

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRR-1046-2022 (O&M)

Date of Decision:- 29.11.2022

Mukesh Pal @ Makhan

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. L.S. Sekhon, Advocate, for the petitioner.

Mr. Abhinash Jain, DAG, Haryana.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 28.4.2022 passed by learned Additional Sessions Judge, Fatehabad vide which an application filed by the petitioner under provisions of Section 36-A of the NDPS Act and 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 FIR No. 48 dated 9.2.2022, Police Station City, Ratia, District Fatehabad, under Sections 21(b)/27-A/29/61/85 of the NDPS Act, was lodged against the petitioner wherein the allegations are broadly to the effect that on 09.2.2022, the petitioner was found in possession of 15 grams of 'Heroin'.
3. The matter was investigated by the police and a report under Section 173 Cr.P.C. was presented before the trial Court on 7.4.2022. The said report was, however, not accompanied by the report of FSL.

4. The period of 60 days, which is mandated for filing of challan in cases of recovery of non-commercial quantity, as per provisions of the NDPS Act read with Section 167 Cr.P.C. expired on 10.4.2022. Since the prosecution did not file the FSL report even by the said date, the petitioner moved an application dated 26.4.2022 under Section 167(2) Cr.P.C. for his release on bail before the Court of learned Additional Sessions Judge, Fatehabad 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 28.4.2022, which has been assailed by way of filing the instant petition.
5. The learned counsel has 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.
6. 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 hand has been referred to a Division Bench and is still pending.

7. 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 60 days in the instant instance, no case for grant of bail is made out.
8. This Court has considered the rival submissions.
9. 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.
10. 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.

11. As noticed above, there are some conflicting judgments of this Court and the matter stands referred to a Division Bench and is still subjudice. In this context a reference may also be made to an order of Hon'ble Supreme Court passed on 9.11.2022 in Special Leave to Appeal (Crl.) Nos. 8164-8166/2021 titled as Mohd. Arbaz and others Versus State of NCT of Delhi which has been cited by learned counsel for petitioner to contend that the matter as regards the challan in NDPS cases being incomplete on account of absence of FSL report is also being adjudicated by Hon'ble Apex Court. The said order dated 9.11.2022 of Hon'ble Supreme Court in Mohd. Arbaz's case reads as follows :-

“In all these petitions the question that arises for consideration is relating to the completeness of the charge sheet in accordance with law if the same is filed without the CFSL Report. The matter would require detailed consideration. In the meantime, all parties to complete their pleadings. For the present, though the issue of default bail is to be considered in the petitions since it would require some time, without reference to that aspect of the matter, keeping in view that the petitioners in SLP(Crl.) Nos. 6876- 6877/2022, SLP (Crl.) No. 532/2022 and SLP (Crl.)No. 5190/2022 are still in custody, we order that they be released on bail subject to the conditions to be imposed by

the concerned trial courts. While indicating so we also take note of the objection put forth by learned counsel for the respondent-State in SLP(Crl.) No.2666/2022 who objects to the grant of bail since the petitioner therein has not surrendered despite the bail being cancelled by the High Court. Though in a normal circumstances we would have taken a serious view of the matter, keeping in view the fact that the petitioner has approached this Court immediately after cancellation of the bail and the petition has been tagged alongwith similar matters and could not be taken up, we allow the benefit of bail to the petitioner. Hence, the order cancelling bail which is impugned in SLP (Crl.) No. 2666/2022 shall remain stayed. List all these petitions on 17.01.2023.”

12. In view of discussion made above, 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.
13. 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.
14. 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 or in case, the matter pending in Hon'ble Supreme Court i.e. Mohd. Arbaz's case (supra) is decided in favour of prosecution.

29.11.2022
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No