

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Reserved on 08.02.2024
CRM-M-41613-2023 (O&M)
Pronounced on: 29.02.2024

1.

Vinit YadavPetitioner

Versus

State of HaryanaRespondent

2.

CRM-M-2775-2024 (O&M)
Pronounced on: 29.02.2024

State of HaryanaPetitioner

Versus

Vinit YadavRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Raktim Gogoi, Advocate with
Mr. Kunal Sharma, Advocate and
Mr. S. Vinod, Advocate
for the petitioner in CRM-M-41613-2023 and
for the respondent in CRM-M-2775-2024.

Mr. Chetan Sharma, DAG, Haryana.

MANJARI NEHRU KAUL, J.

1. Since both the above referred petitions arise out of FIR No.234 dated 04.05.2023 under Sections 420, 465, 468 of the IPC and Sections 22 and 32 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Pinjore, District Panchkula, they are being taken up together and disposed of vide this common order.

1 (a). Prayer in CRM-M-41613-2023, filed under Section 439 of the Cr.P.C., was for grant of bail to the petitioner-accused (hereinafter referred to as 'the accused') in the FIR in question. The aforesaid

petition was rendered infructuous for the “present” as the accused had been granted the concession of default bail by the learned Trial Court on 10.11.2023. Resultantly, a show cause notice was issued to the accused on 15.11.2024 as to why the concession of default bail granted to him on 10.11.2023 by the learned Trial Court be not cancelled in the light of misrepresentation as well as material concealment made in the application for default bail under Section 167(2) of the Cr.P.C. before the learned Trial Court qua the pendency of petition i.e. CRM-M-41613-2023 in this Court.

1 (b). Meanwhile, the State of Haryana being aggrieved by the order dated 10.11.2023 passed by the learned Trial Court, vide which default bail was granted to the accused, under Section 167(2) of the Cr.P.C., moved CRM-M-2775-2024, seeking cancellation of the said bail granted to the accused.

2. **Submissions made by learned State counsel in CRM-M-2775-2024 are as follows:-**

2 (a). That the accused was apprehended on 04.05.2023 and remanded to custody on 05.05.2023, subsequent to his production before the learned Trial Court.

2 (b). That the accused filed application for default bail under Section 167(2) of the Cr.P.C. on 31.10.2023 before the learned Trial Court. This application, however, was premature as no right under Section 167(2) of the Cr.P.C. had accrued in his favour for default bail on the said date as the entitlement of the accused to default bail would have arisen only on 01.11.2023, i.e. after the expiry of the statutory period of 180 days.

2 (c). That the default bail granted to the accused was liable to be cancelled due to concealment made by him in his application under Section 167(2) of the Cr.P.C. before the learned Trial Court qua a similar petition for bail i.e. CRM-M-41613-2023 pending before this Court. This non-disclosure contravened the directions issued by this Court in ***CRM-M-21526-2021 titled as 'Vijay Kumar @ Vijay Vs. State of Punjab'***, wherein disclosure of pendency of any application for bail filed before this Court or any other Court was made mandatory. Learned State counsel has also drawn the attention of this Court to a decision rendered by this Court in ***CRM-M-52620-2019 titled as 'Kulwant Singh Vs. State of Punjab' decided on 11.03.2022*** wherein also the following directions issued by this Court in ***Vijay Kumar @ Vijay's case (supra)*** were reiterated:-

“1. That in each and every case when an application for bail is made before the Courts below, under any of the provisions of the Code of Criminal Procedure, it shall be mandatory to mention in the application as to whether such or similar application for bail under any of the provisions of Code of Criminal Procedure has or has not been made before any Superior Court, and if at all, a Superior Court has been approached for similar relief, the result thereof.

2. An application, which does not contain the aforementioned information shall not be accepted/entertained and would be returned for resubmission with the necessary information.

3. It needs to be also clarified that the Public Prosecutors / prosecuting agency shall be duty bound to apprise the Court concerned(before whom the bail application has been moved), after collecting the necessary information from the investigating officers with respect to the filing of any application/petition before any Court, seeking concession of bail under the provisions of Code of Criminal Procedure and the result thereof.

4. In case of any lapse/default on the part of the investigating agency/prosecution in the said regard, it would be construed to be a fraud played upon the Court, which could invite departmental as well as penal action against the erring parties/officials, as the case may be.”

2 (c) (ii). That the affidavit filed by the father of the accused before the learned Trial Court falsely claimed that no such or similar application was pending before any Court, which was factually incorrect and misleading. The filing/pendency of petition i.e. CRM-M-41613-2023 before this Court had been cleverly concealed, when the accused moved his application under Section 167(2) of the Cr.P.C. on 31.10.2023 before the learned Trial Court.

2 (d). That there are serious and grave allegations against the accused, who is a professional Psychiatrist and has been illegally operating a De-addiction Centre (hereinafter referred to as 'Centre'), dispensing prohibited substances to the public. Considering the widespread misuse of Buprenorphine, the Drug Controller General of India issued a direction on 24.09.2010, stipulating that the drug should only be supplied to De-addiction Centres established by the Government of India and funded by the Ministries of Health, Social Justice and Empowerment as well as to hospitals with De-addiction facilities. Subsequently, on March, 28, 2019, this directive was amended to include psychiatric clinics and hospitals among the authorised recipients of this drug. Additionally and most significantly, the amendment mandated that a comprehensive list of Centres receiving this drug along with the quantity supplied to each Centre, be submitted periodically to the Drug Controller General's Office. In support, learned

counsel for the State has drawn the attention of this Court to Section 6(3)(viii) of the Drug De-addiction Rules, 2010, and the corresponding provisions of the Haryana De-addiction (Amended) Rules, 2018, which provide for the mandatory registration of De-addiction Centres, even for those holding licences under the Mental Health Act, 1987, requiring them to submit data on De-addiction cases as per prescribed formats; the registration of De-addiction Centres is thus a mandatory requirement. However, it is a matter of record that on the day when the Centre was raided, the accused did not possess a valid licence to operate it, let alone administer or dispense Buprenorphine, which he had been doing under the guise of his profession as a Psychiatrist, in flagrant violation of rules and regulations.

2 (e). That during investigation it also surfaced that false OPD cards had been prepared in the name of patients treated at the illegal Centre being operated by the accused. However, upon contacting these patients, they denied ever having visited the Centre on 03.05.2023, despite entries in the said regard, recorded in the OPD cards on the said date, recovered from the Centre.

