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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2221-2023 (O&M)

Date of decision: 03.10.2023

Parveen Kumar

....Petitioner

versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Raman Chawla, Advocate,
For the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

Revision petition is directed against an order dated 08.09.2023 passed by Learned Additional Sessions Judge, Hisar in bail application No.578 of 06.09.2023 titled 'Parveen Kumar Vs. State of Haryana' whereby petitioner's bail application under Section 167 (2) Cr.P.C. in case FIR No.179 dated 09.03.2023 registered under Section 20B (ii) C, 25 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Barwala, Hisar, was dismissed.

2. Per First Information Report (FIR), a secret information was received that accused Parveen Kumar (Petitioner) was indulging in sale of contraband i.e. Ganja. Accordingly, a barricade was erected near Bharat Dharamkanta, Barwala Bypass, Hisar and accused Parveen Kumar was seen coming from the side of Hansi. He was signaled to stop. On seeing the police party, he tried to flee but was apprehended by the police party. On checking, he was found in possession of 48 kilograms of Ganja and was arrested on the spot on 09.03.2023. During the course of investigation, he suffered disclosure statement implicating co-accused Dharambir being the owner and driver of the truck in which, he allegedly brought 90 kilograms of Ganja from Vishakhapatnam. Accordingly, co-accused Dharambir was arrested on 10.03.2023 and nominated as an accused.

3. Learned counsel for the petitioner submits that petitioner was arrested on 09.03.2023 and produced before Court on 10.03.2023. He submits that FIR was lodged on 09.03.2023 and stipulated period for filing final report was 90 days as challan was to be presented on 08.06.2023. Admittedly, no FSL report was received after lapse of 180

days i.e. 06.09.2023 and thereafter on the date fixed before the Court on 08.09.2023, challan was not submitted in the Court and when application for default bail under Section 167(2) Cr.P.C. was filed, after expiry of 180 days on 06.09.2023, prosecution side moved an application for extension of period to file challan, due to non-receiving of FSL report and which was allowed on 04.09.2023. It is admitted fact that FSL report was not presented in Court till 08.09.2023 and the application was moved after the said mandatory period. Therefore, petitioner is entitled to default bail. He applied for same before learned Additional Sessions Judge, Hisar, but the same was dismissed vide order impugned herein.

3.1. He further submits that petitioner has nothing to do with the alleged offence. He was not named in the FIR and thus petitioner has been falsely implicated. Learned counsel 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.

3.2 He further submits that co-accused Dharambir has been granted concession of regular bail by this Court vide order dated 25.09.2023 (Annexure P-10).

3.3. Learned counsel further submits that petitioners have 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 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.

4. On the other hand, learned State counsel opposes the bail petition. He submits that the application for extension of time to file complete charge sheet *qua* the petitioner has already been allowed by learned Court below vide order dated 04.09.2023 and further period of three months to file complete challan has been granted to the police. Further states that petitioner has committed a serious offence. He further submits that quantity of contraband recovered falls under commercial quantity as per provisions of the

NDPS Act and rigors of Section 37 of NDPS Act would be applicable in this case. In case, petitioner is granted concession of bail, there are chances of his fleeing. He further submits that five other cases are pending against him he is not on bail in those cases, as per custody certificate.

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 **Ajit Singh** (supra). It is held therein that a police report filed without the Chemical Examiner Report is considered an incomplete challan. This entitles the petitioners 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, under instructions from ASI Mahinder submits that challan is being finalized and likely to be submitted shortly in due course. Investigation *qua* petitioner is complete and petitioner is thus not required for custodial interrogation.

8. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for more than 06½ months, being in custody since 09.03.2023.

9. 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.

10. 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.

11. Petitioner is stated to be 40-year old family person, whose family members are all dependent on him and in his absence, they are living in sheer penury. Being a person with family responsibilities and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

12. Co-accused has already been granted concession of regular bail by this Court.

13. 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.

14. Accordingly, instant revision petition is allowed and order dated 08.09.2023 passed by learned Additional Sessions Judge, Hisar 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 Ilaqa Magistrate/Duty Magistrate, as the case may be.

15. 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.

16. 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.

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

(ARUN MONGA)
JUDGE

03.10.2023
vandana

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