

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR-846-2023 (O&M)
Date of Decision: 27.09.2023

Joginder @ Chintu

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. P.S. Saini, Advocate
for the petitioner.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 401 Cr.P.C. with a prayer to set-aside the impugned order dated 09.08.2022 passed by the Court of Additional Sessions Judge, Fatehabad, whereby, the bail application filed by the present petitioner under Section 167(2) Cr.P.C. and Section 36-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as '**the NDPS Act**') in case arising out of FIR No. 92 dated 03.02.2022 under Section 21(b) 27-A/29/61/85 of the NDPS Act registered at Police Station City, Fatehabad, was ordered to be dismissed.

2. The FIR in the present case was registered on the basis of the statement made by ASI Major Singh, Anti Narcotic Cell, Fatehabad. Since, the petitioner had filed the present application under Section 167(2) Cr.P.C. and Section 36-A of the NDPS Act

before the trial Court for grant of concession of bail to him, only on the ground that the complete challan was not presented by the prosecution within a period of 180 days, so there is no need to reproduce the detail of the case in the present order.

3. Learned counsel for the petitioner contended that in the present case, the petitioner was ordered to be arrested on 03.02.2022 and the final report under Section 173 Cr.P.C., without the FSL report, was presented against the petitioner on 26.03.2022. The petitioner had completed 180 days in custody on 03.08.2022. Consequently, the petitioner moved an application under Section 167(2) Cr.P.C. with a prayer to release him on default bail. Learned counsel further submitted that the trial Court had wrongly dismissed the bail application filed by the petitioner without assigning any cogent reasons and despite knowing the fact that the incomplete challan, i.e., the challan without the FSL report had been filed by the police before the Special Court. Learned counsel further submitted that the provisions contained in Section 167(2) Cr.P.C. conferred an indefeasible right on the present petitioner to claim his bail as a matter of right. In fact, the report of the chemical examiner was an essential and integral part of the investigation under the NDPS Act, which would also determine the culpability of the accused and the Court could take cognizance on the basis of the said report only. Consequently, any challan presented by the Investigating Agency without FSL report would be an incomplete challan and the petitioner

would be entitled to be released on bail under Section 167(2) Cr.P.C. Learned counsel for the petitioner also placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence, 2021(2) SCC 485; 2020(4) R.C.R. (Criminal) 800. He also placed reliance on the judgments passed by this Court in the matters of Ajit Singh @ Jeeta and another Vs. State of Punjab (CRR 4659 of 2015), Suresh Vs. State of Haryana (CRR 1135 of 2020), Saleem @ Mulla Vs. State of Haryana (CRM-M-11271 of 2021), Surjit Singh @ Seeta Vs. State of Punjab (CRR 1039 of 2020), Julfkar Vs. State of Haryana (CRR 1125 of 2020).

4. On the other hand, learned State counsel had vehemently opposed the prayer made by the learned counsel for the petitioner on the ground that in the present case, no doubt, the petitioner was arrested on 03.02.2022, but the challan under Section 173 Cr.P.C. was presented before the Court on 26.03.2022. Learned State counsel further submitted that the petitioner is an habitual offender and already indulged in criminal activities in the area. As per the record, apart from the present case, the petitioner has been involved in 28 other criminal cases, out of which, 07 cases were registered under the NDPS Act and in the 02 cases, the petitioner was convicted also. Learned counsel further submitted that the Special Court had rightly dismissed the petition filed by the petitioner as the final report under Section 173 Cr.P.C. was presented within a period of 60 days of the

arrest of the petitioner. Still further, the final report under Section 173(2) Cr.P.C. filed without the report of the chemical examiner/FSL cannot be said to be an incomplete report, so as to entitle the accused to grant of default of bail under Section 167(2). Consequently, it was prayed that the present petition may be ordered to be dismissed.

5. I have heard learned counsel for the parties and perused the record.

6. Even the Hon'ble Supreme Court has intricately linked the provisions contained under Section 167(2) Cr.P.C. to the constitutional mandate as enshrined under Article 21 of the Constitution of India, promising protection of life and personal liberty against unlawful and arbitrary detention and the provisions under Section 167(2) Cr.P.C. must be interpreted in a manner, which serves this purpose. The provisions of Section 167(2) Cr.P.C. has to be interpreted keeping in mind the three fold objectives expressed by the Legislature, ensuring a fair trial; expeditious investigation and trial and set down a rationalized procedure, that protects the interests of indigent sections of the society. Even, the Hon'ble Supreme Court held that the right conferred on an accused under Section 167(2) Cr.P.C., is an indefeasible right and this cannot be extinguished on the ground that some more cases are pending against the accused. In fact, the right of the accused under Section 167(2) Cr.P.C. has to be considered without looking into the gravity of the offence or the pendency of other cases against him. While discussing the rights of

the accused under Section 167(2) Cr.P.C., the Hon'ble Supreme Court has held in the matter of M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence (supra) as follows:-

“13.1 However, the expression ‘the accused does furnish bail’ in Section 167(2) and Explanation I thereto cannot be interpreted to mean that if the accused, in spite of being ready and willing, could not furnish bail on account of the pendency of the bail application before the Magistrate, or because the challenge to the rejection of his bail application was pending before a higher forum, his continued detention in custody is authorized. If such an interpretation is accepted, the application of the Proviso to Section 167(2) would be narrowly confined only to those cases where the Magistrate is able to instantaneously decide the bail application as soon as it is preferred before the Court, which may sometimes not be logistically possible given the pendency of the docket across courts or for other reasons. Moreover, the application for bail has to be decided only after notice to the public prosecutor. Such a strict interpretation of the Proviso would defeat the rights of the accused. Hence his right to be released on bail cannot be defeated merely because the prosecution files the chargesheet prior to furnishing of bail and fulfil the conditions of bail of furnishing bonds, etc., so long as he furnishes the bail within the time stipulated by the Court”.

Still further, it was held as follows:-

18.1 Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have ‘availed of’ or enforced his right to be released on

default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2), Cr.P.C. read with Section 36A (4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.

18.2 The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.

7. Learned State counsel has also relied upon the law laid down by the Hon'ble Suprem Court in the matters of **Narendra Kumar Amin Vs. CBI, 2015 (1) RCR (Criminal) 566** and **Abdul Azeez P.V. Vs. NIA, 2014(3) ACR 335,** to contend that the challan without the FSL report would not be regarded as incomplete challan. The judgments of the Hon'ble Supreme Court and Full Bench of this Court, which are relied upon heavily by learned State counsel are distinguishable on the facts from the present case. All these judgments did not pertain to a case under the NDPS Act.

8. Still further, this court, in CRM M-25600-2021 decided on 15.07.2021 titled as “**State of Haryana Vs. Dildar Ram @ Dari**” 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.

9. In view of the above discussion and the law laid down by this Court as well as Hon'ble Supreme Court, the present petition is ordered to be allowed and the impugned order dated 09.08.2022 passed by the Additional Sessions Judge, Fatehabad, is set-aside. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned subject to the following conditions:-

(i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.

(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.

(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of

residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner involved in any other criminal activity, during the pendency of the trial, it shall be viewed seriously and the prosecution shall be at liberty to move an appropriate application for cancellation of bail granted to the present petitioner.

(vii) The concerned Court may insist two heavy local surties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

(viii) The petitioner shall report every 1st and 3rd Monday in English calander month before the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the Rojnamcha. In case, he does not report on every 1st and 3rd Monday before the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of Haryana shall be at liberty to move an appropriate application in this regard.

27.09.2023

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No