

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

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CRM-M-50932-2021

Date of Decision : **February 03, 2022**

YOGPAL

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

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CRM-M-46606-2021

VINOD GUPTA

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Through Video Conferencing

Present : Mr. Deepak Grover, Advocate
for the petitioner in CRM-M-50932-2021.

Mr. Vikas Sheel Verma, Advocate
for the petitioner in CRM-M-46606-2021.

Mr. Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI. J. (Oral)

Both the petitions are being taken up together since the prayer in both the petitions pertain to the grant of regular bail to the petitioners and arising out of the same FIR.

As per the allegations contained in the FIR when the police party was patrolling then a secret information was received that two persons, namely, Manoj @ Mannu and Yogpal (petitioner) in CRM-M-

50932-2021 are indulging in business of intoxicant substances alongwith their other friends and if a raid is conducted then there may be found some intoxicant substance. Thereafter a naka was laid down and one Wagon-R car was seen coming from U.P. side and was stopped by them. Thereafter the aforesaid Manoj @ Mannu and the petitioner were apprehended alongwith one plastic bag and thereafter the procedure under Section 50 NDPS Act was followed and there was a seizure of 25.500 kgs of ganja. Thereafter on the same day on the disclosure statement made by one of the accused, the other petitioner i.e. Vinod Gupta was also apprehended on the same day i.e. 25.5.2021.

The learned counsel for the petitioners has submitted that so far as the petitioner-Vinod Gupta is concerned, he was apprehended merely on the basis of disclosure statement made by co-accused which is not admissible in evidence and there is no other material available before the police to connect the petitioner with the present offence and so far as the petitioner-Yogpal is concerned, he has already been granted default bail under Section 167(2) Cr.P.C. by the learned trial Court on 9.12.2021 and, therefore, the present petition for the grant of regular bail has become infructuous.

The learned State counsel has submitted that the confiscated quantity falls in the category of commercial quantity because under the NDPS Act, the commercial quantity is 20 kgs of ganja and so far as the grant of bail to petitioner, namely, Vinod Gupta is concerned, the same is hit by the bar contained under Section 37 of NDPS Act. He has, however, submitted that since the case of petitioner, namely, Vinod

Gupta can certainly be considered for the grant of bail under Section 167 (2) Cr.P.C. because he was also arrested on the same day i.e. 25.5.2021 and so far as the default bail is concerned, he is at parity with the other co-accused, namely, Yogpal.

I have heard the learned counsels for the parties.

On 25.5.2021 both the petitioners were arrested. As per the learned State counsel, the challan in the present case was presented on 28.9.2021. However, as per the learned State counsel, the same was presented without FSL report and the FSL report was submitted on 25.11.2021. The period of 180 days expired on 21.11.2021 and, therefore, one of the petitioners, namely, Yogpal was granted default bail by the learned trial Court. So far as the other petitioner, namely, Vinod Gupta is concerned, he was also arrested on 25.5.2021 and he was also entitled for the grant of default bail under Section 167(2) Cr.P.C. The grant of default bail is a statutory right and, therefore, without going into the merits with respect to bar contained under Section 37 of NDPS Act, petitioner, namely, Vinod Gupta is also entitled for the grant of default bail under Section 167(2) Cr.P.C. The law with regard to the same as to whether the accused is entitled for the grant of benefit of default bail under the NDPS Act when the challan has been presented without FSL report has been laid by a Division Bench of this Court in ***Ajit Singh @ Jeeta and another Vs. State of Punjab, Criminal Revision No.4659 of 2015*** wherein it was observed that the presentation of challan without FSL report would be an abuse of law and the petitioner is entitled for the grant of default bail under Section 167(2) Cr.P.C. The relevant part of

the aforesaid Division Bench judgment is reproduced as under:-

“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.

We are conscious of the fact that these issues have arisen largely on account of the inability of the State to provide the Chemical Examiner's report in time ostensibly for the reason that it is not equipped with

enough laboratories to examine the contraband but for that, it is the State which has to be faulted and it would do well to hone up its own infrastructure so that the accused who deserves punishment, does not get the benefit of law and go scot free and gain access to a undeserving liberty.”

In view of the aforesaid position, CRM-M-50932-2021 titled Yogpal Vs. State of Haryana is disposed of as having become infructuous and so far as CRM-M-46606-2021 is concerned, the petitioner shall be entitled for the grant of default bail under Section 167(2) Cr.P.C. and, therefore, the present petition is allowed and the petitioner shall be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

However, before parting with this judgment there are various aspects which need to be noted.

Vide order dated 10.12.2021, the State was directed to verify as to whether the petitioner had filed any other bail application before any other Court during pendency of the present petition or not in CRM-M-50932-2021. Thereafter, the DSP Palwal filed affidavit dated 17.1.2022 by stating that the bail application was last dismissed by learned Additional Sessions Judge, Palwal on 24.11.2021 and no bail application has been filed by him thereafter before the learned Additional Sessions Judge, Palwal. However, on 21.1.2022, it was brought to the notice of this Court by the learned counsel for the parties that the petitioner-Yogpal has already been granted bail on 9.12.2021 whereas the DSP has not

disclosed the same in the affidavit. Notice was issued to the said DSP to explain his conduct as to under what circumstances he had concealed the aforesaid material fact from this Court. Now an explanation has been given by the DSP, Palwal by way of filing an affidavit dated 1.2.2022 which has been filed through e-mail since the matter is being taken up through video conferencing. In the said affidavit, he has stated that he enquired from the IO and the IO has not given sufficient information and, therefore, the DSP has requested for an unconditional apology.

There are two aspects of the matter.

Firstly, whenever an affidavit is filed by any Officer of the State, whether the same should be properly checked up on facts and verified by him or not and secondly in the present case the petitioners were arrested on 25.5.2021 and as per the learned State counsel on instructions from ASI Harbir Singh the FSL report was made on 13.8.2021 but when the challan was presented on 25.8.2021 the same was filed without FSL report and FSL report was submitted on 25.11.2021 after the expiry of period of 180 days which expired on 21.11.2021 and the result of the same was that both the petitioners had become entitled for the grant of default bail which is otherwise their statutory right. The subject matter of the FIR pertains to NDPS Act and no justification or reason has come forward as to why the incomplete challan was presented without FSL report when the same was available even prior to the presentation of the challan. Therefore, a strong case of suspicion has arisen with regard to the method or conduct of the investigation by the police officer and also due to their conduct, the petitioners have been

released on default bail although they are entitled under Section 167(2) Cr.P.C.

In view of the above, the present order be conveyed to the DGP, Haryana for his information and in case it is so required or desired in accordance with law then further appropriate process may also be followed in accordance with law.

February 03, 2022
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(JASGURPREET SINGH PURI)

JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No