2 (f). That in the Centre which was being illegally operated by the accused, a huge recovery of 6 kgs and 995 grams of intoxicant tablets of Buprenorphine, without any valid permit or licence was effected.

2 (g). That prescription drugs were being dispensed directly from the Centre's counter without proper consultation with the doctor incharge, clearly indicating that the accused had been indulging in fraudulent and unethical practices under the guise of his profession.

2 (h). That after the completion of the investigation, sufficient material emerged regarding the active involvement of the accused in offences under the NDPS Act. In view of the serious allegations against the accused, the material collected by the investigating agency and the law laid down by Hon'ble the Supreme Court in ***Criminal Appeal No.37 of 2023 titled as 'State through CBI Vs. T. Gangi Reddy @ Yerra Gangi Reddy' decided on 16.01.2023***, the default bail granted by the learned Trial Court to the accused, in a tearing hurry, deserved to be cancelled moreso, when it was a matter of record that an application praying for extension of time for completion of investigation under Section 36A(4) of the NDPS Act had already been filed by the learned Public Prosecutor on 31.10.2023, before the learned Trial Court concerned; furthermore, the said request for extension of time under Section 36A(4) of the NDPS Act was filed before the expiry of the statutory period of 180 days, and also before the application was moved by the accused under Section 167(2) of the Cr.P.C., before the learned Trial Court.

2 (i). That it had been categorically pointed out and brought to the notice of the learned Trial Court by the learned Public Prosecutor in the report under Section 36A(4) of the NDPS Act, that the investigation was incomplete as the FSL report was still awaited; and that reminders had also been sent to the FSL Madhuban to send the report at the earliest. Despite earnest efforts made by the investigating agency to collect the FSL report as well as ample cogent reasons stated by the learned Public Prosecutor in his report under Section 36A(4) of the NDPS Act, the learned Trial Court had erroneously dismissed the

application for extension of time to complete investigation vide the impugned order itself.

2 (j). That the report from the FSL, which was received subsequently on 06.12.2023, confirmed the presence of narcotic substances, which had been illegally stored and were being dispensed in the Centre.

2 (k). Furthermore, while concluding his submissions, learned State counsel also pointed to certain erroneous observations made by the learned Trial Court in the impugned order. He asserted that the observations were contrary to the material on record; in addition, the learned Trial Court proceeded to decide the application under Section 167(2) of the Cr.P.C. without first addressing the prayer for extension of time for presenting challan, despite being informed that the accused was running an illegal Centre and a huge recovery of contraband had been effected coupled with the fact that numerous reminders had been sent to FSL Madhuban for sending the FSL Reports at the earliest.

2 (l). Learned State counsel, thus, asserted that in view of the above and coupled with the accused not having approached the learned Trial Court with clean hands and apparently having played a fraud upon both this Court as well as the learned Trial Court, the default bail granted to the accused deserved to be cancelled; it was evident that the accused had blatantly flouted the law and the rules, especially in the context of the prevailing drug menace in the region, leading to many lives being ruined.

2 (m). At last a prayer was, thus, made by the learned State counsel that the default bail granted to the accused vide the impugned

order be cancelled on merits and in the light of the gravity of the offences committed by the accused.

3. **In response to the submissions made by learned State counsel, learned counsel for the petitioner-accused has made the following submissions and also filed reply along with Annexures R-1 to R-8, in CRM-M-2775-2024:-**

3 (a). That the accused had not concealed anything from this Hon'ble Court as his right to default bail under Section 167(2) of the Cr.P.C. had arisen subsequent to the filing of petition-CRM-M-41613-2023. Since the investigation in the instant case remained incomplete even after the expiry of 180 days, an indefeasible right under Section 167(2) of the Cr.P.C. had accrued in favour of the accused in exercise of which he had filed his application for default bail before the learned Trial Court on 31.10.2023.

3 (b). That the alleged raid was conducted by the investigating agency at the Centre of the accused on 03.05.2023 where he practices as a Psychiatrist. Therefore, the period from 03.05.2023, would have to be considered as his deemed arrest. Accordingly, 180 days' period would have commenced from 03.05.2023 and not from 05.05.2023. Consequently, the indefeasible statutory right to default bail had accrued to the accused on 31.10.2023; hence, he was rightfully granted default bail by the learned Trial Court in accordance with the provisions of law, moreso when it was also a matter of record that the challan had not been presented till that date.

3 (c). That as per the prosecution version, the accused had been taken into police custody on 03.05.2023, however, on account of his ill-

health, he had to be kept in the hospital and could only be released on 04.05.2023. The non-production of the accused before a competent Court beyond 24 hours period violated his fundamental rights as guaranteed under Articles 21 and 22 of the Constitution of India.

3 (d). That there were no malafides on the part of the accused, if he failed to mention the pendency of petition i.e. CRM-M-41613-2023, while filing his application under Section 167(2) of the Cr.P.C. before the learned Trial Court since it was an inadvertent error. Additionally, since the petition filed before this Court was for regular bail under Section 439 of the Cr.P.C. and the application filed before the learned Trial Court was for default bail under Section 167(2) of the Cr.P.C., the legal issues involved in both the petitions were different. Therefore, there was no intentional concealment by the accused.

3 (e). That while emphasizing and highlighting the underlying jurisprudence of default bail, it was contended that it is not to be granted based on merits of the case but because of the lapse on the part of the investigating agency to complete the investigation within the statutory time period. Since default bail was not granted to the accused based on merits of the case, much less the allegations levelled against him, it could not be equated to 'Bail' under Chapter XXXIII of the Cr.P.C. It would be equally impermissible to cancel default bail granted to an accused, on merits of the case, based on material collected during investigation and included in the charge sheet, filed subsequently.

3 (f). That the default bail once granted, could only be cancelled in exceptional circumstances and only on grounds of either violation of bail conditions or misuse of the concession of bail. However, the State

had failed to demonstrate any violation of the bail conditions or misuse thereof, by the accused.

3 (g). That in the circumstances, petition i.e. CRM-M-2775-2024 filed by the State seeking cancellation of default bail was meritless and deserved to be dismissed. In support, learned counsel has placed reliance upon *M. Ravindran Vs. Directorate of Revenue Intelligence : (2021) 2 SCC 485 and Udaymohanlal Acharya Vs. State of Maharashtra : (2001) 5 SCC 453*.

