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

CRR-1624-2022

Date of decision : 05.08.2022

Amarjit alias Aman alias Amni

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. V.B. Godara, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision is to the order dated 06.06.2022 to the extent that the Special Judge Under NDPS Act, Fatehabad, in an application for bail under Section 36-A of the NDPS Act and Section 167(2) of Cr.P.C. had ordered the release of the petitioner on default bail “till receipt of FSL report” instead of allowing the said application.

Learned counsel for the petitioner has submitted that in the present case, the petitioner was arrested on 05.02.2022 and the challan has been presented on 06.04.2022 and the said challan did not contain the FSL report. It is further submitted that since the alleged recovery effected in the present case is 30 grams 45 milligrams of heroin thus, challan was to be presented within a period of 60 days. It is contended that the challan was presented on 06.04.2022 without annexing the FSL report. It is further contended that application under Section 167(2) of Cr.P.C. read with Section 36-A of the NDPS Act was filed on 01.06.2022 and no application for

extension of time to complete investigation was filed by the prosecution in terms of Section 36(4) of the NDPS Act. It is argued that the FSL report has not been submitted even till date.

Learned counsel for the petitioner has placed reliance upon the Division Bench judgment of this Court in **CRR No. 4659 of 2015** titled as **“Ajit singh @ Jeeta and anoher Vs. State of Punjab”** to contend that in such a situation the petitioner deserves the concession of default bail. It is also contended that in view of the conflict of opinion on the said point, the matter was referred to a Division Bench and has further relied upon a **judgment dated 18.11.2020** passed in **CRR No. 1135 of 2020** titled as **“Suresh Vs. State of Haryana”** in which a Coordinate Bench of this Court, after considering the entire aspect, was pleased to release the petitioner/accused therein on conditional bail with the clarification that in case the legal point is held against the petitioner/accused therein, the State would be at liberty to seek cancellation/ modification of the order, if warranted at that stage. It is contended that in the impugned order, the abovesaid important contentions have not been considered and has thus, prayed that the impugned order dated 24.05.2021 be set aside.

Learned State counsel, on the other hand, has opposed the present petition and has submitted that there is a plethora of judgments, which support the proposition that once the challan has been presented even without the FSL report, then also, default bail cannot be granted.

This Court has heard learned counsel for the parties and has perused the paperbook.

The relevant portion of the judgment in **Suresh's case** (supra) passed by a Coordinate Bench is reproduced hereinbelow:

“2. Vide the Impugned Order, the Ld. Additional Sessions Judge, Fatehabad had dismissed the Petitioner's Application for Bail under Section 36-A of the NDPS Act read with Section 167(2) of the Cr.P.C.

xxx--xxx--xxx

4. It may be mentioned that the aforesaid decision of the Division Bench in Ajit Singh alias Jeeta's case (supra) was passed in view of a question sent up for consideration in those seven cases, which was as follows:-

“Whether the presentation of report under Section 173 (2) Cr.P.C. by the police without the report of Chemical examiner/Forensic Science Laboratory amounts to incomplete challan and in the absence of any extension of time under Section 36-A(4) of the N.D.P.S. Act, the accused is entitled to bail under Section 167(2) Cr.P.C.?”

5. The Division Bench answered the above reference by holding that a Challan presented without Chemical Examiner's Report can only be termed as an incomplete one, which would result in Default Bail to the accused unless an Application was moved by the Investigating Agency with a prayer for extension of time. The relevant extracts from the decision of the Division Bench are set down as below :-

“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.”

*6. The Ld. Court below nevertheless rejected the Petitioner's Application by relying upon a Single Bench's decision of this Court in case of '**Shankar vs. State of Haryana – CRM-M No.44412 of 2019**', in which it was held that the above decision of the Division Bench was per incuriam since it had not taken into account an earlier decision of the Supreme Court in the case of '**Narendra Kumar Amin vs. CBI and others, 2015(3) SCC 417**', wherein it was mentioned that once a Police Report has been filed as defined in Section 2(r) read with Section 173(2) of the Cr.P.C., the accused cannot claim that since along with the Police Report some documents have not been attached, hence the accused is entitled to Bail under Section 167(2) of the Cr.P.C.*

7. Ld. Counsel for the Petitioner has however relied upon a

*subsequent decision of another Single Bench of this Court in **CRR No.1125 of 2020 - Julfkar vs. State of Haryana**, in which the said Bench disagreed with the decision of the Single Bench in **CRR No.1713 of 2019 - Akash Kumar @ Sunny vs. State of Haryana**' as it was of the view that a smaller Bench could not have declared the Judgment of a Larger Bench to be per incuriam. The concerned Petitioner was therefore granted bail by the Single Bench in the subsequent decision with a further direction that the matter be referred to a Division Bench for consideration of the controversy which had thus arisen. The relevant observations of the Bench in **Julfkar's case** (supra) are set out as below :-*

