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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRR No.2015 OF 2023 (O&M)
DATE OF DECISION: 12.09.2023****Deepak @ Ramphal****...Petitioner****Versus****State of Haryana****...Respondent****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. A.P.S. Nain, Advocate
For the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

Revision petition is directed against an order dated 07.07.2023 passed by learned Additional Sessions Judge, Panipat in bail application No.1386 of 2023 titled 'Deepak @ Ramphal V. 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. According to the prosecution's case, on December 25, 2022, SI Satpal Singh, along with other police officials, was engaged in routine patrolling and inspections when they intercepted the petitioner and his co-accused based on confidential information. After completing the necessary procedures, a search was conducted. SI conducted search on both individuals, as well as their bags. Upon inspection, it was discovered that both bags contained two polythene bags. One of these polythene bags, colored white, was found to contain approximately 1.70 kilograms of charas, while the second polythene bag, colored green, contained approximately 1.60 kilograms of charas. An FIR was registered. Petitioner, Deepak alias Ramphal, was

apprehended on the spot on December 25, 2022, and has been in custody since that date.

3. Learned counsel contends that in the present case, the police has submitted challan without report of FSL, which amounts to incomplete challan, as envisaged under Section 173(5) Cr.P.C. and therefore, petitioner is entitled to default bail. He applied for same before learned Additional Sessions Judge, Panipat, but the same was dismissed vide order impugned herein. He argues that even otherwise, alleged recovery has been planted on petitioner. 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.

3.1 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. The counsel representing the petitioner argues that, the purported contraband found on the petitioner was weighed together with the plastic bag, which is why the total weight is reported as 1 kilogram and 70 grams. This weight is only slightly above the threshold for a commercial quantity. There is thus a strong possibility that the recovery could fall below the threshold for a commercial quantity due to errors in weighing and the inclusion of the weight of the plastic bag with the alleged contraband.

3.3 He also submits that nothing is to be recovered now 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.

3.3 Learned counsel for petitioner would further contend that similarly situated co-accused Ajay was granted the concession of default bail by this Court under Section 167 (2) Cr.P.C. vide order dated 28.08.2023 (Annexure P-3) passed in CRR-1863-2023. Further urges that petitioner is also entitled to the concession on the ground of parity.

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 3 kg 340 gram charas contained in two polythene bags was recovered from the conscious possession of petitioner and his co-accused. 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, candidly admits that no other case is pending against him and that co-accused Ajay has been granted the concession of default bail by this Court vide order dated 28.08.2023 (Annexure P-3).

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

6. The argument of the petitioner's counsel holds merit, as per the precedent rendered by a Division Bench of the Court in the case of **Ajay Singh supra**. It is held therein that a police report filed without the Chemical Examiner Report is considered an incomplete challan. This entitles the

petitioner to seek default bail under Section 167 (2) of the Criminal Procedure Code, in conjunction 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 has also been filed. Investigation *qua* 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. The petitioner is currently being held in preventive custody based solely on an unsupported suspicion that if released, he might tamper with evidence or influence witnesses. Documentary evidence and the FSL report related to the contraband has already been submitted to the trial court, and the accused has no access to it. Thus, there is no likelihood of evidence tampering since the investigating agency has already secured the evidence. In terms of the witnesses, they are all official personnel, and therefore, any concerns about potential influence by the prosecution are equally unfounded.

9. 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 from trial proceedings.

11. Co-accused Ajay has been granted the concession of default bail by this Court vide order dated 28.08.2023 (Annexure P-3).

12. 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.

13. Accordingly, instant revision petition is allowed and order dated 07.07.2023 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.

14. In case, petitioner is found 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.

15. 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 revision petition alone and learned trial Court shall proceed without being influenced with this order.

16. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

SEPTEMBER 12, 2023
Shalini

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