

**CRM-M No.30826-2022 (O&M) and
CRM-M No.51681-2022**

::1::

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

**Reserved on: 29.11.2022
Pronounced on : 06.12.2022**

**1. CRM-45453-2022 in/and
CRM-M-30826-2022 (O&M)**

Sadam @ Sonu @ Mota

..... Petitioner

versus

State of Haryana

..... Respondent

2. CRM-M-51681-2022

Saddam @ Sonu @ Mota

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

**Present :- Mr. Sandeep Kotla, Advocate
for the petitioner (CRM-M-30826-2022).**

**Ms. Pooja Jaglan, Advocate
for the petitioner (CRM-M-51681-2022).**

Mr. Gurbir S.Dhillon, AAG, Haryana.

PANKAJ JAIN, J.

CRM-45453-2022 in CRM-M-30826-2022

**This is an application for placing on record the Annexures P-3
& P-4.**

For the reasons recorded, the application is allowed.

**Documents Annexures P-3 & P-4 are taken on record subject to all just
exceptions.**

CRM-M-30826-2022 and CRM-M-51681-2022

This order shall dispose off above mentioned two petitions.

Both these petitions have been filed by the same petitioner.

CRM-M-30826-2022 has been filed under Section 439 Cr.P.C. seeking regular bail in case F.I.R. No.57 dated 23.01.2022 registered under Sections 20/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Industrial Sector 29, Panipat and in the other petition i.e. **CRM-M No.51681-2022** the petitioner seeks default bail in the same case claiming that the FSL report qua the contraband alleged to have been recovered from the petitioner is still awaited.

As per the case of the prosecution secret information was received that one boy namely Saddam @ Sonu @ Mota son of Shabir (present petitioner) is standing with a plastic bag and is selling Narcotic Substance. After complying with Section 42 of the NDPS Act the police party apprehended the petitioner. During search 20 kilo 400 grams of **Ganja** is alleged to have been recovered from the plastic bag he was holding.

Mr. Sandeep Kotla, Advocate appearing for the petitioner in **CRM-M-30826-2022** has drawn attention of this Court to the case status report filed by the investigating agency before the lower Court with the following averments :-

“There after ASI Mahabir produced the above said accused along with the case property before SHO Sector 29 Panipat. SHO Sh. Ankit Kumar P.S. Sector 29 Panipat after verification and broken the seals of "KR" and affixed his seal "AK" and direction was issued to ASI Mahabir and prepared report u/s 55 of NDPS Act. Statement of SHO u/s 161 Cr.PC were recorded. Thereafter accused after his personal search send in lock

up in P.S. Sector 29 Panipat. Case property in safe condition was handed over to Malkhana Muhrar, P.S Sector 29 Panipat. Entire incident of the case was shared with higher officials and for thorough investigation accused abovesaid were taken to Police cell Sector 29 Panipat to confined in A.N Cell Panipat. Statement of the witnesses u/s 161 Cr.PC were recorded separately. On dated 24.01.2022 accused were medically examined and covid test was conducted, and produced before the Hon'ble Court along with case property 20 Kg 400 gm. With seal of "A.K" inventory, application 52-A NDPS Act."

He thus submits that after the admission on part of the investigating agency that the seals affixed at the time of recovery were broken before the contraband could be produced before the Magistrate in compliance of Section 52-A of the NDPS Act, the contraband cannot be related to the recovery allegedly made from the petitioner. Thus the petitioner is entitled for bail as the chances of conviction in these circumstances are feeble. He further submits that the contraband alleged to have been recovered from the petitioner is stated to be **Ganja** weighing 20 kilo 400 grams along with the gunny bag. Thus it will be debatable as to whether the quantity recovered would fall within the threshold of commercial quantity i.e. 20 kilo *vis-a-vis* **Ganja** as notified under the NDPS Act to attract rigours of Section 37 of the NDPS Act.

Ms. Pooja Jaglan, Advocate appearing for the petitioner in **CRM-M No.51681-2022** has argued that report under Section 173 Cr.P.C. stands filed with the Court on 12.07.2022 without FSL report. This renders the challan incomplete and thus the petitioner is entitled for default bail under Section 167(2) Cr.P.C. Reliance has been placed upon Division Bench judgment of this Court rendered in *Ajit Singh @ Jeeta & anr. Vs.*

