

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

Criminal Revision No.164 of 2021(O&M)

Date of Decision: February 23, 2022

Jatinder alias Jitu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Kanwaljeet Singh Brar, Advocate
for the petitioner.

Mr.Pawan Kumar Longia, DAG, Haryana.

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HARINDER SINGH SIDHU, J.

Challenge herein is to the order dated 18.01.2021 passed by learned Addl. Sessions Judge, Sirsa, whereby, the application of the petitioner for grant of default bail under Section 167(2) Cr.P.C, was dismissed.

The petitioner is an accused in case FIR No.241 dated 15.07.2020 under Section 22(C) of the Narcotic Drugs and Psychotropic Substances Act No.61 of 1985, registered at Police Station Sadar Dabwali, District Sirsa (Haryana). Allegations against him are that on the intervening night of 14/15.07.2020 his car was intercepted by the Police and on search of the vehicle 18000 Capsules of Tramadol Hydrochloride Diclofenac Sodium, Dicyclomine Hydrochloride and Chlorpheniramine Maleate Capsules Parvorin – Spas Ridley bearing Batch No.PAR-2003 were recovered.

Learned counsel for the petitioner has argued that the Police had filed the challan which was not accompanied by the FSL report. It was

hence an incomplete challan. The petitioner, who is behind bars for the last more than 1½ years, is entitled to default bail under Section 167(2) CrPC.

The question as to whether in a case under the NDPS Act a report under Section 173(2) Cr.P.C. submitted without the Chemical Examiner's report can be considered to be an incomplete report entitling the accused to the benefit of default bail under Section 167(2) Cr.P.C. has come up before this court on numerous occasions. In view of the conflicting Single Bench judgments on this point this question was referred to a Division Bench. The Division Bench in **Ajit Singh @ Jeeta and another vs. State of Punjab, 2018 SCC Online P&H 6941** held that a Challan presented without Chemical Examiner's Report has to be termed as an incomplete one which would entitle the accused to default bail. This judgment was followed in various Single Bench judgments.

However, a different view was taken in **Akash Kumar @ Sunny Vs. State of Haryana**, CRR No.1731 of 2019 decided on 16.10.2019, wherein, it was held that the challan under Section 173(2) Cr.P.C. if filed even without the FSL report would not entitle the accused to be released on default bail under Section 167(2) Cr.P.C. It was opined that the judgment of the Division Bench in **Ajit Singh @ Jeeta (supra)** was per incurium as certain relevant judgments of the Supreme Court had not been considered. A similar view was taken in **Shankar Vs. State of Haryana**, CRM-M-44412-2019, decided on 20.12.2019.

Taking note of the conflict in judgments, a Ld. Single Judge in **Julfkar Vs. State of Haryana**, CRR-1125-2020 decided on 16.09.2020 has referred the matter to a Division Bench. Meanwhile, the petitioner therein was directed to be released on bail. In **Suresh Vs. State of Haryana**,

CRR-1135-2020, decided on 18.11.2020 while granting bail to the petitioner, therein, directed 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. Similar orders have been passed in a number of other cases.

The primary reliance by the petitioner is on the judgment in **Ajit Singh @ Jeeta (supra)**.

Apart from the fact that the question is pending consideration before the Division Bench, in my view, the ratio of **Ajit Singh's** case may not be strictly applicable in the facts of the present case.

In **Ajit Singh's case (supra)** the following two questions were referred to the Division Bench:-

“1. Whether the presentation of report under Section 173 (2) Cr.P.C. by the police without the report of chemical examiner/FSL amounts to incomplete challan and in the absence of any extension of time under Section 36A (4) of the NDPS Act, the accused is entitled to bail under Section 167(2) Cr.P.C. ?

2. If the reply is in the affirmative, then what is the position regarding commonly used substances like opium and poppy husk etc., which can be easily identified by the police officer from visual inspection, smell or taste ?”

While answering the Reference the Division Bench observed as under:-

“What flows from the above is that when a report is submitted by the police to the Magistrate, he ought to apply his mind to see whether it discloses the commission of an offence, so as to enable it to subject the accused to the rigors of a trial.

What would also necessarily flow from this, would be a

prima facie opinion by the Court of the commission of an offence which under the N.D.P.S. Act would revolve around establishing the possession of contraband, its nature, content and extent.

With respect to the question posed by the learned Single Judge regarding some of the contraband being identifiable through naked eye, inspection based on experience and knowledge, would be a great fallacy and we would respectfully state that it would be grossly unsafe to rely upon such an opinion based on naked eye inspection backed by experience or knowledge to arrive at a prima facie opinion of the commission of an offence to submit an accused to the rigors of trial by the Magistrate in the exercise of its powers under Section 190 Cr.P.C.

The only way that it can be done is to establish the nature of contraband on the basis of the Chemical Examiner's report and for this reason, the Chemical Examiner's report assumes an immense significance for the trial Court, to formulate an opinion as the very cognizance of an offence would depend on it. Non-inclusion of the Chemical Examiner's opinion in the report under Section 173 Cr.P.C. would expose the accused to unfounded dangers imperiling and endangering his liberty since the provisions of the N.D.P.S. Act in its applicability to a trial and conclusion are stringent in consequence.

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.”

The basis of the conclusion of the Division Bench that the report under Section 173(3) Cr.P.C. without the Chemical Examiner's report cannot be considered to be a complete report, was that the accused cannot be subjected to a trial under the draconian NDPS Act without first determining the nature and content of the contraband. It was held that the Chemical Examiner's report was an essential; integral and inherent part of the investigation under the N.D.P.S. Act as it lays the foundation of an accused's culpability without which a Magistrate would not be able to form the necessary opinion to take cognizance of the offence.

The above consideration is pertinent in a case where it is not possible to identify the contraband with certainty like where it is in the form of a powder or loose tablets etc.

In the present case, the recovered contraband is 18000 Capsules

of Tramadol Hydrochloride Diclofenac Sodium, Dicyclomine Hydrochloride and Chlorpheniramine Maleate Capsules Parvorin – Spas Ridley bearing Batch No.PAR-2003. The label of the recovered tablets bear the Name of the Manufacturer with the Batch Number and the Contents. It cannot be said that there is any dispute or doubt about the identity of the recovered contraband. The Chemical Examiner's report when received will only reinforce and confirm the identity of the contraband.

Thus, in my view no ground is made out to release the petitioner on default bail.

February 23, 2022

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No