Rebuttal by the State

4. In response to the assertions made by learned counsel for the accused, the State has vehemently rebutted the submissions by contending as follows:-

4 (a). That since the FIR was registered only on 04.05.2023, the accused could not have been arrested prior to that date. Additionally, it was a matter of record that on 03.05.2023, the accused took ill and was admitted to a hospital, from where he was discharged only on 04.05.2023, and it was then, when he was formally arrested. Subsequently, the accused was produced before the Illaqa Magistrate on 05.05.2023 and remanded to custody. Thus, the period of 180 days would have commenced only with effect from 05.05.2023 and the right for being enlarged on default bail would have accrued to the accused, only on the 181st day which in the case would be 01.11.2023.

4 (b). That since the application for default bail was filed prior to the expiry of the statutory period of 180 days, the learned Trial Court erred in entertaining the same. Despite repeated requests made by the

learned Public Prosecutor, the accused was wrongly granted the concession of default bail in haste. The learned Public Prosecutor had filed an application/Report under Section 36A(4) of the NDPS Act for extension of time for investigation before the expiry of 180 days statutory period as the FSL report had not been received. Reliance has been placed on Annexure P-2 annexed with CRM-M-2775-2024, which is the report under Section 36A(4) of the NDPS Act filed by the learned Public Prosecutor. However, the learned Trial Court concerned chose to disregard the vehement prayer for extension of time and erroneously observed that no cogent reason had been provided by the prosecution regarding the steps taken to obtain FSL report, even though the factum of repeated reminders having been sent to the FSL to expedite and send its report had been brought to the notice of the learned Trial Court. However, for reasons very strange, it failed to persuade the learned Trial Court, which without examining the material produced before it, proceeded to erroneously grant default bail to the accused. It was evident that due diligence had been exercised by the prosecution while seeking extension of the investigation period as per the provisions of the NDPS Act, however, the learned Trial Court not only disregarded the statutory provisions but also the gravity of the matter at hand.

4 (c). That the manner in which the prayer of the learned Public Prosecutor for extension of time for investigation under Section 36A(4) of the NDPS Act, had been rejected by the learned Trial Court, was extremely strange as on the one hand, the learned Trial Court itself kept the application moved by the learned Public Prosecutor pending,

however, in the same breath in the impugned order had observed as under:-

“.....However, it is undisputed that the period for presentation of challan has not been extended till date by the Court and both the applications i.e. the application under Section-167 (2) of Cr.P.C. as well as the application for extension of time for presentation of challan have got to be decided simultaneously.....”

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

6. Before proceeding further, it would be relevant to give a run up to the sequence of events leading to the filing of both the abovementioned petitions.

7. FIR No.234 dated 04.05.2023 under Sections 420, 465, 468 of the IPC and Sections 22 and 32 of the NDPS Act was lodged against the accused at Police Station Pinjore, District Panchkula which has been annexed as Annexure P-1 with CRM-M-41613-2023, and is reproduced as under:-

“Sir, the copied text is as under: To SHO, Pinjore Panchkula Subject: Regarding to lodge an FIR under various sections of IPC and NDPS Act against Dr. Vinit Yadav and others. It is submitted that on 03.05.2023 a team comprising of Mrs. Varsha Khangwal, ADC, Panchkula, Dr. Mukta Kumar (CMO, Panchkula), Dr. Sneh Singh (Dy. CMO, Panchkula), Dr. M.P Sharma (Psychiatrist), Mrs. Ankita (P.S.W, Panchkula) Parveen Kumar, (Drugs Control Officer, Panchkula) visited M/s Marranwala Psychiatry and Drug Dependence Treatment Hospital, Near Petrol Pump, Pinjore Baddi Road, Marranwala, Panchkula for surprise inspection. On spot Dr. Vinit Yadav, MD, (Psychiatry), owner of the hospital along with his staff were found present. After disclosing the identity and purpose of visit to him, the team asked him to produce the license and registration of the centre as De-

Addiction Centre. Dr. Vinit Yadav disclosed that he is registered from the Indian Medical Council vide certificate number.-16-21642 MCI/09-34934 dated 19.06.2009. He also disclosed that he is having his centre registered under Narcotic Drugs and Psychotropic Substances Act 1985 (61 of 1985) vide registration number/License No.-Hry.SJE-2019/17438 dated 12.09.2019 valid upto 11.09.2022 further not renewed another license under Establishment of Psychiatrist Hospital/Nursing Homes having number:-SMHA/2019/1526 dated 20.06.2019 valid upto 19.06.2024. During inspection OPD/IPD registers, files of patient were examined by the team. Then the team interacted with many patients telephonically who had supposedly visited the centre and taken treatment on 03.05.2023, as informed by Dr. Vinit Yadav. These patients were 1. Sh. Pargat Singh Patient number-5795, (M.no-8968719673) 2. Sh. Bhag Singh Patient number-1825, (M.no-9872239062) 3. Sh. Paramjeet Singh Patient number-4034, (M.no- 9418143347) 4. Sh. Rakesh Sharma, Patient number-5108 (M.no-7876342044) 5. Sh. Karam Singh Patient number-5117 (m.no-7590031792) 6. Sh. Shivam Sharma Patient number-5695, (m.no. 6230501034) 7. Sh. Gurdarshan Singh Patient number-3669, (m.no-9779721768) 8. Sh. Sikander Ali, Patient number-1689, (m.no-8219306096) 9. Sh. Prithvi, Patient number-1640 (m.no-7082386486) 10. Sh. Daljeet Patient number- 2332, (m.no-7807212485). Out of these patients, Rakesh Sharma's mother picked the call and gave number of Sh. Rakesh Sharma. She denied having any knowledge of his taking any treatment from the Marranwala De-addiction Centre. The number of Rakesh Sharma was found switched off. All the remaining patients denied visiting the De-Addiction centre on 03.05.2023 but their entries were found in the OPD files. Also these patients claimed that the doses consumed by them were much lower than that prescribed in the OPD files. During the inspection, interviews of patient named Sh. Prince Masih, Sh. Sachidanand and Sh. Malkit Singh was done. During these interactions, it was noticed that there was gross mismatch between the doses of medicine (Buprenorphine) prescribed and that being dispensed. Five persons namely Sh. Ram Singh, Sh. Abdul, Sh. Prince Masih, Sanjeev Kumar and Sh. Mukesh disclosed that they used to come on 1" of every month and purchase three strips of medicines. As per the statement of the OPD patient present at the moment, Buprenorphine was being dispensed by Jasneet Narinder who were ward attendants. It was also reported by patients that during the treatment period the drugs were being dispensed directly from the dispensing counter, even without personal consultation with the doctor in-charge of the centre. It was also noticed that no security guards were

