

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

219

2024:PHHC:005182

CRM-M-13225-2021

Date of decision: January 15, 2024

STATE OF HARYANA

.....Petitioner

Versus

GULAB SINGH AND ANOTHER

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Trishanjali Sharma, Deputy Advocate General, Haryana
for the petitioner.

Mr. Satnam Singh Gill, Advocate
for the respondents.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant petition has been filed under Section 439(2) Cr.P.C. read with Section 482 of the Code of Criminal Procedure, 1973 for cancellation of default bail granted to the respondents by setting aside the order dated 10.12.2020 (Annexure P-1), vide which the Court of Ld. Additional Sessions Judge, Kaithal in FIR No.153 dated 21.09.2020 under Section 18(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 of the Act added later on), registered at Police Station Guhla, District Kaithal, allowed the application under Section 167(2) Cr.P.C. filed by the respondents-accused.

2. Learned State counsel submits that the trial Court had erroneously granted the concession of default bail to the respondents-accused vide order dated 10.12.2020. It has been contended that following a secret information received, both the respondents-accused were apprehended at the spot, while they were travelling together in a car; on being intercepted, a recovery of 1 kg 830 grams of opium was then effected from their car. It has been further

submitted that no doubt the recovery of the contraband effected from the respondents-accused has been categorized as intermediate under the NDPS Act, coupled with the fact that the investigating agency had filed challan within the statutory period of 60 days on 16.11.2020, however, the trial Court vide impugned order had erroneously granted the concession of default bail to the respondents-accused only on account of the FSL report not being filed along with the challan.

3. Learned State counsel has further submitted that the trial Court had wrongly placed reliance upon the judgment passed by the Division Bench of this Court in **CRR-4659-2015** titled as **Ajit Singh @ Jeeta and others V/s State of Punjab** inasmuch as the judgment rendered in Ajit Singh's case (supra) was *per incuriam* as it did not take into consideration various judgments passed by other Courts as well as the Hon'ble Supreme Court in **Narender Kumar Amin V. Central Bureau of Investigation (SC) | 2015 (1) R.C.R. (Criminal) 566**. A prayer has, therefore, been made for cancelling the concession of default bail granted to the respondents-accused vide impugned order dated 10.12.2020.

4. *Per contra*, learned counsel for the respondents-accused has opposed the prayer made by the learned State counsel by asserting that a false case had been planted upon them. It has been further submitted that admittedly, the alleged recovery effected from both the respondents-accused had been classified as intermediate under the NDPS Act, hence, the investigating agency was obligated to conclude the investigation within 60 days, which it failed to do. Additionally, it has been emphasized that even after the statutory period of 60 days had elapsed, FSL report had not been submitted nor any application was moved, much less through the Public Prosecutor for extension of time to file the FSL report. It has been further contended that it was also a matter of

record that after being enlarged on bail, the respondents-accused had never misused the said concession nor had they violated any of the stipulated conditions while being enlarged on bail. Hence, there was no justifiable basis for the cancellation of the bail which had been granted to them.

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

6. It needs to be reiterated that once bail has been granted, the Court must act with the great deal of caution before cancelling the same. Trite to say that since cancellation of bail takes away the constitutional right of personal liberty of an accused, it should not be resorted to in a routine manner. The law is fairly settled in this regard that bail can be cancelled, only if the order granting bail is perverse or patently illegal, or the accused has breached the conditions imposed upon him while being enlarged on bail.

7. In the instant case, the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court in Narender Kumar Amin's case (supra), however, it has not been disputed by the learned State counsel that the aforesaid authority does not deal with the provisions of the NDPS Act. In Ajit Singh's case (supra), it has been held that FSL report in cases under the NDPS Act provides the foundation for complicity of an accused in the cases and its absence thereof renders the Court unable to take cognizance and proceed further. This cruciality of chemical examiner's report under NDPS cases distinguishes the receipt of chemical examiner's report in other criminal cases under the Indian Penal Code, 1860.

8. In the circumstances, the judgment rendered by a Division Bench of this Court in *Ajit Singh @ Jeeta and others V/s State of Punjab* lays down the guiding principle for default bail in cases under the NDPS Act;

the same question of law is still *res integra* and under consideration by the Hon’ble Supreme Court.

9. Learned State counsel has also not been able to point out towards any misuse of bail or breach of any conditions committed by the respondents-accused.

10. In the facts and circumstances as enumerated hereinabove, no ground is made out for cancellation of default bail granted to the respondents-accused.

11. The petition stands dismissed.

12. 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.

January 15, 2024
Jaspreet Kaur

(MANJARI NEHRU KAUL)
JUDGE

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