

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

CRM-M-43133 of 2021

DECIDED ON: 28th January, 2022

Gurvinder Singh

.....PETITIONER

VERSUS

The State of Haryana

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Sanpreet Sandhu, Advocate for petitioner.

Mr. Pradeep Prakash Chahar, DAG Haryana.

AVNEESH JHINGAN, J (ORAL)

Due to COVID-19 situation, the Court is convened through video conference.

This petition under Section 439 Cr.P.C. is filed seeking regular bail in case of FIR No. 435 dated 20.11.2020, under Sections 21-C, 22-C, 29 of NDPS Act, 1985, registered at Police Station Taraori, District Karnal.

The petitioner was arrested on 20.11.2020. 900 capsules of Tramadol and 600 tablets of Alprazolam were recovered.

On 12.1.2022, following order was passed:

"This petition is filed seeking regular bail on the ground that incomplete challan was filed i.e. without copy of the FSL report.

On 25.10.2021, learned State counsel submitted that the matter needs to be looked into as to why the Investigating Officer did not take necessary steps for seeking extension of time as per the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

Reply by way of affidavit of Vijay Deswal, HPS Deputy Superintendent of Police, Karnal, has been filed.

As per the pleadings of the reply, the petitioner was arrested on 20.11.2020. 900 capsules of Tramadol and 600 tablets of Alprazolam were recovered from the petitioner. He was sent to judicial custody on 23.11.2020. FSL report was received on 24.9.2021 i.e. approximately 10 months after the detention of the petitioner.

Para-2 of reply of the preliminary objection is quoted below:

"2. That in response to the above said order, it is respectfully submitted that there is no special provision to seek extension of time, as per the provisions of NDPS act for presenting challan in the Court, without the report of FSL, Madhuban."

It would be appropriate to quote Section 36-A (4) of the Act.

"(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days."

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days."

It is not an isolated case before this Court, seeing selective approach being adopted by the investigating agency under the Act. At this stage Ms. Geeta Sharma, DAG Haryana, assures the Court that the matter will be looked into at the appropriate level and necessary action required would be taken and seeks short accommodation to file better affidavit.

Let status report be filed.

Adjourned to 24.1.2022."

Thereafter reply by way of affidavit of Mr. Ganga Ram Punia, IPS, Superintendent of Police Karnal, dated 21.1.2022 was filed. Paras-4 and 5 of the affidavit is quoted below:

"4. That in the present case FIR No. 435 dated 20.11.2020 under Sections 21-C and 22-C and 29 NDPS Act, Police Station Tarorai, Karnal, show cause notices have been issued to Inspector Kulbir Kaur, who was working as Station House Officer of Police Station Taroari and Sub Inspector Subhash 144/A vide this office order No. 200-201/R/SP dated 19.01.2022 for not filing required application through Public Prosecutor for obtaining the extension of time from the Ld. Special Court Appropriate disciplinary action will be taken after receipt of their replies.

5. That, it is further submitted that it will be ensured that such omissions do not occur in future and required application to seek extension of time is filed within time before Special Court so that accused don't get benefit of default bail. Further, proper follow up with FSL authorities is also being made to obtain FSL reports timely."

The issue in the present petition is that in case of filing of the challan without FSL report tantamount to filing incomplete challan. The issue was referred to a Division Bench and interim bail were granted in those cases.

Learned counsel for the petitioner relies upon decision of this Court in ***Suresh Versus State of Haryana***, CRR No. 1135 of 2020 decided on 18.11.2020.

Learned State counsel opposes the bail but is not in a position to distinguish the present case vis-a-vis the case relies upon by the petitioner. The operative part of order in case of **Suresh case (supra)** is quoted below:

*“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.”*

The present petition is disposed of in the same terms as in CRR No. 1135 of 2020.

28th January, 2022

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**(AVNEESH JHINGAN)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>