present at the centre the staff nurses were not trained as per the guidelines. As informed by Dr. Vinit Yadav there has been no indoor admissions from January 2023 to till date. One patient Sh. Mulkhraj who was present at the centre reported that he has been dispensed Bupernorphine on 03.05.2023 however no record of the said patient was found in any register available at the centre. 33 original patient files were taken for verification of the record by the team, copies of these files have been taken by Dr Vinit Yadav. Handwritten statement has been taken on the spot of Dr. Vinit Yadav, Staff Nurse Anita, Amrita, Bhagwat Kalpana. The Centre is not having valid registration number under Haryana De-addiction Centres Rules 2010, Amended 2018 to run a De-Addiction centre. Moreover Dr. Vinit Yadav and his staff is doing fake entries in the patient files as disclosed by the patients present in the centre and also disclosed by the patients telephonically. Committee suspects that narcotic drug Buprenorphine is being misused and or diverted to some other places for misuse by the centre by making fake entries in the patient files and registers and this needs to be thoroughly investigated You are hereby requested to lodge an FIR against Dr. Vinit Yadav others who are involved in this malpractices/violations under various sections of IPC and others laws in force to ensure non-tampering and protection of the records, the centre may be sealed as per law. Enclosed:-1. Original Spot memo.3 pages 2. 33 original patient files (List enclosed). Enclosine 1 22 3. Original hand written statement of Dr. Vinit Yadav, Ms. Anita, Ms. Amrita, Ms. Kalpana, Ms. Bhagwati, Ms. Poonam, Mr. Jasneet Mr. Narinder. Encloser 3, 4, 9, 10, 11, 12, 13, 14, 15 4. Hand written statement of Patient Sanjeev Kumar. ENR 16,17 5. Copies of Registration certificates. ENR No 5,6,7,8 Dated:- 03.05.2023 SD SNEH SINGH 3/5/23 Dr. Sneh Singh Dy. Cmo, Panchkula

Police proceedings: Dated 03.05.2023 at around 5:30 p.m. I PSI received telephonic information through Station House Officer, Police Station that a team led by Mrs. Varsha Khagwal ADC Panchkula which by Dr. Mukta Kumar CMO Panchkula, Dr. Sneh Singh dy.cmo Panchkula, Dr. M.P. Sharma (psychiatrist), Mrs. Akita (pow) Panchkula and Praveen Kumar (Drug Control Panchkula) have reached for inspection Madhaval Psychiatric Hospital. On the basis of this information, I PSI along with ESI Ajit Singh 78 Panchkula, HGH Kuldeep 923 HGH Rajendra 913 HGH Rulda Ram 866 Panchkula reached at the spot where Dr. Sneh Singh dy CMO Panchkula presented before me a written complaint after their inspection at around 10:30 PM. From the contents of the said written complaint it is found that License No. hry.sye- 2019/17438 dt 12.09.2019 (vaild upto

11.09.2022] issued to Dr. Vinit Gupta's center under NDPS Act has since expired and as per the Notification No. S.O. 527 (c) dt 16.07.1996 specifying small quantity and commercial quantity issued by the Ministry of Finance, Department of Revenue, the Buprenorphine falls at Serial No. 169 and therefore, falls in the category of psychotropic substances under the NDPS Act. From the contents of the complaint and the notification issued by the Ministry of Finance, Department of Revenue, Notification No. S.O. 527 (c) dt 16.07.1996 specifying small quantity and commercial quantity at Serial No. 169 as well as the original report produced by Dr. Sneh Singh, 33 original patients file and original hand written statements of Dr. Vineet Yadav, Anita, Amrita, Kalpana, Bhagwati, Poonam Jashmeet, Narindra and handwritten patient Sanjeev Kumar, copy of registration certificate would reveal the commission of offence under Sections 22, 32-61-85 NDPS Act and 420, 465, 468 IPC. Accordingly, after reducing the same into writing, the same is being sent to the Police Station in Panchkula through HGH Kuldeep 923. After registration of the case, the number of the same be intimated. Special reports be prepared and be sent to the higher officials. The nodal officer under the NDPS Act has been informed to reach at the spot. I PSI am awaiting the arrival of Nodal Officer along with the team of the doctors.”

8. At the first instance, the accused approached this Court on 17.05.2023 for grant of regular bail under Section 439 of the Cr.P.C. in the FIR in question, vide CRM-M-25506-2023 titled as 'Vinit Yadav Vs. State of Haryana'. The said petition was dismissed as withdrawn vide order dated 01.06.2023, relevant portion of which reads as under:-

*“Present: Mr. Sangram Singh Saron, Advocate.
Mr. Chetan Sharma, DAG, Haryana.*

XXX XXX XXX

After arguing for some time, when this Court was not inclined to grant bail to the petitioner in view of the fact that the investigation was still pending, a prayer was made by learned counsel for the petitioner for withdrawal of the instant petition.

Dismissed as withdrawn.”

9. Thereafter, the accused filed a second petition under Section 439 of the Cr.P.C. vide CRM-M-30847-2023 on 16.06.2023, which was dismissed by this Court vide order dated 19.07.2023, the relevant portion of which reads as under:-

*“Present : Mr. Vikram Chaudhri, Sr. Advocate with
Mr. Parvez Chaudhary, Advocate and
Mr. Digvijay Singh, Advocate
for the petitioner.*

XXX XXX XXX

This is the second petition filed under Section 439 Cr.PC for release of the petitioner on bail in case FIR No.234 dated 04.05.2023 registered under Sections 420, 465, 468 IPC and Sections 22 and 32 NDPS Act at Police Station Pinjore, District Panchkula.

Learned Senior counsel for the petitioner has miserably failed to bring to the notice of this Court any material change in circumstances, which would warrant entertaining the instant petition. The previous petition was withdrawn as recently as .on 01.06.2023 by the learned counsel for the petitioner wherein the following order was passed:

“After arguing for sometime, when this Court was not inclined to grant bail to the petitioner in view of the fact that the investigation was still pending, a prayer was made by the learned counsel for the petitioner for withdrawal of the instant petition.

