

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

115

CRR-2066-2023
Date of Decision: 20.09.2023

Rachna and another

...Petitioners

Vs.

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Yashveer Kharb, Advocate
for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. By way of the present petition, the petitioners have challenged the impugned order dated 18.07.2023 passed by the Court of Additional Sessions Judge, Panipat, whereby, the application under Section 167(2) Cr.P.C. filed by the petitioners was ordered to be dismissed.

2. As per the case of the prosecution, on 17.01.2023, a police team headed by ASI Sandeep was present in connection with patrolling duty and detection of crimes, where, a secret information was received against the petitioners and others. Accordingly, a raid was conducted at the house of the petitioners and on search of four plastic bags, 154 Kgs of Ganja Patti were recovered from the petitioners and their co-accused Sewadan and they were possessing the said contraband without any permit or licence. Accordingly, after

following the due process of law, the FIR was ordered to be registered against the petitioners and Sewadan.

3. Learned counsel for the petitioners contends that the FIR in the present case was ordered to be registered on 17.01.2023 and even the petitioners were arrested on 17.01.2023 and they were ordered to be produced before the Court of on 18.01.2023. Thereafter, the investigation was conducted and the police had presented final report under Section 173 Cr.P.C. without the report of the FSL on 14.07.2023, before the Court. On 12.07.2023, an application was filed for extension of time for submitting the report before the trial Court. However, vide order dated 12.07.2023 (Annexure P-2), the said application was ordered to be dismissed. On 17.07.2023, the petitioners filed the present application under Section 167(2) Cr.P.C. as the Investigating Agency had presented the incomplete final report under Section 173 Cr.P.C. as the report of FSL was not annexed with the said report. Learned counsel further contends that the petitioners were arrested in the present case on 17.01.2023 and they were produced before the Court on 18.01.2023 and the application for grant of bail under Section 167(2) Cr.P.C. was filed on 17.07.2023, after completion of more than 180 days. However, vide impugned order, the said prayer has been wrongly declined by the Court of Additional Sessions Judge, Panipat. Learned counsel for the petitioners has placed relied on the law laid down by this Court in Criminal Revision 4659 of 2015 decided on 30.11.2018 titled as **“Ajit Singh @ Jeeta**

and another Vs. State of Punjab” and connected cases, Criminal Revision 1125 of 2020 decided on 16.09.2020 titled as “**Julfakr Vs. State of Haryana**”, CRR 755 of 2021 decided on 29.11.2021 titled as **Krishan Singh Vs. State of Haryana**”, CRM M-48705 of 2021 decided on 11.02.2022 titled as “**Joginder Singh Vs State of Haryana**” and connected case, CRR 708-2021 decided on 28.10.2022 titled as “**Satpal Singh @ Satpala and another Vs. State of Haryana**”, CRR 1369 of 2023 decided on 29.05.2023 titled as “**Vikram Vs State of Haryana**” and by the Hon'ble Supreme Court in Special Leave to Appeal decided on 09.11.2022 titled as “**Mohd. Arbaz and others Vs. State of NCT of Delhi**”.

4. On the other hand, learned State counsel submitted that even though, the FSL report had not been filed alongwith the challan, still, the challan without FSL report would not be regarded as incomplete challan. Learned State counsel submits that huge recovery had taken place from the present petitioners and the petitioners are not entitled for the concession of bail by this Court. Learned State counsel has also relied upon the law laid down by the Hon'ble Supreme Court in the matter Narendra Kumar Amin Vs. CBI, 2015 (1) RCR (Criminal) 566 and Abdul Azeez P.V. Vs. NIA, 2014(3) ACR 335.

5. I have heard learned counsel for the parties and perused the record.

6. The judgments of the Supreme Court and Full bench of this Court, which are cited by the learned counsel for the State, are

distinguishable on facts from the instant case. The judgments of the Supreme court in the cases of **Narendra Kumar Amin Vs. CBI** (supra) and **Abdul Azeez P.V. Vs. NIA** (supra), did not pertain to a case under the NDPS Act.

7. The coordinate Benches of this court in the aforementioned cases had held that the challan under Section 173(2) Cr.P.C. having been filed even without the FSL report would not entitle the accused to be released on default bail under Section 167(2) Cr.P.C. However, different view had been taken by the coordinate Bench of this court in the case titled **Julfkar Vs. State of Haryana, CRR-1125-2020** and had referred the matter to the Division Bench in view of the conflict in judgments. It was also observed by a Coordinate Bench in **CRR-1135-2020, Suresh Vs. State of Haryana**, decided on 18.11.2020, while granting default bail to petitioner therein as challan was filed without FSL report, that in the event of the division bench opining that the challan filed without FSL report would be a complete challan, the State would be at liberty to prefer an application for cancellation of bail.

8. Another coordinate Bench of this court in **CRR-1150-2020**, titled **Rinku Vs. State of Haryana** vide order dated 03.11.2020, had also opined that as the matter had been referred to the larger bench, in the meantime, the accused would be entitled to be released on default bail.

9. This court, in CRM M-25600-2021 decided on 15.07.2021 titled as “**State of Haryana Vs. Dildar Ram @ Dari**” has held that challan filed without FSL report would not be regarded as a complete challan and the accused would be entitled to default bail in terms of Section 167(2) Cr.P.C.

10. Therefore in the present case, as the challan had been filed without the FSL report in the instant case, the petitioner would be entitled to be released on default bail in terms of Section 167(2) Cr.P.C.

11. In view of the above discussion and the law laid down by this Court as well as Hon'ble Supreme Court, the present petition is ordered to be allowed and the impugned order dated 18.07.2023 passed by the Additional Sessions Judge, Panipat, is set-aside. The petitioners are ordered to be released on bail on their furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned.

12. In the event of the Division Bench of this Court opining that the challan filed without FSL report would be a complete challan, the State of Haryana will be at liberty to file a petition for cancellation of bail granted to the present petitioners.

13. The petition is allowed in the above terms.

20.09.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

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