

Ajay

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Parveen Sharma, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

Revision petition is directed against order dated 20.07.2023 passed by learned Additional Sessions Judge, Panipat in bail application No.1532 of 2023 titled 'Ajay Versus State of Haryana', whereby petitioner's bail application under Section 167(2) Cr.P.C. in case FIR No.781 dated 25.12.2022 registered under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Industrial Sector -29, Panipat, District Panipat, was dismissed.

2. Per prosecution case, on 25.12.2022, SI Satpal Singh along with other police officials was on routine patrolling and checking, when petitioner and his co-accused were intercepted by police on the basis of secret information. After carrying out formalities, search was conducted. SI carried out the search of both the boys along with bags. On checking, both bags were found containing two polythene bags. One white coloured polythene was found containing charas weighing about 1 kg 70 gram and second green coloured polythene was found containing charas weighing about 1 kg 600 gm. FIR was registered and petitioner was arrested from the spot on 25.12.2022 and is in custody ever since.

3. Learned counsel contends that alleged recovery has been planted on him. Petitioner has thus been falsely implicated. Petitioner is not involved in any other case. He is totally innocent. Petitioner has indefeasible right to be released on bail as per provisions of section 167(2) Cr.P.C. read with Section 36A(4) of NDPS Act. He further contends that in the present case, the police has submitted the challan without report of

and therefore, petitioner is entitled to default bail. He applied for the same before learned Additional Sessions Judge, Panipat, but the same was dismissed vide order impugned herein.

3.1 Learned counsel for the petitioner further submits that in any case, alleged contraband recovered from the petitioner was weighed along with plastic bag and it is thus that the total weight is stated to be 1 kg 600 grams, which too is marginally higher than commercial quantity. There is every chance that recovery may fall in non-commercial quantity, owing to error in weighment and inclusion of weight of polythene bag with the alleged contraband.

3.2 He also refers to a Division Bench Judgment of this Court in case **Ajit Singh alias Jeeta and another vs. State of Punjab**¹ to contend that report of chemical examiner must be mandatorily included in the final report under Section 173 Cr.P.C. and in the absence of the same, challan would be incomplete and Court is not competent to take cognizance of the offence in an incomplete challan.

3.2 He also submits that nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses.

4. Per contra learned State counsel submits that challan presented by the police cannot be said to be incomplete as FSL report is a *per se* admissible document which can be produced at any time during course of trial in view of Section 293 of Cr.P.C. He further points out that FSL report has been filed by the prosecution on 25.08.2023.

4.1. He further submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He submits that per his instructions, 1 kg 620 gram charas contained in polythene bag was recovered from the conscious possession of the petitioner. Learned State counsel further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act would be attracted in this case. He however, admits that no other case is pending against him.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. There is force in the contention of learned counsel for the petitioner that police report filed without the Chemical Examiner Report is an incomplete challan in view of ratio laid down by Division Bench of Court in *Ajay Singh's case (supra)*, thereby entitling him to claim default bail under Section 167(2) Cr.P.C. read with Section 36A(4) of the NDPS Act.

7. That apart, on a Court query, learned State counsel, on instructions from ASI Balinder submits that challan was filed but charges are yet to be framed. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Allegations against the petitioner are a matter of trial at this stage. There are 13 prosecution witnesses. Commencement/conclusion of trial will take some time as it is proceeding at a snail pace. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for the last more than 08 months, being in custody since 25.12.2022.

8. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/ or influence witnesses. There is no documentary evidence and it is more in the nature of FSL report *qua* contraband, already filed in the trial Court to which accused has no access. There is no probability of tampering with evidence as the same has already been seized by the investigating agency. As regards witnesses, they are all official and therefore, they are unlikely to be influenced, even if there is any such apprehension by the prosecution.

9. Be that as it may, offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to society at large by committing any violent crime. In any case, allegations against petitioner are matter of trial. At this stage, there appears to be a reasonable ground that petitioner may not be guilty of the alleged offence. He is unlikely to commit any offence while on bail.

10. Petitioner is stated to be family man with responsibilities, having fixed abode and clean antecedents, it is unlikely that he poses any flight risk and/or will flee

11. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.
12. Accordingly, instant revision petition is allowed and order dated 20.07.2023 passed by learned Additional Sessions Judge, Panipat is set aside. Petitioner is ordered to be released on bail, if not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.
13. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.
14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.
15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

28.08.2023
vandana

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