Dismissed as withdrawn.”

Hence, in the aforementioned facts and circumstances, more so, as also conceded by the learned Senior counsel for the petitioner that investigation in the FIR in question, is still underway, no ground is made out to entertain the present petition. Accordingly, the present petition stands dismissed.”

10. The dismissal of the second petition under Section 439 of the Cr.P.C. was then followed by filing of the instant petition i.e. CRM-M-41613-2023, essentially seeking default bail though it was captioned as a petition under Section 439 of the Cr.P.C. Hence, it would be crucial to reproduce both the prayer clause along with paragraphs 3 and 4 of the petition as they clearly reveal that the core issues presented for consideration before this Court squarely centred on the grant of default bail. Prayer clause and paragraphs 3 and 4 of CRM-M-41613-2023 are reproduced hereunder:-

“Prayer clause

3rd Petition under Section 439 read with Section 482 Cr.P.C. humbly praying that this Hon'ble Court may be pleased to direct the release of the petitioner on bail and/or interim bail in case arising out of FIR No. 234 dated 4.5.2023 registered under Sections 420, 465, 468 IPC and Sections 22 and 32 NDPS Act at Police Station Pinjore, District Panchkula keeping in view the fact that the petitioner is lying incarcerated for the last over 90 days without the filing of the challan apparently in the absence of any FSL report as well as while taking into consideration the ratio decidendi laid down by a Division Bench judgement of this Hon'ble Court in Inderjeet Singh @ Laddi vs. State of Punjab 2014 SCC Online P&H 24990.

Paragraphs 3 and 4

*3. That the instant petition is **confined, circumscribed and limited** to the following issues: -*

I. Whether in the absence of any Final report having being filed and apparently there being no FSL report, could the petitioner be kept behind the bars for a period exceeding 60 days and accordingly, would the petitioner be entitled to be released on default bail in consonance with Section 36A of the NDPS Act read with 167(2) Cr.P.C.?

II. Whether in view of the law laid down by a Division Bench of this Hon'ble Court in Inderjeet Singh @ Laddi vs. State of Punjab 2014 SCC Online P&H 24990, the petitioner deserves the concession of interim bail awaiting the FSL Report?

4. That with respect to the first issue, the following submissions may be noted:-

A. FOR THAT, the petitioner was arrested way back on 4.5.2023 in a case purportedly for offences under Sections 420, 465, 468 IPC as well as Sections 22 and 32 of the NDPS Act, 1985, however, despite a lapse of more than 60 days as on 5.7.2023, no FSL/Chemical Analysis Report has been filed and therefore, the petitioner ought to have been offered default bail in terms of 167(2) Cr.P.C. on the expiry of the statutory period.

B. FOR THAT, moreover, no offence under the NDPS Act is made out against the petitioner. Since the FSL report has not been obtained within the outer limit prescribed under Section 36A(4) of the NDPS Act and hence even if the chargesheet had been filed in the absence of such a report, the same would have been incomplete and hence the petitioner was fully entitled to be enlarged on statutory bail.

C. FOR THAT, the indefeasible right accruing to the petitioner for default/compulsory bail in terms of Section 36A (4) of the NDPS Act r/w 167(2) of Cr.P.C. is an integral part to the fundamental right of personal liberty under Article 21 of the Constitution of India and cannot be brushed away by the mere filing of an incomplete chargesheet in terms of Section 173 of Cr.P.C. for offences under NDPS Act.

D. FOR THAT, the FSL/Examiner report is an indispensable part of the investigation process in offences under the NDPS Act.

E. FOR THAT, under the stringent law provisions of the NDPS Act, the FSL/Examiner report is a crucial and essential element for the Prosecution to inculcate the accused to prove that the article seized/recovered from him is indeed a substance/contraband/psychotropic drug which comes under the realm or offences under the NDPS Act and ispo facto without same it would not be possible to determine that the article seized Firstly, comes under the domain of NDPS offences and Secondly, to determine under which category of quantity it will fall. The Hon'ble High Court of Bombay in Sagar Parshuram vs State of Maharashtra, Bail Application (ST) No 4761/2020, observed that "It may not be overlooked that the chemical Analyzer's report is an essential integral and inherent part of the investigation under the NDPS Act and lay the foundation of accused's culpability without which magistrate is not able to form an opinion and take cognizance of the accused involved in the commission of

offence under the Act". Furthermore, a plethora of judgments have been rendered on the same point of law. (Jagvinder Singh vs State of Haryana, CRM no. 361 of 2021; Ajit Singh @ Jeeta & Anr. Vs State of Punjab, CRR No 4659 of 2015; Rohtash @ Raju vs State of Haryana CRR-933 of 2022).

F. FOR THAT, Standing Instructions 1/88 and 1/89 were issued by the Narcotics Control Bureau (NCB) and the Department of Revenue Intelligence respectively. As per the aforesaid Standing Instructions issued by the Narcotics Control Bureau (NCB), which have been held to be a 'requirement of law' as per the dictum of the Hon'ble Supreme Court in Union of India v Balmukund Rai, (2008) 12 SCC 161 (Coram 3JJ). The manner of drawing a sample of narcotics has been laid down in Standing Order 1/88 dated 15.03.1988 issued by the Narcotics Control Bureau.

G. FOR THAT, the Hon'ble High Court of Rajasthan in Ramchandra v. State of Rajasthan, S.B. Criminal Misc. Second Bail Application No.3122/2021 held that the sample drawn on the spot in terms of Section 55 of the NDPS Act which is sent for FSL as per the abovementioned standing instructions and representative samples drawn before the Magistrate in terms of 52A of NDPS Act for the purpose of primary evidence in the trial are distinct and the said question of law was not considered by the Hon'ble Supreme Court in Union of India v. Mohanlal, (2016) 3 SCC 379. Withal to above, various Hon'ble High Courts have granted bail for the non-compliance of the abovementioned standing instructions, (High Court of Rajasthan in Om Prakash Bishnoi v. Union of India, S.B. CrI. Misc. No. 7553/2019 Netram v. State of Rajasthan 2014(1) CrI.R.(Raj) 163).

