

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

224

2023:PHHC:154517

CRR-1600-2021

Date of decision: December 2nd, 2023

Rakesh Kumar @ Kaka

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Ms. Trishanjali Sharma, Deputy Advocate General,
Haryana.

MANJARI NEHRU KAUL, J.

The petitioner is impugning the order dated 24.11.2021 passed by learned Additional Sessions Judge, Sirsa, whereby his application for grant of bail under Section 167 (2) Cr.P.C. has been dismissed.

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner was arrested on 01.12.2020 in the FIR in question (Annexure P-1); though the challan was presented within the statutory period of 180 days, i.e. on 24.05.2021, however, the FSL report was not made part of the challan thereafter and furthermore, even on the date when the petitioner filed an application under Section 167 (2) of the Cr.P.C. for grant of default bail, before the trial Court.

3. Learned counsel has thus, asserted that in the circumstances, the investigation in the present case remained incomplete even after the expiry of 180 days and an indefeasible right of default bail had, therefore, accrued to the petitioner.

4. It has also been argued that it is a matter of record that no

report as mandated under Section 36A(4) of the NDPS Act seeking extension of time was ever filed by the Public Prosecutor.

5. Learned counsel for the petitioner has also further urged that this Court in a catena of cases has held that challan filed without the FSL report would be deemed to be an incomplete one, thus, entitling the petitioner to default bail. In support, learned counsel has referred to *Ajit Singh alias Jeeta and another Versus State of Punjab passed in CRR No.4659 of 2015*.

6. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has submitted that mere non-filing of FSL report would not entitle the petitioner to default bail, more so since the recovery in the case in hand was huge for which he did not deserve to be extended the concession of bail.

However, learned State counsel has not been able to controvert that the FSL report was neither filed along with the challan nor had been received and presented before the trial Court when the petitioner applied for the concession of default bail under Section 167 (2) of the Cr.P.C. and still further, no report as mandated under Section 36A(4) of the NDPS Act was ever moved by the learned Public Prosecutor before the trial Court seeking extension of time to file the FSL report.

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

8. 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.”

9. On a combined reading of the above provisions outlined in Section 167 (2) of the 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 proceedings conducted by the investigating agency after the registration of an FIR to gather pertinent material and evidence in aiding the Court to ascertain as to whether there has been any commission of an offence. In cases falling under the NDPS Act in particular, the investigation would be considered to be complete only subsequent to the opinion received from the Chemical Examiner regarding the nature of the substance recovered and submitted for analysis. Without receipt of any such opinion from the Chemical Examiner, the discernment of the nature of substance cannot be relied solely on sensory perceptions like sight and smell.

10. Hence, the FSL report or the Chemical Examiner’s report would be a pivotal document in *prima facie* proving the potential offences falling under the NDPS Act. In its absence, the investigation would not be deemed to have concluded. The failure to include the FSL report with the chargesheet would also incapacitate a Court from proceeding further to take cognizance or frame charges concerning the alleged offences. It would be relevant to refer to the

case (supra), wherein it has been underscored that a chargesheet filed without FSL would be deemed to be incomplete thereby entitling the accused to the grant of default bail.

11. Adverting to the facts of the case in hand, the petitioner was arrested on 01.12.2020 and the chargesheet was filed on 24.05.2021, however, the FSL report, as not disputed by the learned State counsel, was not annexed with the challan nor was it submitted even after the expiry of the statutory period of 180 days. Additionally, it remains undisputed that no report as mandated under Section 36A(4) of the NDPS Act was filed by the Public Prosecutor seeking extension of time.

12. Consequently, the chargesheet in the present case would be deemed to be incomplete.

13. As a sequel to the above, since the investigation in the instant case remained incomplete on the date when the petitioner moved an application for default bail under Section 167 (2) of the Cr.P.C., the instant petition deserves to be allowed.

14. Ordered accordingly.

15. The petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

December 2nd, 2023

Puneet

**(MANJARI NEHRU KAUL)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No