

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

226-A

CRR-1868-2022 (O&M)

Date of Decision: 09.01.2023

Gurjant Singh

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. AGS Dhillon, Advocate for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

ASHOK KUMAR VERMA, J. (ORAL)

Custody certificate dated 06.01.2023 filed by learned counsel for the State, is taken on record.

The petitioner has filed the present revision petition for setting aside the impugned order dated 17.08.2022 passed by learned Additional Sessions Judge, Karnal, whereby the application dated 08.08.2022 filed by the petitioner under Section 167(2) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of default bail in case FIR No. 15 dated 05.01.2022 registered under Sections 18 and 25 of the NDPS Act at Police Station Assandh (Karnal), was dismissed.

As per prosecution story, on the basis of secret information, the petitioner was arrested by the police on 05.01.2022 for having in his un-authorized possession of 3 kgs of opium which falls within the ambit of 'commercial quantity', after complying with mandatory provisions of

the NDPS Act.

Learned counsel for the petitioner contends that the challan has been filed in the instant case on 01.07.2022 ,without the FSL report, and therefore, he would be entitled to default bail in terms of Section 167 (2) of the Cr.P.C. The FSL report was filed on 09.08.2022 i.e. after expiry of 180 days. The prosecution has not filed any application seeking extension of time for filing the FSL report. He has placed reliance on the judgments of this Court in ***CRR-2189-2022, 'Sahil vs. State of Haryana, decided on 20.12.2022; CRR-682-2021 Gurpreet Kaur vs. State of Haryana, decided on 06.12.2022; CRR-2078-2022 Nachhatro vs. State of Haryana decided on 16.11.2022; CRR-1870 & 2775-2022, Sattar Vs. State of Haryana and Neeraj @ Shera vs. State of Haryana, respectively, decided on 22.12.2022; CRR-507-2021, Rajender vs. State of Haryana, decided on 07.12.2022; CRR-1046-2022, Mukesh Pal @ Makhan Vs. State of Haryana, decided on 29.11.2022 and Richhpal @ Ganga and another vs. State of Haryana, decided on 29.10.2022.***

The learned counsel has submitted that since there has been some conflict in judgments of this Court as regards the issue in hand, the matter has been referred to a larger Bench vide order dated 16.09.2020 passed in ***2020(4) Law Herald 3188 Julfkar vs. State of Haryana [CRR-1125-2020]*** to consider as to whether a challan filed without report of FSL would be an incomplete challan.

Learned State counsel fairly conceded that that the FSL report was filed on 09.08.2022 i.e. after the expiry of 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 reply filed by way of an affidavit dated 08.10.2022.

I have heard learned counsel for the parties.

The FIR was registered against the petitioner for having in his un-authorized possession of 3 kgs of opium which falls within the ambit of 'commercial quantity'. This court in the case of **State of Haryana Vs. Dildar Ram @ Dari's, CRM-M-25600-2021 decided on 15.07.2021**, had held that filing of the challan without FSL report would not be regarded as a complete challan and, therefore, the accused would be entitled to default bail in terms of Section 167(2) Cr.P.C.

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 vs. State of Punjab, CRR-4659-2015 decided on 30.11.2018** 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.”

As noticed above, there are some conflicting judgments of this Court and the matter stands referred to a Division Bench and is still *sub judice*. In this context a reference may also be made to an order of Hon’ble Supreme Court passed on **9.11.2022 in Special Leave to Appeal (Crl.) Nos. 8164-8166/2021 titled as Mohd. Arbaz and others Versus State of NCT of Delhi**, as the matter with regard to challan in NDPS cases being incomplete on account of FSL report is also being adjudicated by the Hon'ble Apex Court. The said order dated 09.11.2022, of the Apex Court in **Mohd. Arbaz 's case** reads as follows :-

“In all these petitions the question that arises for consideration is relating to the completeness of the charge sheet in accordance with law if the same is filed without the CFSL Report. The matter would require detailed consideration. In the meantime, all parties to complete their pleadings. For the present, though the issue of default bail is to be considered in the petitions since it would require some time, without reference to that aspect of the matter, keeping in view that the petitioners in SLP(Crl.) Nos. 6876-6877/2022, SLP (Crl.) No. 532/2022 and SLP (Crl.) No. 5190/2022 are still in custody, we order that they be released on bail subject to the conditions to be imposed by the concerned trial courts. While indicating so we also take note of the objection put forth by learned counsel for the respondent-State in SLP(Crl.) No.2666/2022 who objects to the grant of bail since the petitioner therein has not surrendered despite the bail being cancelled by the High Court. Though in a normal circumstances we would have taken a serious view of the matter, keeping in view the fact that the petitioner has approached this Court immediately after cancellation of the bail and the petition has been

tagged alongwith similar matters and could not be taken up, we allow the benefit of bail to the petitioner. Hence, the order cancelling bail which is impugned in SLP (Crl.) No. 2666/2022 shall remain stayed. List all these petitions on 17.01.2023.”

In view of discussion made above, this Court deems appropriate to extend the concession of bail in terms of Section 167(2) Cr.P.C. to the petitioner while also keeping in view the fact that the petitioner has been behind bars since 05.01.2022.

The petition, as such, is accepted. The impugned order dated 17.08.2022 is accordingly set aside and petitioner-Gurjant Singh, is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

It is, however, clarified that the prosecution would be at liberty to move for cancellation of bail/recall of this order in case the reference made to larger Bench in ***Julfkar’s case (supra)*** is answered in favour of prosecution or in case, the matter pending in Hon’ble Supreme Court i.e. ***Mohd. Arbaz’s case (supra)*** is decided in favour of prosecution.

January 09, 2023
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No