H. FOR THAT, recovery having been made by the Drug Inspector as opposed to the authorized officer under the NDPS Act, however, the petitioner is aggrieved by the non-compliance of the mandate of Section 167(2) Cr.P.C. which accrues to the petitioner an indefeasible right to be granted bail without any need of filing even a formal application and it being the obligation of the concerned court to offer him bail on the expiry of the statutory period. Since neither any offence under the NDPS Act is attracted qua the petitioner nor the CFSI report has been procured by the investigating agency, the petitioner deserved to be released on default bail which was his indefeasible right."

11. On 01.09.2023, when CRM-M-41613-2023 was taken up for hearing for the first time by this Court, arguments were advanced by the learned counsel for the accused to the effect that he had become eligible for being granted the concession of default bail as challan had not been presented by the police, even after the expiry of the prescribed statutory period of 60 days for offences under Section 420, 465 and 468 of the IPC. In order to satisfy this Court qua his aforestated submissions, as to how the accused was eligible for being granted default bail, an adjournment was sought by the learned counsel for the accused and the case was then adjourned on his request. On 14.11.2023, when the case came up for hearing once again before this Court, learned counsel appearing for the accused made a submission that the instant petition had been rendered infructuous as the accused had been enlarged on default bail by the learned Trial Court vide order dated 10.11.2023 i.e. during the pendency of the instant petition. On the said date, the following order was passed by this Court and a report was also called from the learned Trial Court along with complete Court records:-

*“Present: Mr. Kunal Sharma, Advocate for the petitioner.
Ms. Trishanjali Sharma, Dy. Advocate General,
Haryana for the respondent/State.*

Learned counsel for the petitioner has informed the Court that the petitioner has been extended the concession of default bail by the learned trial Court vide order dated 10.11.2023, during the pendency of the instant petition.

Registrar (Vigilance) is directed to call for the complete record of the instant case along with the report from the trial Court concerned, forthwith.

Adjourned to 15.11.2023.

To be taken up at 10:00 a.m.”

12. On 15.11.2023, i.e. the next date of hearing, it came to the fore from a perusal of the learned Trial Court records that the pendency of the instant petition had been withheld by the accused from the learned Trial Court at the time of filing application under Section 167(2) of the Cr.P.C.; in the circumstances, a show cause notice was issued to the accused as to why the bail granted to him vide order dated 10.11.2023, be not cancelled, and the following order was passed:-

*“Present: Mr. Raktim Gogoi, Mr. Keshavam Chaudhri and
Mr. Kunal Sharma, Advocates for the petitioner.*

*Ms. Trishanjali Sharma, Dy. Advocate General,
Haryana for the respondent/State.*

XXX XXX XXX

In compliance of the order dated 14.11.2023, Registrar (Vigilance) has produced the report of the trial Court along with the complete record of the case. The record has been perused by this Court.

At this stage, learned counsel appearing for the petitioner submits that the instant petition has been rendered infructuous since the petitioner has been extended the concession of default bail under Section 167(2) Cr.P.C. A prayer has, therefore, been made for dismissal of the instant petition as having been rendered infructuous.

Insofar as prayer for grant of bail in terms of averments made in the instant petition is concerned, the same has been rendered infructuous for the present, as the petitioner has been granted the concession of default bail by the Court below vide order dated 10.11.2023.

A perusal of the record received from the trial Court in compliance of order dated 14.11.2023, as also the report of the trial Court, reveals inter alia the following:

(i) The application for default bail under Section 167(2) Cr.P.C. filed before the trial Court on 31.10.2023 does not refer to, or contain any averments whatsoever regarding the pendency of bail petitions before this Court or before Hon’ble the Supreme Court of India. However, in the affidavit of Inderjit Yadav filed before the trial Court

dated 31.10.2023 as Parokar (father of the petitioner – Vinay Yadav) the following averments have been made:

“That no such or similar application is pending before the Court of Session or any other Court at the time of filing of the application. Neither such application has been filed earlier in this Hon’ble Court or in the Hon’ble Supreme Court of India.”

Notably, the affidavit is conspicuously silent about the status of petitions filed under Section 439 Cr.P.C. before this Court including the present one, which is in contravention of the directions issued by this Court vide order dated 22.07.2021 passed in ‘Vijay Kumar @ Vijay vs. State of Punjab’ CRM-M No.21526 of 2021.

This Court in Vijay Kumar’s case (supra) had issued the following directions to the courts in the States of Punjab, Haryana and UT, in view of the fact that it had been coming to notice that during the pendency of petitions under Section 439 Cr.P.C. before this Court, some unscrupulous accused had been clandestinely approaching the trial Court seeking similar relief by concealing the factum of the pendency of petitions under Section 439 Cr.P.C. and/or by misrepresenting facts:

“1. That in each and every case when an application for bail is made before the Courts below, under any of the provisions of the Code of Criminal Procedure, it shall be mandatory to mention in the application as to whether such or similar application for bail under any of the provisions of Code of Criminal Procedure has or has not been made before any Superior Court, and if at all, a Superior Court has been approached for similar relief, the result thereof.

2. An application, which does not contain the aforementioned information shall not be accepted/entertained and would be returned for resubmission with the necessary information.

3. It needs to be also clarified that the Public Prosecutors/ prosecuting agency shall be duty bound to apprise the Court concerned(before whom the bail application has been moved), after collecting the necessary information from the investigating officers with respect to the filing of any application/petition before any Court, seeking concession of bail under the provisions of Code of Criminal Procedure and the result thereof.

4. In case of any lapse/default on the part of the investigating agency/prosecution in the said regard, it would be construed to be a fraud played upon the Court,

which could invite departmental as well as penal action against the erring parties/officials, as the case may be.”

(ii) This omission assumes significance, especially considering the report of the trial Court, which explicitly notes that neither in the application filed for extension of time nor in the reply to the said application the factum of the pendency of the present petition was disclosed.

In this regard, it would be apposite to refer to the reply dated 03.11.2023 filed by the prosecution (which is part of the trial Court record received by this Court) wherein, a reference has been made not only to the earlier two petitions filed by the petitioner before this Court but also to the present petition, albeit wherein incorrectly it has been stated that the third petition filed by the petitioner had been dismissed.

(iii) It is also relevant to note that in order dated 10.11.2023, vide which the petitioner was granted the concession of default bail, the trial Court has made a reference that “other reports related to the case were obtained from the quarters concerned”, however, no such reports are forthcoming from the available records, and the order itself lacks specific details or references to these purported additional reports.

