the police and a report under Section 173 Cr.P.C. was presented before the trial Court on 4.3.2021. The said report was, however, not accompanied by the report of FSL.
4. The period of 180 days, which is mandated for filing of challan as per provisions of NDPS Act read with Section 167 Cr.P.C. expired on 20.6.2021. Since the prosecution did not file the FSL report even by the said date, the petitioner moved an application under Section 167(2) Cr.P.C. for his release on bail on 22.6.2021 on the ground that in the absence of report of FSL, the challan could not be said to be complete. The said application was considered by the trial Court but was dismissed vide order dated 5.7.2021, which has been assailed by way of filing the instant petition.
5. The learned counsel for the petitioner has submitted that the trial Court fell in error in relying upon a Full Bench judgment rendered by this Court in AIR 1978 Punjab 341 – State of Haryana Vs. Mehal Singh and others whereas the said judgment did not pertain to an offence under the NDPS Act and has infact been distinguished by a subsequent judgment dated 30.11.2018 of a Division Bench in Ajit Singh @ Jeeta Vs. State of Punjab [passed upon reference in Crl Rev. No. 4659 of 2015 and other cases].
6. The learned counsel has next submitted that since there has been some conflict in judgments of this Court as regards the issue in hand, the matter has been referred to a larger Bench vide order dated 16.9.2020 passed in 2020 (4) Law Herald 3188 Julfkar Vs. State of Haryana [CRR-1125-2020] to consider as to whether a challan filed without report of FSL would be an incomplete challan.

7. The learned counsel, while referring to a judgment of this Court rendered in State of Haryana Vs. Dildar Ram @ Dari CRM-M-25600-2021 has submitted that a co-ordinate Bench of this Court while referring extensively to the case law on the subject has distinguished the judgments of the Supreme Court reported as 2015(1) RCR (Criminal) 566 - Narendra Kumar Amin Vs. CBI and also the full Bench of this Court reported as 1978 PLR 480 – State of Haryana Vs. Mehal Singh and others on the ground that the same did not pertain to NDPS Act whereas a case under NDPS Act is on an entirely different footing than a case for other offences like IPC. It has been submitted that several co-ordinate Benches have granted bail in view of the fact that the matter in had has been referred to a Division Bench and is still pending.
8. Opposing the petition, the learned State counsel, has submitted that since the mandate of Cr.P.C. is filing of challan within the stipulated period and since the challan had been filed within 180 days in the instant instance, no case for grant of bail is made out.
9. I have considered rival submissions addressed before this Court.
10. It is no doubt correct that Hon'ble the Supreme Court and also a full Bench of this Court have held that a challan even if not accompanied by a report of the Chemical Examiner or of the expert cannot be said to be incomplete. However, it needs to be highlighted that the said cases did not pertain to an offence under the NDPS Act. A case under the NDPS Act can only survive in case the prosecution is able to establish that the article recovered is indeed a contraband and which can only be established on the basis of its chemical examination, which is normally got done through FSL established by the

Government. In other words, the report of the FSL forms the foundation of the case of prosecution and in case the same is not there the entire case of prosecution falls to ground.

11. On the other hand, in other cases say any injury or hurt or murder case under IPC, even the ocular version coupled with some medical evidence or some other circumstantial evidence may suffice to bring home the guilt of the accused. Though, a report of an expert, if sought, pertaining to some blood stains or comparison of handwriting, ballistic report, could be helpful to establish the case of the prosecution for such offences under IPC or some other Acts but cannot be said to be indispensable in each and every case and even in the absence of such reports, the prosecution may well be able to establish its case. As such, the contention of the petitioner that the report of FSL form very foundation of the case of prosecution and is an integral part of the challan cannot be brushed aside. In any case, since there are some conflicting judgments of this Court and the matter stands referred to a Division Bench and is still subjudice, this Court deem appropriate to extend the concession of bail in terms of Section 167(2) Cr.P.C. to the petitioner while also keeping in view the fact that the petitioner has been behind bars since the last more than 9 months and is not stated to be involved in any other case.

12. The petition, as such, is accepted. The impugned order is accordingly set aside and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

13.It is, however, clarified that the prosecution would be at liberty to move for cancellation of bail/recall of this order in case the reference made to larger Bench in Julfkar's case (Supra) is answered in favour of prosecution.

14.10.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No