

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

CRR-1187-2023
Decided on : 15.12.2023

Jaskaran Singh @ Bunty and another Petitioners

Versus

State of Punjab Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vishya Bahl, Advocate
for the petitioners.

Mr. Jaiteshwer S. Bhandari, AAG, Punjab.

Manjari Nehru Kaul, J.(Oral)

The petitioners are impugning the order dated 18.04.2023 passed by the learned Special Court, Jalandhar vide which their application for grant of bail under Section 167(2) Cr.PC has been dismissed.

2. Learned counsel for the petitioners has, *inter alia*, contended that they were arrested on 13.10.2022 in the FIR in question annexed as Annexure P-1 for allegedly possessing 260 gms of heroin. The prosecution presented the challan on 12/4/2023 at 2.00 pm, without FSL report being annexed with it. However, prior to the presentation of the challan at 10.00 am on the same day, the petitioners had already moved an application seeking the concession of default bail under Section 167(2) Cr.PC.

3. It has been further argued that the challan, which had been presented by the investigating agency, was an incomplete one; even on the day when the petitioners filed their application for default bail, the FSL report had not been filed by the Investigating Agency. Hence, despite the expiry period of statutory period of 180 days, the investigation in the instant case remained incomplete and an indefeasible right of default bail had accrued to the petitioners under Section 167(2) of the Cr.P.C.

4. Additionally, it has also been highlighted by the learned counsel that no report as mandated under Section 36A(4) of the NDPS Act was ever submitted by the Public Prosecutor seeking extension of time to file the FSL report.

5. While drawing the attention of this Court to a catena of cases, learned counsel has urged that it has been time and again held through various judicial pronouncements that any challan filed in a case under NDPS Act without the FSL report, would deemed to be an incomplete one, thus, entitling the petitioners to default bail. In support, learned counsel has referred to the judgment of this Court in ***Ajit Singh @ Jeeta and another Versus State of Punjab (CRR-4659-2015)***.

6. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has contended that mere absence of the FSL report alongside the challan would not entitle the petitioners to be released on default bail, more so, when the recovery in the case in hand has been classified as commercial under the NDPS

Act. It has been submitted that the challan in the case in hand had been filed on 12.04.2023 i.e. within the stipulated period of 180 days, and therefore, the right accrued to the petitioner came to be extinguished on filing of the challan.

7. The State has, however, not controverted that the FSL report was neither filed along with the challan nor had it been received and presented prior to the application under Section 167(2) Cr.PC moved by the petitioners. Additionally, it has also been conceded by the State counsel that no report as mandated under Section 36A(4) of the NDPS Act for extension of time to file the FSL report was made by the Public Prosecutor. It has been submitted that however, the FSL report had subsequently been received and filed before the trial Court concerned and hence, the petitioners had rightly been declined the concession of default bail vide the impugned order dated 18.04.2023.

8. I have heard learned counsel for the parties and perused the relevant material on record.

9. Before proceeding further, it would be apposite to reproduce Section 167 (2) of the Cr.P.C. and Section 36A(4) of the NDPS Act, which read as under:

“167 (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not

exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

[(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding— (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

“36A (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.”

10. Upon a comprehensive analysis of the above provisions outlined in Section 167 (2) Cr.P.C. and Section 36A(4) of the NDPS Act, it is evident that the legislature has accorded significant importance to the conclusion of investigation. The term ‘investigation’ inherently encompasses all the proceedings conducted by the investigating agency subsequent to the registration of an FIR, aimed at procuring relevant material and evidence to aid the Court in ascertaining the potential commission of an offence. Specifically in cases falling under the NDPS Act, the investigation can only be deemed to be complete subsequent to the receipt of an opinion from the Chemical Examiner regarding the nature of the substance seized and submitted for analysis. The reliance solely on sensory perceptions such as sight and smell would not suffice in ascertaining the nature of the substance, without the aforementioned opinion from the Chemical Examiner.

11. Consequently, the FSL report or the Chemical Examiner’s report assumes pivotal significance in *prima facie* proving the potential offences falling under the NDPS Act. In its absence, the investigation cannot be considered as concluded. Furthermore, the failure to include

the FSL report with the charge-sheet would incapacitate the Court from proceeding further with cognizance or framing the charges concerning the alleged offences.

12. It would be relevant to refer to the judgment of a Division Bench of this Court in ***Ajit Singh @ Jeeta's case (supra)***, wherein it has been underscored that a charge-sheet filed without FSL report would be deemed to be incomplete thereby entitling the accused to the grant of default bail.

13. Adverting to the case in hand, the petitioners were arrested on 13.10.2022, and the charge-sheet was filed on 12.04.2023, however, the FSL report, as also not disputed by the learned State counsel, was neither appended with the challan nor even presented thereafter within the stipulated statutory period of 180 days. Consequently, the charge-sheet in the present case would have to be deemed incomplete. Furthermore, it is crucial to highlight, as also conceded by the learned State counsel, that no report as mandated under Section 36A(4) of the NDPS Act was ever submitted by the Public Prosecutor seeking extension of time. No doubt, the FSL report was eventually submitted on 17/04/2022, it was, however after expiry of statutory period of 180 days and after the petitioners had already moved their application under Section 167(2) Cr.PC. Consequently, an indefeasible right to be extended the concession of default bail under Section 167(2) Cr.P.C. had accrued in favour of the petitioners.

14. As a sequel to the above, without commenting on the merits of the case, since the investigation in the instant case remained incomplete on the expiry of the statutory period of 180 days as well as on the date when the petitioner moved their application for default bail under Section 167 (2) of the Cr.P.C., the instant petition deserves to be allowed and the petitioners are admitted to bail to the satisfaction to the trial Court/Duty Magistrate concerned.

15. However, it is made clear that in case the petitioners misuse the concession of bail granted to them, the State would be at liberty to seek its cancellation.

(MANJARI NEHRU KAUL)
JUDGE

15.12.2023
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Whether speaking/reasoned:	Yes
Whether reportable :	Yes