Let notice be issued to the petitioner – Vinit Yadav, as to why bail granted to him vide order dated 10.11.2023, be not cancelled. Let an affidavit be also filed by the Commissioner of Police, Panchkula explaining the stand of the State.

Adjourned to 01.12.2023.”

13. Thereafter, the case was taken up for hearing on 01.12.2023 whereupon the following order was passed:-

*“Present: Mr. Vikram Chaudhri, Senior Advocate with
Mr. Raktim Gogoi & Mr. Kunal Sharma,
Advocates for the petitioner.*

*Mr. Rahul Mohan, Sr. Dy. Advocate General,
Haryana and
Mr. Chetan Sharma, Dy. Advocate General,
Haryana with
SI Mann Singh, for the respondent/State.*

Learned senior counsel appearing on behalf of the petitioner has filed short affidavit of the petitioner, which is taken on record subject to all just exceptions.

Learned senior counsel for the petitioner inter alia contends that the reason why the petitioner applied for default bail before the learned trial Court was because the investigation in the present case was still incomplete, and thus, a right of default bail had accrued in his favour. It was only in exercise of this right that the petitioner had filed an application under Section 167(2) Cr.P.C. before the trial Court on expiry of 180 days on 31.10.2023. It has been further submitted that the application under Section 167(2) Cr.P.C. was moved before the learned trial Court at Panchkula at 11:00 a.m., whereinafter the Court directed the same to be filed with the Registry. It has been submitted that thereafter, the petitioner moved his application under Section 167(2) Cr.P.C. with the Registry of the trial Court at 2:00 p.m., which was then subsequently taken up by the Court concerned.

Learned senior counsel has submitted that there was no intentional concealment on behalf of the petitioner qua the pendency of the instant petition before this Court and the reason why there had been non compliance of the directions issued by this Court in 'Vijay Kumar @ Vijay vs. State of Punjab' CRM-M No.21526 of 2021, was because the Lawyers are unaware of the directions issued therein as the same were neither reported in any Law Journal nor any strict compliance of the directions passed in Vijay Kumar's case (supra) were being made in the subordinate Courts of Punjab, Haryana and UT Chandigarh.

Learned State counsel has filed reply by way of an affidavit of Sibash Kabiraj IPS, Commissioner of Police, Panchkula, which is taken on record subject to all just exceptions and a copy thereof supplied to learned senior counsel opposite.

While disputing the submissions made by the learned senior counsel for the petitioner, learned State counsel has submitted that it is a matter of record that the investigation in the case was still incomplete as FSL report was still awaited. It was in this background, the Public Prosecutor had moved an application under Section 36A(4) of the NDPS Act on 31.10.2023, i.e. before the expiry of 180 days, seeking extension of time to file the challan. He has submitted that it was a matter of record that the application as mandated under Section 36A(4) of the NDPS Act had been moved by the Public Prosecutor seeking extension of time, prior to the application filed under Section 167(2) Cr.P.C. by the petitioner. It has been

CRM-M-41613-2023 (O&M)
CRM-M-2775-2024 (O&M)

further submitted that even otherwise, the petitioner had been erroneously allowed to be released even before the order granting him default bail under Section 167(2) Cr.P.C. had been signed and uploaded on the website by the Court below.

Learned State counsel is directed to file a detailed reply on behalf of the Commissioner of Police, Panchkula/ Superintendent, Central Jail, Ambala, especially qua the procedure followed with respect to the verification of judicial orders passed by the Courts and also with regard to the procedure followed for the release of accused on bail.

The reply be positively filed before the next date of hearing with a copy in advance to the counsel opposite.

Adjourned to 12.12.2023.”

14. It needs to be pointed out that when the case came up for hearing again before this Court on 15.01.2024, the learned State counsel informed the Court that though a petition for cancellation of the default bail had been filed but due to some objections raised by the Registry, it had not been listed. On the said date, a Court query was also put to the learned State counsel as to whether or not the report from the FSL had been received, to which this Court was informed that the FSL report had been received on 06.12.2023, though it had been prepared on the 03.11.2023 by the FSL. Resultantly, this Court directed the Director, FSL, Madhuban to file an affidavit as to what transpired between 03.11.2023 and 06.12.2023 and the reason for the inordinate delay on the part of the FSL to despatch the said report. The said order is reproduced as under:-

*“Present: Mr. Vikram Chaudhri, Senior Advocate with
Mr. Raktim Gogoi, Mr. Kunal Sharma &
Mr. S. Vinod, Advocates for the petitioner.*

*Mr. Chetan Sharma, Dy. Advocate General,
Haryana for the respondent/State.*

Learned State counsel, on instructions, has informed the Court that though an application under Section 439(2) Cr.P.C. had been moved by the State, however, due to certain objections raised by the Registry of this Court, it could not be listed; the said objections have since been removed and there is every likelihood that the petition seeking cancellation of bail of the petitioner would be listed within this week.

On a pointed query put to the learned State counsel as to whether the FSL report had been received, he, on instructions, has informed the Court that the FSL report had since been received on 06.12.2023. On a further query put to the learned State counsel as to on what date the FSL report was prepared, he on instructions has submitted that it was prepared on 03.11.2023.

In the circumstances, the Director FSL is directed to file a detailed affidavit as to what transpired between 03.11.2023 and 06.12.2023, i.e. the date when the FSL report was received by the investigating agency, and as to why it took more than a month for the FSL report to be dispatched to the investigating agency; more so when it is not disputed that repeated reminders had been sent by the investigating agency to the FSL prior to 03.11.2023 to send the FSL report at the earliest and due to the non-receipt of the FSL report, the prosecution through the Public Prosecutor had moved the trial Court under Section 36(A)(4) of the NDPS Act on 30.10.2023 seeking extension of time to file challan.

The affidavit shall also detail the procedure followed by the Forensic Science Laboratory after the preparation of FSL report; by what mode is the intimation sent to the investigating agency qua the FSL report having been prepared. Since in the case in hand, the FSL report was prepared on 03.11.2023 and received after more than a month by the investigating agency, the affidavit shall detail the steps taken by the Laboratory to intimate the investigating agency about the report being ready.

The said affidavit shall also contain the details of all the FSL reports, which were prepared between 01.11.2023 and 07.12.2023 pertaining to cases under the NDPS Act; the dates when the FSL reports in those cases were prepared and when the intimation qua the same was sent to the investigating agencies concerned.

