

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

**CRR-1571-2023(O&M)
Date of decision:-09.08.2023**

Sarjeet Sharma

...Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Akshay Jindal, Advocate and
Mr.Vijayveer Singh, Advocate
for the petitioner.

Mr.R.S. Chauhan, AAG, Haryana
for respondent – State.

SUVIR SEHGAL, J.(ORAL)

1. By way of present revision petition, petitioner has approached this Court for setting aside order dated 06.06.2023 whereby application filed by him under Section 167(2) Cr.P.C. for grant of default bail in FIR No.477 dated 18.08.2022 registered for offence under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short - “the NDPS Act”) at Police Station Pinjore, District Panchkula, Annexure P1, has been dismissed.

2. There is no dispute about the factual position. FIR Annexure P1 has been registered on the basis of secret information that Sarjeet Sharma, present petitioner and Madan Singh were travelling on a vehicle with contraband. A Mahindra XUV bearing registration No.HP-

34E/7177 was intercepted and recovery of 1.550 kg. of CHARAS was made. Petitioner was driving the vehicle and Madan Singh was sitting on the navigator seat. Both the accused were apprehended. Petitioner approached this Court and by order dated 08.02.2023, Annexure P7, he was directed to be released on interim bail till the filing of FSL report. As the period of 180 days for presentation of challan was about to expire, an application was moved by the investigating agency on 13.02.2023 for extension of time on the ground that FSL report was awaited and co-accused Ronik Anand was yet to be nabbed. Notice of the application was issued but no response was filed. Challan was presented on 23.02.2023 but without the FSL report and co-accused Madan Singh filed an application seeking release on default bail. Both the applications were considered by the trial Court and by order dated 09.03.2023 Annexure P2, extension of three months was granted to the investigating agency to present the challan and the prayer made by co-accused Madan Singh for release on default bail was declined. Both the orders were assailed by the co-accused before this Court and by judgment dated 11.05.2023, Annexure P3, this Court set aside the impugned orders and remitted the matter to the trial Court for a fresh decision on both the applications. After fresh consideration, trial Court by order dated 31.05.2023 Annexure P6 declined the application of the investigating agency and admitted co-accused Madan Singh on bail, subject to his furnishing personal bonds along with surety. In the meantime, petitioner filed an application for release on compulsive bail on 28.04.2023. FSL report was received on 02.05.2023 and petitioner's application came to be declined by the trial Court vide order dated

04.05.2023, Annexure P4. This order was challenged by the petitioner before this Court by filing a revision petition, which was withdrawn on 26.05.2023, Annexure P5, with liberty to approach the trial Court by filing a fresh application. By order impugned herein, trial Court has rejected the application of the petitioner.

3. Counsel for the petitioner has urged that upon the passing of order Annexure P5 by this Court, the application for default bail, as originally filed by petitioner, stood revived. Counsel contends that the petitioner deserves to be enlarged on account of non-presentation of a complete challan by the investigating agency and he is similarly placed as the co-accused.

4. Prayer has been opposed by the State counsel, who has supported the impugned order and submits that petitioner has not surrendered upon the filing of FSL report and he is not entitled to be released on bail.

5. I have considered the respective submissions of counsel for the parties.

6. Order passed by this Court on 26.05.2023, Annexure P5, deserves to be noticed and is being reproduced as under:

CRM-23824-2023

This application has been filed for withdrawal of the revision petition.

Learned counsel for the applicant-petitioner submits that extension of time was granted vide order dated 09.03.2023. The said order has been set aside by this Court vide order dated 11.05.2023 passed in CRR No.741 of 2023. Thus, he may be

permitted to withdraw this petition with liberty to approach the trial Court afresh.

The submission is accepted and application is allowed. The date of hearing in the main case is advanced to today and is taken on Board.

CRR-1288-2023

Dismissed as withdrawn with liberty to approach the trial Court afresh.

(SUDHIR MITTAL)

JUDGE

7. A perusal of the order shows that on an application moved by the petitioner, he was granted permission by this Court to withdraw the revision petition with liberty to approach the trial Court by filing a fresh application. The consequence is that order, Annexure P4 stood affirmed. Although petitioner was given an opportunity to move afresh but the original application filed by him does not get revived. The argument raised by counsel for the petitioner that he be put back in the same position as on 28.04.2023 when he had initially moved the application seeking default bail, cannot be accepted. The situation in the case of co-accused is different as in the revision petition filed by Madan Lal, this Court quashed the impugned order and remitted the matter to the Trial Court for fresh decision on both the applications. Therefore, petitioner cannot claim parity with him.

8. Furthermore, it deserves to be noted that while rejecting prayer of the petitioner for release on default bail, the trial Court in its

order dated 04.05.2023, Annexure P4, had found that the application for compulsive bail had been moved after 175 days of custody. As such, the said application was pre-mature and even if the argument of the counsel is accepted that the original application stands revived, even then, he cannot succeed. Now, in the interregnum FSL report has been presented and the arguments that an incomplete challan was presented by the investigating agency, no longer survives.

9. In view of the above discussion, there is no merit in the petition, which is hereby dismissed.

10. It is clarified that nothing said hereinabove shall construed to be an expression of opinion on the merits of the case.

09.08.2023
Brij

(SUVIR SEHGAL)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No