

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

210

2023:PHHC:130137

CRM-M-56955-2022

Date of decision: October 4th, 2023

Rajinder Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Pankaj Bali, Advocate
for the petitioner.

Mr. Rahul Mohan, Senior Deputy Advocate General,
Haryana.

MANJARI NEHRU KAUL, J.

The petitioner is seeking the concession of default bail under Section 167 (2) of the Cr.P.C. in case FIR No.216 dated 14.03.2022 under Sections 17/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Sadar, Karnal

2. Learned counsel for the petitioner submits that the petitioner has been in judicial custody since 15.03.2022 for having been found in possession of poppy husk weighing 147 kilograms, 350 grams, which was being allegedly cultivated by him and co-accused without any licence or permit. It has been further submitted that no doubt, challan was presented on 13.06.2022, which was within the stipulated statutory period of 180 days, however, it was not accompanied by the report of Forensic Science Laboratory (hereinafter referred to as FSL); that even after expiry of the statutory period of 180 days, on 12.09.2022, neither any report of the FSL was submitted by the investigating agency nor any report of the Public Prosecutor as mandated under Section

36A(4) of the NDPS Act seeking extension of time, was moved by the prosecution. Thus, there was no manner of doubt that the investigation had remained incomplete, even after the expiry of the statutory period of 180 days on 12.09.2022, entitling the petitioner to the right of default bail.

3. Learned counsel has contended that the Court below had gravely erred in dismissing his application under Section 167 (2) Cr.P.C. for grant of default bail on the ground that the Ahlmad of the Court had reported that due to inadvertence, the FSL report had been placed in a case bearing the same FIR No.216 dated 13.04.2022 (titled as 'State Versus Gurpreet') under Sections 15, 25 etc. of the NDPS Act registered at a different Police Station Gharaunda, Karnal. While arguing further, learned counsel asserted that the Court below failed to take into notice that since on the date when the petitioner moved his application under Section 167 (2) Cr.P.C. i.e. on 05.11.2022, admittedly there was no FSL report in the file of the present case before the Court concerned, albeit due to an inadvertent error on the part of the prosecution, the challan could not have been deemed to be complete. In support, learned counsel has placed reliance upon judgment of Division Bench of this Court in *Ajit Singh @ Jeeta Versus State of Punjab [passed upon reference in Criminal Revision No.4659 of 2015 and other cases]* to urge that challan without the FSL report would be deemed to be an incomplete challan, entitling the accused to the concession of default bail under Section 167 (2) Cr.P.C. under the NDPS Act.

4. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has submitted that it

could not be said that the investigation was incomplete as was being projected by the counsel opposite. Rather, the investigation in the case in hand was complete as it was a matter of record that the FSL report had already been received, though inadvertently it had been placed in the file of another case pertaining to some other Police Station, though, bearing the same FIR number. Learned State counsel has further submitted that since the petitioner had filed his application for default bail only on 05.11.2022, that is after the prosecution had already filed the FSL report on 01.11.2022, hence, his right to seek default bail clearly stood extinguished. Learned State counsel has, therefore, prayed for dismissal of the instant petition as the recovered contraband had been classified as commercial under the NDPS Act and furthermore, the petitioner could not be made to derive any benefit out of an inadvertent error by the prosecution.

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

6. The question which arises for the consideration of this Court is as to whether in the facts and circumstances as discussed hereinabove, the investigation in the present case would be deemed to be incomplete so as to entitle the petitioner to the concession of default bail.

7. Before proceeding further, it would be apposite to reproduce Section 167 (2) Cr.P.C. and Section 36A (4) of the NDPS Act:-

“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, 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 the 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 released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

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."

A conjoint reading of Section 167 (2) Cr.P.C. as well as Section 36A (4) of the NDPS Act highlights the crucial role of completing the investigation by the investigating agency. 'Investigation' in this context encompasses all activities undertaken by the investigating agency to gather evidence necessary for determining whether or not the alleged crime has been committed.

8. In cases under the NDPS Act, the FSL report is pivotal because it links the accused to the alleged crime. Until a definitive opinion is received from the Chemical Examiner qua the recovered substance, relying solely on the sensory attributes of the seized articles by the investigating agency would be insufficient to conclusively prove the nature of those substances. It cannot be over emphasized that it is only after presentation of the challan by the investigating agency, the Court is able to take cognizance of cases, particularly cases under the NDPS Act. Thus, the investigation can be considered complete only when the report of the FSL becomes part of the challan. Without its inclusion, the Court concerned would not be able to proceed further or take cognizance of the case.

9. The learned State counsel has based his arguments on the fact that, by accident, the FSL report relating to the instant case had been mistakenly placed in the file of another case, which was then filed

in the said case by the Public Prosecutor on 01.11.2022. However, it is undisputed that on the day when the petitioner applied for default bail under Section 167 (2) Cr.P.C., and even much thereafter, the FSL report was not included in the case file of the present case i.e. FIR No.216 dated 14.03.2022. In the circumstances, once the FSL report was not part of the case file, particularly when the petitioner had filed his application under Section 167 (2) Cr.P.C., it would be violation of his personal liberty to detain him beyond the statutory period of 180 days. Moreover, it can also be safely concluded that the petitioner could not have been possibly aware of the FSL report having been already received and inadvertently presented before a wrong Court. This Court, thus, does not see any validity in the case of the State counsel that the right of the petitioner to the grant of default bail stood extinguished because the application had been filed by the petitioner after the FSL report had been presented, though mistakenly, in another Court.

10. This Court has thus, no hesitation in allowing the instant petition in the facts and circumstances as enumerated hereinabove. Accordingly, the instant petition is allowed. 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.

11. Needless to add, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

October 4th, 2023

Puneet

(MANJARI NEHRU KAUL)

JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No