"I am now faced with a situation where I am confronted with two Single Bench judgments in Akash Kumar alias Sunny (supra) and Shankar (supra) and a binding Division Bench judgement in Ajit Singh alias Jeeta (supra). By virtue of the doctrine of stare decisis, the Single Bench judgements in Akash Kumar alias Sunny (supra) and Shankar (supra) are binding on me as they lay down a proposition of law although at variance with the law laid down by the Division Bench in Ajit Singh alias Jeeta (supra). However, I express my respectful disagreement with the aforementioned Single Bench judgements on the ground that a smaller Bench could not have declared the judgement of a larger Bench to be per incuriam in view of the doctrine of stare decisis and also that the principle of per incuriam has been applied erroneously. Judicial discipline demands that a reference be made to a Division Bench regarding the validity and correctness of the aforementioned Single Bench judgements. The file of this case be, thus, placed before Hon'ble the Chief Justice with a request to constitute a Division

Bench for consideration of this matter. Since the law has been unsettled and is leading to confusion amongst the trial Courts, the matter may be considered urgently. Meanwhile, it is directed that the petitioner be released on bail on furnishing bail and surety bonds to the satisfaction of the trial Court.”

“This Criminal Revision Petition is directed against the Impugned Order dated 31st August, 2020 passed by the Ld. Additional Sessions Judge, Fatehabad, in case arising out of FIR No.38, dated 28th February, 2020, under Sections 22(C) of the Narcotic Drugs and Psychotropic Substances Act No.61 of 1985 (for short, the NDPS Act) and Sections 18(A) and 18(C) of Drugs and Cosmetics Act, 1940 registered at Police Station Sadar Tohana, District Fatehabad, Haryana.

8. *Relying on the decision in Julfkar's case (supra), another Single Bench thereafter has similarly granted Default Bail to the Petitioner in '**CRR No.1150 of 2020 - Rinku vs. State of Haryana**' since in another subsequent decision in '**M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence, Criminal Appeal No.699 of 2020**', the Apex Court has held that subsequent presentation of FSL Report after submission of the Bail Application, will not extinguish the right of a Petitioner to seek Default Bail. Another Single Bench of this Court in '**Melody Yodhanpuri vs. State of Punjab, Criminal Revision No.983 of 2020**', had similarly granted Bail by relying upon the Division Bench decision in **Ajit Singh @ Jeeta's case (supra)**.*
9. *In the given circumstances, this Court is also of the view that at this stage the Petitioner ought to be granted Bail in any case since he has already remained in detention for more than 8½ months now and there is not record of his*

*involvement in any other case under the NDPS Act, and on account of on-going Covid-19 Pandemic, the trial which could not commence is likely to take a considerable time in its completion. Further, the validity of the decision in disregarding the Division Bench's decision in **Ajit Singh alias Jeeta's case (supra)** cannot at this stage be said to be altogether beyond controversy, since the matter has now been referred for consideration afresh in view of the decision in **Julfkar's case (supra)** which has subsequently been followed in the case of **Rinku vs. State of Haryana (supra)**.*

10. Taking into account all the above circumstances, the Criminal Revision Petition is allowed at this stage and the Petitioner is permitted to be conditionally released on bail to the satisfaction of the Ld. Trial Court concerned. It is however clarified that in case of any different result coming forth from that in the decision in Ajit Singh alias Jeeta's case (supra), the State would be at liberty to seek cancellation/modification of this order, if warranted at that stage.

11. Disposed off.

November 18, 2020

(SUDIP AHLUWALIA)

JUDGE”

A perusal of the above judgment would show that after considering the judgment of Division Bench and also the judgment passed in **CRR No.1125 of 2020** titled as **“Julfkar vs. State of Haryana”**, vide which the matter has been referred to a Division Bench, the petitioner therein was granted interim bail.

It is not in dispute that the petitioner was arrested on 05.02.2022 and challan was presented on 06.04.2022 without the FSL report having been annexed with the challan. The FSL report has not been received even till

date. The petitioner had moved an application under Section 167(2) of Cr.P.C. read with Section 36-A of the NDPS Act on 01.06.2022 and no application for extension of time was filed by the State. The alleged recovery effected from the petitioner is 30 grams 45 milligrams of heroin which is far lesser than the commercial quantity stipulated as the commercial quantity of the same starts from 250 grams. The trial Court instead of releasing the petitioner on bail subject to any contrary law to ***Ajit Singh @ Jeeta's case*** (Supra) being laid down, had released the petitioner on default bail till receipt of FSL report.

Keeping in view the abovesaid facts and circumstances, and also the order passed by the Coordinate Bench in ***Suresh's case*** (Supra), the present Criminal Revision is allowed at this stage, and the impugned order dated 06.06.2022 to the extent that the petitioner has been released on default bail till receipt of FSL Report is set aside and it is ordered that the petitioner be released on bail, subject to his furnishing bail bonds in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of the trial Court/Duty Judge.

It is, however, clarified that in case, the question of law is held against the present petitioner in the abovesaid reference and is contrary to the law laid down in ***Ajit Singh alias Jeeta's case*** (supra), then, the State would be at liberty to seek cancellation/modification of this order, if warranted at that stage.

05.08.2022

Pawan

**(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**