State of Punjab passed in **CRR-4659-2015** decided on 30.11.2018. She submits that default bail was filed by the petitioner on 03.10.2022. Extension of time under Section 36-A(4) of the NDPS Act has been sought by the prosecution vide application dated 06.10.2022 i.e. after the institution of bail application filed by the petitioner. Thus the same cannot have an effect of defeating indefeasible right of the petitioner to seek default bail under Section 167(2) Cr.P.C. which has its genesis in Article 21 of the Constitution of India as held by Apex Court in *M.Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence, 2021(2) SCC 485*. She relies upon *Harpreet Singh @ Rubi Vs. State of Haryana*, passed in **CRR-217-2022** decided on 31.10.2022, *Richhpal @ Ganga & anr. Vs. State of Haryana* passed in **CRR-1971-2022** decided on 29.10.2022, *Randeep Singh @ Kali Vs. State of Haryana* passed in **CRR-1966-2022** decided on 29.10.2022, *Gurpreet Singh @ Gopi @ Gurpartap Singh Vs. State of Punjab* passed in **CRM-M-20708-2022** decided on 21.10.2022, *Hajinder @ Gora Vs. State of Haryana* passed in **CRR-616-2021** decided on 18.10.2022, *Vijay Pal Vs. State of Haryana* passed in **CRR-48-2021** decided on 05.05.2022, *Sayed Mohd. Ahmed Kazmi Vs. State, GNCTD & ors.* passed in **CR Appeal No.1695-1697 of 2012** decided on 19.10.2012 and *Jigar @ Jimmy Pravinchandra Adatiya Vs. State of Gujarat 2022 AIR (Supreme Court) 4641*.

Per contra learned State counsel is not in a position to controvert the aforesaid factual assertions made by counsels representing the petitioner. However, he submits that absence of FSL report will not

render report under Section 173 Cr.P.C. incomplete. He further asserts that there is no challenge to the order passed under Section 36-A(4) of the NDPS Act dated 06.10.2022 and thus present application filed under Section 167 (2) Cr.P.C. cannot be sustained till the order dated 06.10.2022 passed under Section 36-A(4) of the NDPS Act is in existence. However, he does not dispute that vide order dated 06.10.2022 the time has been extended beyond 180 days only after the application filed by the petitioner seeking default bail was filed.

I have heard learned counsel for the parties and have gone through the records of the case.

It is not in dispute that the seals affixed at the time of alleged recovery of the contraband were broken before the same were produced before the Magistrate in compliance of Section 52-A of the NDPS Act. It is settled law that apart from proving seizure the prosecution is burdened with onus to prove that the contraband material recovered was kept intact and the seals affixed thereon remained untampered. Reliance can be made to law laid down by the Apex Court in ***State of Rajasthan Vs. Sahi Ram, 2019 (10) SCC 649*** wherein it was observed as under :-

“17. If the seizure of the material is otherwise proved on record and is not even doubted or disputed the entire contraband material need not be placed before this Court. If the seizure is otherwise not in doubt, there is no requirement that the entire material ought to be produced before the Court. At times the material could be so bulky, for instance as in the present material when those 7 bags weighed 223 kgs that it may not be possible and feasible to produce the entire bulk before the Court. If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept intact, that when the samples were submitted for forensic examination the

seals were intact, that the report of the forensic experts shows the potency, nature and quality of the contraband material and that based on such material, the essential ingredients constituting an offence are made out.”

Keeping in view that the aforesaid fact admission qua the breaking of the seals by the prosecution itself in the status report filed by Court below, this Court is of the considered opinion that prima-facie petitioner has made out a case which may persuade the Court to hold him not guilty of the offence punishable under Sections 20 and 29 of the NDPS Act. Further this Court finds that it will be in the fitness of the things that following conditions be imposed upon the petitioner in addition to the conditions that may be imposed by the trial Court while releasing the petitioner on bail :-

- (i) *The petitioner shall not mis-use the liberty granted.*
- (ii) *The petitioner shall not tamper with any evidence oral or documentary during the trial.*
- (iii) *The petitioner shall not absent himself on any date before the trial.*
- (iv) *The petitioner shall not commit any offence similar to the one alleged in the present case.*
- (v) *The petitioner shall deposit his passport, if any with the trial Court.*
- (vi) *The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) *The petitioner shall not in any manner try to delay the trial.*

As a sequel of the discussion made hereinabove, the petitioner is ordered to be released on bail subject to the satisfaction of the trial Court. It is made clear that the aforestated conditions shall be in addition to the conditions that may be imposed by the trial Court while releasing the petitioner on bail.

Keeping in view the fact that the Court has held petitioner entitled for regular bail, I find that there is no need to dwell upon the application filed by the petitioner seeking default bail. The same is ordered to have been disposed off as having been rendered infructuous.

Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case. The opinion formulated hereinabove is only for the purpose of Section 37 of the NDPS Act. Trial Court shall be at liberty to analyze the evidence on record and return findings without being influenced by the observations made hereinabove.

Ordered accordingly.

(PANKAJ JAIN)
JUDGE

06.12.2022
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No