

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

246

CRR-429-2023

Date of Decision : 15.05.2023

Tejbir

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present : Mr. Amit Choudhary, Advocate
for the petitioner.

Mr. R.S. Chauhan, Asstt. A.G., Haryana
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

1. The petitioner has filed the present revision petition for setting aside the impugned order dated 31.01.2023 passed by learned Additional Sessions Judge, Panipat whereby the application filed by the petitioner under Section 167(2) of the Code of Criminal Procedure, 1973 read with Section 36(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') for grant of default bail in case FIR No.413 dated 22.07.2022 registered under Sections 20 and 29 of the NDPS Act at Police Station Industrial Sector-29, Panipat was dismissed.

2. Learned counsel for the petitioner contends that the petitioner was arrested on 22.07.2022 and on the same day was produced before the Court. The challan had been filed in the instant case on 10.01.2023 without the FSL report, and therefore, he would be

entitled to default bail in terms of Section 167(2) of the Cr.P.C. He has placed reliance on the judgments of the Division bench of this Court in the case of *Ajit Singh @ Jeeta and another Vs. State of Punjab, CRR No.4659 of 2015 decided on 30.11.2018 and CRR-1410-2022 titled as 'Dhruv Kumar @ Alok and others Vs. State of Haryana' decided on 13.03.2023.*

3. Learned State counsel, upon instructions, states that FSL report could not be filed within the stipulated period of 180 days. He, however, contends that challan filed without even FSL report would be a complete challan. Learned State counsel opposes the present petition in terms of status report filed by way of an affidavit dated 28.02.2023 filed in the Registry which is already on record.

4. I have heard learned counsel for the parties and gone through the paperbook.

5. The FIR was registered against the petitioner on 22.07.2022 on the allegations that 98 kgs of Ganja was recovered from him. The challan is stated to have been filed on 10.01.2023. The FSL had not been filed along with the challan. The petitioner had sought bail from the Sessions court in terms of Section 167(2) Cr.P.C. but his application was dismissed on 31.01.2023. This court in the cases of *State of Haryana Vs. Dildar Ram @ Dari, CRM-M-25600-2021*, decided on 15.07.2021; *Bhim Sain Vs. State of Haryana : 2022(1) RCR (Criminal) 93*; *Bhupinder Kumar @ Binder Vs. State of Haryana : 2019 (2) RCR (Criminal) 376* and *Saleem @ Mulla Vs. State of Haryana : 2021(3) RCR (Criminal) 407* had

held that filing of the challan without FSL report would not be treated as a complete challan and, therefore, the accused would be entitled to default bail in terms of Section 167(2) Cr.P.C.

6. The specific question with regard to the significance of filing a challan under Section 173(2) Cr.P.C. without the FSL report in a case under the NDPS Act had been referred to a Division Bench of this court. The Division Bench of this court in the case of **Ajit Singh @ Jeeta and another's case (Supra)** held that the report of the FSL with regard to the nature of the recovered substance would go to the root of the matter and, therefore, a challan filed without the FSL report with regard to the nature of the substance would be an incomplete challan and would not satisfy the requirement envisaged under Section 167(2) Cr.P.C. The accused, in such circumstances, would be entitled to be released on default bail. The relevant extract of the judgment is reproduced hereunder:-

“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.”

7. The coordinate Benches of this court in the cases of ***Rahul Vs. State of Punjab, CRR No.1016-2020, decided on 21.12.2020; Azuka Vs. State of UT, Chandigarh, CRR-765-2020, decided on 13.03.2020; Shankar Vs. State of Haryana, CRM-M-44412-2019, decided on 20.12.2019 and Akash Kumar @ Sunny Vs. State of Haryana, CRR No.1731-2019 decided on 16.10.2019***, had held that the challan under Section 173(2) Cr.P.C. having been filed even without the FSL report would not entitle the accused to be released on default bail under Section 167(2) Cr.P.C. However, different view had been taken by the Coordinate Benches and the Coordinate Bench of this court in the case titled ***Julfkar Vs. State of Haryana, CRR-1125-2020*** had referred the matter to the division bench in view of the conflict in judgments. It was also observed by a coordinate Bench in ***CRR-1135-2020, Suresh Vs. State of Haryana, decided on 18.11.2020***, while granting default bail to petitioner therein as challan was filed without FSL report, that in the event of the division bench opining that the challan filed without FSL report would be a complete challan, the State would be at liberty to prefer an application for cancellation of bail.

8. Another Coordinate Bench of this Court in ***CRR-1150-2020, titled Rinku Vs. State of Haryana vide order dated 03.11.2020***, had also opined that as the matter had been referred to the larger bench, in the meantime, the accused would be entitled to be released on default bail.

9. This court, in the case of **State of Haryana Vs. Dildar Ram @ Dari (supra)** has held that challan filed without FSL report would not be regarded as a complete challan and the accused would be entitled to default bail in terms of Section 167(2) Cr.P.C.
10. Therefore, as the challan had been filed without the FSL report in the instant case, the petitioner would be entitled to be released on default bail in terms of Section 167(2) Cr.P.C.
11. In view of the above, without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on default bail on his furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate concerned.
12. In the event of the Division Bench opining that the challan filed without FSL report would be a complete challan, the State would be at liberty to prefer an application for cancellation of bail.

15.05.2023
Kothiyal

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No