

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-277-2022
Reserved on: 14.03.2022
Pronounced on: 15.03.2022

Surinder Singh @ Sinder

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Kamal Kant, Advocate
for the petitioner(s).

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
280	28.07.2021	Butana	15/25-61-85 NDPS Act

Bail no. before trial Court	CIS No.BA/258/2022
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1. Challenging the order denying default bail by Ld. Additional Sessions Judge, the petitioner under arrest for violating the provisions mentioned above of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), per the FIR captioned above, has come up before this Court under Section 401 CrPC. The petitioner claims that he is entitled to default bail under section 167 CrPC because, despite the statutory period of 180 days granted to file the charge sheet, the State launched the prosecution without placing the forensic science laboratory report on record.

2. Ld. counsel appearing for the State contends that the FSL report is still awaited. However, he has opposed the bail by stating that the grant of bail encourages the drug peddlers, and the drug menace is spreading day by day. On 18-2-2022, this court had afforded a final opportunity to the State to get the FSL report before the next date, i.e., March 11, 2022, failing which, on that ground alone, the court would proceed to grant interim bail. Strangely, despite this order, the FSL report did not come. On the one hand, the State has launched a campaign against the drug menace, and on the other, the laboratories have not been strengthened to ensure timely testing. Although in heinous

offences or rape and murder, the time to file a charge-sheet is 90 days, the legislature prescribed 180 days in NDPS cases, and despite double the time, the testing of the substance could not occur. It is likely to get the accused being released on bail on this sole ground. The slumber of the executive in not providing adequate testing facilities for substances under the NDPS Act, is contrary to international efforts to combat the drug menace.

REASONING:

3. The substance of section 167(II) CrPC concerning the commercial quantity of contraband mentioned under NDPS is that the Magistrate shall not authorize the detention of such person for a total period exceeding 180 days, even if the investigation is still pending.

4. In Inderjeet Singh alias Laddi v. State of Punjab, 2014(3) RCR(Cri) 953, a division bench of this court holds,

[66] (viii) It is suggested that the State authorities should get the drugs in respect of which there is a contravention and that are recovered examined by the Chemical Analysts at the earliest and a report provided to the offender at the earliest so that the position can be ascertained as to whether the alleged offender was in possession of permissible quantity of the drug or otherwise. In case there is delay this would entitle the offender to at least interim bail till the report is finally received.

5. In Mohd. Abras & ors v. State of NCT of Delhi, SLP (Cri) Bo. 8718 of 2021, decided on 13-12-2021, a three-judge bench of Hon’ble Supreme Court holds,

“The relief sought by the petitioner in this petition is that he is entitled for default bail as the complete and final challan has not been filed within 180 days and the final report was not accompanied with an FSL Report.

Heard learned counsel for the parties and carefully perused the material placed on record.

Taking into consideration the fact that the petitioner has suffered incarceration for a period of more than 1 year and 4 months, we are inclined to grant interim bail to the petitioner for a period of three months from today subject to the terms and conditions to be imposed by the trial court.”

6. The judicial precedents referred above do not make out an absolute right for bail superseding criminal antecedents.

7. As per the impugned order dated 28-1-2022, the petitioner has following criminal history:

Sr. No.	FIR No.	Date	Offences/Section(s)	Police Station
1	92	21.05.2006	15 NDPS Act	Nissing

2	29	2011	8/15-C NDPS Act	Chandravini
3	49	2012	8/29 NDPS Act	Lal Kothi, Jaipur
4	133	07.05.2008	18 NDPS Act	Sadar, Karnal
5	239	02.08.2021	224 IPC	Gwalior (M.P.)

8. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

9. A perusal of the petition does not refer to any averment based on which this court is assured that if this recidivist is released on bail, then he shall not indulge in criminal behavior. Moreover, he had absconded during bail. Thus, I do not find any illegality in the impugned order.

10. Even otherwise, given the criminal history, the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner was not entitled to bail fails to make a case for bail at this stage. However, it shall be open for the petitioners to file new bail application(s) in changed circumstances or after recording the statements of witnesses other than official and formal witnesses, whichever is earlier. The dismissal of this petition shall not come in the way while considering the fresh petition(s).

11. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

Petition dismissed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

March 15, 2022
AK

Whether speaking/reasoned: Yes
Whether reportable: No.