

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

(118)

CRR-2276-2022 (O&M)
Date of decision : 31.10.2022

Ankit Kumar @ Mogli

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Hardeep S. Dhillon, Advocate, for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

Challenge in the revision petition is to the order dated 21.10.2022 whereby the bail application of the petitioner under Section 167(2) Cr.P.C for enlarging the petitioner on default bail on account of the fact that the report of FSL has not been filed by the Police with the challan, has been declined by the Additional Sessions Judge, Ambala.

Learned counsel for the petitioner has submitted that in the present case, the petitioner was arrested on 18.02.2022 and the challan in the present case was presented on 22.04.2022 and the said challan did not contain the FSL report. It is further submitted that after the expiry of period of 180 days, the petitioner had moved an application under Section 167 (2) Cr.P.C. on 18.10.2022. It is argued that no application for extension of time

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

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 another 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 said important aspects have not been considered and thus, the impugned order dated 21.10.2022 deserves to 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 18.02.2022 and had moved an application under Section 167(2) Cr.P.C. on 18.10.2022 i.e. after the expiry of 180 days. The challan was presented on 22.04.2022 and no FSL report was annexed with the challan and FSL report has not been submitted till date. The petitioner has been in custody since 18.02.2022 and the case is still pending for the submission of report of FSL and, thus, in view of the same, the conclusion of the trial is likely to take time.

Keeping in view the abovesaid facts and circumstances as also

the order passed by the Coordinate Bench in ***Suresh's case*** (supra) case, the present revision petition is allowed at this stage and the petitioner is ordered to be released on bail conditionally subject to the satisfaction of the concerned trial Court/Duty Magistrate. It is, however, clarified that in case, the question of law is held against the present petitioner 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.

All the pending miscellaneous application, if any, stand disposed of in view of the abovesaid judgment.

October 31, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No