

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

(1) **CRR-1319-2020 (O&M)**
Date of decision:23.08.2021

Naginder Singh @ Babbu ...Petitioner
Versus

State of Haryana ...Respondent

(2) **CRR-6-2021 (O&M)**

Rakesh Kumar @ Sunil ...Petitioner
Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Aditya Sanghi, Advocate for the petitioners.

Mr. Pardeep Prakash Chahar, DAG Haryana.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

This order shall dispose of CRR-1319-2020 and CRR-6-2021 as
common questions of law and facts are involved in both the said cases.

Challenge in the present revisions is to the order dated
17.11.2020 passed by the learned Additional Sessions Judge, Sirsa, whereby
an application filed by the petitioners seeking concession of bail under
Section 167(2) Cr.P.C., were dismissed.

Learned counsel for the petitioners contends that the FIR in this case was registered on 25.04.2020; that the challan minus FSL report was presented on 04.09.2020 and that no application under Section 36-A of the NDPS Act, was ever moved by the prosecution for extension of time.

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 Haryana, decided on 09.08.2021, learned counsel for the petitioners contends that the point in issue in both the cases, 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, while opposing the prayer of the petitioners, relies upon the judgments passed by the Supreme Court of India in case of Abdul Azeez P.V. Vs. NIA, 2014(3) ACR 3335, CBI Vs. R.S. Pai and others, AIR 2002 SC 1644 and Narendra Kumar Amin Vs. CBI, 2015(1) RCR(Crl.) 566. He also relies upon the judgments passed by the Coordinate Benches of this Court in Akash Kumar @ Sunny vs. State of Haryana, CRR 1731 of 2019 decided on 16.10.2019 and Azuka Vs. State of U.T, CRR-765-2020 (O&M) decided on 13.03.2020.

Still further, learned State counsel submits that the petitioners had been apprehended with with 32 boxes, containing 50 packets each and each packet containing 10 tablets, in toto 16000 intoxicant tablets marka Tramadol Hydrochloride Tablets batch No. TVD-19695. Therefore, the contraband falling under the commercial quantity, the petitioners are not entitled to any concession under Section 167(2) Cr.P.C.

I have heard learned counsel for the parties.

It is not disputed by the learned State counsel that no application for extension of time was filed.

The petitioners are claiming the concession of bail under Section 167(2) in view of the aforesaid judgments of the Coordinate Benches, 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 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), have examined in extenso, similar submissions made on behalf of the counsel representing the petitioners therein and it is 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 petitions are allowed. The impugned order passed by Additional Sessions Judge, Sirsa, is set aside and the petitioners are ordered to be released on bail under Section 167(2) Cr.P.C.

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.

(HARNARESH SINGH GILL)
JUDGE

23.08.2021
Mangal Singh

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No