

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

CRM-M-28889-2021 (O&M)
Date of Decision:-5.8.2022

Baljinder Singh ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. J.S. Sandhu, Advocate with
Mr. Atul Prataap Dhankar, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

GURVINDER SINGH GILL, J. (Oral)

1. The present petition has been filed under Section 439 Cr.C.P. read with Section 167 (2) Cr.P.C. for grant of bail pending trial in a case registered vide FIR No. 370 dated 25.10.2020 under Section 22 of the NDPS Act, 1985. registered at Police Station Sadar Dabwali, District Sirsa.
2. The allegations, in nutshell, are that the petitioner was found in possession of 10000 tablets of 'Tramadol' on 25.10.2020.
3. Learned counsel for the petitioner has mainly stressed upon the petition on the ground that there has been complete violation of provisions of Section 167 (2) Cr.P.C. inasmuch as incomplete challan had been presented shorn off

report of the FSL and that the trial Court did not appreciate the said fact in correct perspective and held that challan in the absence of FSL could not be termed as incomplete challan.

4. I have heard learned counsel for the petitioner and also learned State counsel.
5. In the present case, the recovery of 10000 tablets of 'Tramadol' was affected from the bag, which was kept at tank of the motorcycle. The police after concluding the investigation presented report under Section 173 Cr.P.C. on 23.12.2020. Thereafter, it was on 25.10.2021 that the report of FSL was filed in the Court by which time the period of 180 days from the production of the petitioner before the Magistrate has already expired which in fact expired on 23.04.2021.
6. Learned counsel submitted that since even the said report of FSL was filed beyond the prescribed period of 180 days, therefore, petitioner is entitled to be released on bail in view of the provisions of Section 167 (2) Cr.P.C.
7. On the other hand, learned State counsel, while referring to Section 36-A of the NDPS Act, has submitted that the period provided for presentation of challan can be extended upto 01 year and since an application for extension of said period had in fact been moved by the prosecution on 01.07.2021 i.e. before the expiry of period of 01 year, it cannot be said that the needful had not been done within the prescribed period.
8. I have considered the aforesaid submissions raised before this Court.
9. Even if it is taken that the prosecution had moved an application for extension of period for presentation of challan beyond 180 days, still it cannot be denied that the said application had been filed after expiry of 180

days and, as such, the prosecution having filed the said application belatedly, the same cannot be said to have got the period extended upto 01 year.

10. During the course of arguments, learned State counsel also submitted that the petitioner is a habitual offender having been involved in two other cases under NDPS Act but the said factum cannot defeat the right of the petitioner for being released under the provisions of Section 167 (2) Cr.P.C. unlike a petition considered for grant of bail under Section 439 Cr.P.C, which would attract fetters imposed by Section 37 of NDPS Act.
11. Though, during the course of arguments, learned State counsel also submitted that since challan already stood presented within the prescribed period, and the report of the FSL, being report of the Government Expert could have been tendered in evidence under provisions of Section 293 Cr.P.C., the challan under FSL cannot be said to be an incomplete challan but this Court is unable to accept the said contention.
12. The learned counsel has next 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 titled 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.
13. The learned counsel, while referring to a judgment of this Court rendered in State of Haryana Vs. Dildar Ram @ Dari passed in 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 Hon'ble the Supreme Court reported as 2015(1) RCR (Criminal) 566 titled Narendera

Kumar Amin 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 other Co-ordinate Benches have also granted bail in view of the fact that the matter in hand has been referred to a Division Bench and is still pending.

14. As the matter in controversy is pending adjudication before Division Bench of this Court and petitioner has already been behind bars since the last 1 year and 9 months, the petition 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.
15. 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.

5.8.2022

Sanjay/p.

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No