

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

**Criminal Revision No.1395 of 2021
Date of Decision : 16th December, 2021**

Gajjan Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Laghuinder Singh, Advocate
for the Petitioner.

Mr. Anmol Malik, Dy. Advocate General, Haryana
for the Respondent/State.

SUDIP AHLUWALIA, J.

This Criminal Revision Petition is directed against the Impugned Order dated 20th February, 2021 passed by the Ld. Additional Sessions Judge, Sirsa, in the case arising out of FIR No.90, dated 21st August, 2020, under Sections 22, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act) registered at Police Station Rori, District Sirsa, Haryana.

2. Vide the Impugned Order, the Ld. Additional Sessions Judge, Sirsa had dismissed the Petitioner's Application for Bail under Section 167(2) of the Cr.P.C.

3. Background of the matter is that the Petitioner was allegedly found in possession of 380 tablets of Tredol-100 SR. The

Petitioner was arrested on 21st August, 2020 and produced before the Court on the following day. Challan against him was submitted subsequently but it was not accompanied by the FSL Report pertaining to the seized contraband. The Petitioner, therefore, sought Statutory/Default Bail under Section 36-A of the NDPS Act read with Section 167(2) of the Cr.P.C. by contending that the Challan so submitted was incomplete in the absence of the FSL Report, on account of which he was entitled to Statutory/Default Bail in view of the decision passed by a Division Bench of this Court in **Criminal Revision No.4659 of 2015**, which was a bunch matter of which the leading case was '**Ajit Singh @ Jeeta and another vs. State of Punjab**'.

4. It may be mentioned that the aforesaid decision of the Division Bench in **Ajit Singh alias Jeeta's case (supra)** was passed in view of a question sent up for consideration in those seven cases, which was as follows :-

“Whether the presentation of report under Section 173(2) Cr.P.C. by the police without the report of Chemical examiner/Forensic Science Laboratory amounts to incomplete challan and in the absence of any extension of time under Section 36-A(4) of the N.D.P.S. Act, the accused is entitled to bail under Section 167(2) Cr.P.C.?”

5. The Division Bench answered the above reference by

holding that a Challan presented without Chemical Examiner's Report can only be termed as an incomplete one, which would result in Default Bail to the accused unless an Application was moved by the Investigating Agency with a prayer for extension of time. The relevant extracts from the decision of the Division Bench are set down as below :-

“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.”

6. The Ld. Court below nevertheless rejected the Petitioner's Application by relying upon a Full Bench decision of this Court in **'State of Haryana vs. Mehal Singh and others'** (AIR 1978 Punjab 341) in which while relying on an earlier Supreme Court's decision in **'Tara Singh vs. State'** (AIR 1951 SC 441) it was held that if some documents have not been attached or appended, the default bail as envisaged under Section 167(2) of the Cr.P.C. shall not be available to the accused. The Ld. Court below in this regard also took into the account the decision of this Court in **'Akash Kumar @ Sunny vs. State of Haryana'** decided on 16th October, 2019 in CRR-1731-2019 and in **'Azuka vs. State of U.T., Chandigarh'** in CRR-765-2020. There is however no discussion whatsoever in the impugned order as to how these decisions are applicable to the facts and circumstances of the present case.

7. Ld. Counsel for the Petitioner has however relied upon a subsequent decision of another Single Bench of this Court in **CRR No.1125 of 2020 - Julfkar vs. State of Haryana**, in which the said Bench disagreed with the decision of the Single Bench in **CRR**

No.1713 of 2019 - Akash Kumar @ Sunny vs. State of Haryana' as it was of the view that a smaller Bench could not have declared the Judgment of a Larger Bench to be *per incuriam*. The concerned Petitioner was therefore granted bail by the Single Bench in the subsequent decision with a further direction that the matter be referred to a Division Bench for consideration of the controversy which had thus arisen. The relevant observations of the Bench in **Julfkar's case (supra)** are set out as below :-

*"I am now faced with a situation where I am confronted with two Single Bench judgments in **Akash Kumar alias Sunny (supra)** and **Shankar (supra)** and a binding Division Bench judgement in **Ajit Singh alias Jeeta (supra)**. By virtue of the doctrine of stare decisis, the Single Bench judgements in **Akash Kumar alias Sunny (supra)** and **Shankar (supra)** are binding on me as they lay down a proposition of law although at variance with the law laid down by the Division Bench in **Ajit Singh alias Jeeta (supra)**. However, I express my respectful disagreement with the aforementioned Single Bench judgements on the ground that a smaller Bench could not have declared the judgement of a larger Bench to be *per incuriam* in view of the doctrine of stare decisis and also that the principle of *per incuriam* has been applied erroneously. Judicial discipline demands that a reference be made to a Division Bench regarding the validity and correctness of the aforementioned Single Bench judgements. The file of this case be, thus, placed before*

Hon'ble the Chief Justice with a request to constitute a Division Bench for consideration of this matter. Since the law has been unsettled and is leading to confusion amongst the trial Courts, the matter may be considered urgently.

Meanwhile, it is directed that the petitioner be released on bail on furnishing bail and surety bonds to the satisfaction of the trial Court.”

8. Relying on the decision in **Julfkar's case (supra)**, another Single Bench thereafter has similarly granted Default Bail to the Petitioner in '**CRR No.1150 of 2020 - Rinku vs. State of Haryana**' since in another subsequent decision in '**M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence, Criminal Appeal No.699 of 2020**', the Apex Court has held that subsequent presentation of FSL Report after submission of the Bail Application, will not extinguish the right of a Petitioner to seek Default Bail. Another Single Bench of this Court in '**Melody Yodhanpuri vs. State of Punjab, Criminal Revision No.983 of 2020**', had similarly granted Bail by relying upon the Division Bench decision in Ajit Singh @ Jeeta's case (supra).

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 almost 1 year and 4 months since 22nd August, 2020, and the trial is yet to commence as

even the Charges have not been framed. 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.

December 16, 2021

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No