

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

CRR-682-2021 (O&M)
Date of Decision:-6.12.2022

Gurpreet Kaur ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. D.N. Ganeriwala, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

GURVINDER SINGH GILL, J.(Oral)

1. The present revision petition is directed against the order dated 05.07.2021 passed by learned Additional Sessions Judge, Sirsa, vide which an application filed by the petitioner seeking his release in terms of provisions of Section 167(2) Cr.P.C., has been declined.
2. The allegations, in nutshell, against the petitioner are to the effect that on 30.12.2020 she was found in possession of 980 tablets of '*tramadol*', which undisputedly is 'commercial' quantity.
3. Learned counsel for the petitioner has submitted that although the Investigating Agency had presented challan on 01.03.2021 i.e. within 60 days from the date she was remanded to police custody but the said challan was incomplete inasmuch as the same was not accompanied by the report of

FSL. It has been submitted that it was infact on 05.08.2022 i.e. much after even 180 days that the report of FSL was submitted in the Court by the prosecution.

4. The learned counsel has submitted that since there has been some conflict in judgments of this Court as regards the issue in hand i.e. as to whether a challan which is not accompanied by a report of FSL in a case registered for offence under the NDPS Act, 1985 can be said to be a complete challan or not, 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.
5. The State counsel has not disputed that the aforesaid 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.”

(emphasis supplied)

6. In view of the undisputed fact that challan was not accompanied by report of FSL, which was filed much later and Hon'ble Supreme Court is seized of similar matter and has ordered for release of accused on bail in those cases, 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 almost 2 years.
7. The petition, as such, is accepted. The impugned order is accordingly set aside and the petitioner is ordered to be released on bail on her furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.
8. 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.

6.12.2022

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No