The affidavit shall also give reasons as to why in the case in hand, there was an inordinate delay in the dispatch of the FSL report to the investigating agency, since repeated reminders had been sent to the Laboratory prior to 03.11.2023.

The affidavit shall be positively filed on the next date of hearing. It is made clear that in case the affidavit is not filed, adverse inference shall be taken and the Director FSL shall come present in the Court with all the relevant information including the records pertaining to the FSL reports, of all cases registered under the NDPS Act, between 01.11.2023 and 07.12.2023.

Adjourned to 22.01.2024.”

15. On the next date of hearing i.e. 22.01.2024, affidavit dated 20.01.2024 was filed by Sh. OP Singh, IPS, Director of the Forensic Science Laboratory, Madhuban, Haryana in compliance of order dated 15.01.2024 which was taken on record subject to all just exceptions.

16. In the meanwhile, petition bearing No.CRM-M-2775-2024 filed by the State to challenge the order dated 10.11.2023, granting default bail to the accused, also came up for hearing before this Court on 18.01.2024.

17. Before proceeding further, it would also be pertinent to reproduce the relevant portion of the application filed by the accused under Section 167(2) of the Cr.P.C. as well as the affidavit of his father given before the learned Trial Court, as under:-

“APPLICATION UNDER SECTION 167(2) CR.P.C. FOR GRANT OF DEFAULT BAIL TO THE APPLICANT/ACCUSED DR. VINIT YADAV.

1. XXX XXX XXX

2. That the applicant was arrested on 4.5.2023 and was remanded to Police Custody on 5.5.2023 thereafter, to judicial custody.

CRM-M-41613-2023 (O&M)
CRM-M-2775-2024 (O&M)

3. That the applicant has spent more than 180 days in custody but no Charge-Sheet has been filed against him as per his knowledge. Also, no application seeking extension of time to file a Supplementary Challan has been filed in this Hon'ble Court as per his knowledge.

XXX XXX XXX
XXX XXX XXX

SHORT AFFIDAVIT OF INDERJEET YADAV AGED 64 YEARS SON OF RAMPAT YADAV RESIDENT OF HOUSE NO.1251/1, DAYANAND COLONY, GURGAON

I, the above named deponent, do hereby solemnly affirm and declare as under:-

- 1. That the above named deponent is the Parokar (father of the applicant) is filing the present application in this Hon'ble Court on behalf of the applicant. The present application is likely to succeed on the grounds taken in the same. The contents of the application may kindly be read as a part of the present affidavit.
- 2. That the accompanying application has been drafted by the counsel for the deponent on her instructions.
- 3. That the petition has been drafted by the counsel for the deponent on his instructions and the contents of the same have been over and explained to the deponent.
- 4. That no such or similar application is pending before the Court of Session or any other Court at the time of filing of the application. Neither such application has been filed earlier in this Hon'ble Court or in the Hon'ble Supreme Court of India.

XXX XXX XXX

VERIFICATION:-

Verified that the contents mentioned in para no.1 to 4 of the above affidavit are true and correct to my knowledge. No part of it is false and nothing material has been kept concealed therefrom.

XXX XXX XXX”

18. Upon a careful examination of the chronological sequence of events, it becomes palpably evident that the accused was persistently

moving petitions seeking bail without any material change in circumstances. The actions of the accused undeniably demonstrates a clear case of forum shopping, as evidenced by his simultaneous pursuit of default bail in both the learned Trial Court and this Court, while conveniently omitting any mention of the present petition before the learned Trial Court. In the affidavit of the father of the accused filed before the learned Trial Court along with his application under Section 167(2) of the Cr.P.C. (reproduced in para 17 of this order), the pendency of the present petition is *conspicuously missing*. It is evident that the accused strategically concealed the pendency of the instant petition aiming to secure release on default bail. Notably, the accused effectively disguised a petition for default bail as a regular bail before this Court. Such conduct reflects a calculated attempt to manipulate legal proceedings for personal advantage, which is both reprehensible and deserving of condemnation.

19. Hon'ble the Supreme Court has time and again strongly deprecated the practice of 'forum hunting' adopted by unscrupulous litigants and has termed it as an abuse of process of law. Such a practice does not have any sanction in law and brings the entire criminal justice system in disrepute. The Hon'ble Supreme Court has recently deprecated such practice in ***Criminal Appeal No.303 of 2024 titled as 'Kusha Duruka Vs. The State of Odisha' decided on 19.01.2024***. The so called "inadvertent error" in failing to disclose the pendency of the aforesaid third petition appears to be nothing but an "intentional inadvertent error", and is clearly indicative of the accused engaging in "forum

hunting”. It is imperative that the Courts do not turn a blind eye to such dubious tactics employed by unscrupulous litigants which undermines the integrity of the legal process.

20. Be that as it may, the primary question which has been raised for consideration before this Court is whether the default bail granted to the accused under Section 167(2) of the Cr.P.C. is liable to be cancelled or not.

21. Before proceeding further, it would be relevant to observe that learned counsel for the State has also challenged the legality of the impugned order rejecting the application filed by the prosecution under Section 36A(4) of the NDPS Act for extension of time to complete investigation. He has further raised questions qua the manner in which the learned Trial Court has gone about while rejecting the prayer of the learned Public Prosecutor for extension of time for investigation under Section 36A(4) of the NDPS Act, as on the one hand the learned Trial Court itself kept the application moved by the learned Public Prosecutor pending, however, in the same breath in the impugned order had observed as under:-

“.....However, it is undisputed that the period for presentation of challan has not been extended till date by the Court and both the applications i.e. the application under Section-167 (2) of Cr.P.C. as well as the application for extension of time for presentation of challan have got to be decided simultaneously.....”

22. No doubt, a perusal of the Report of the learned Public Prosecutor (Annexure P-2) reveals that not only due compliance of provisions under Section 36A(4) of the NDPS Act for seeking

extension of time to complete the investigation had been made by the prosecution but the said report/application had also been filed prior to the expiry of 180 days. Still further, the report/application does detail genuine reasons for seeking extension of time, while investigation qua other aspects of the case had been completed, however, despite best efforts of the investigating agency, FSL report had not been received, which was beyond the control of the investigating agency. This Court would refrain presently from commenting upon the manner in which the learned Trial Court has gone about while rejecting the prayer of the learned Public Prosecutor for extension of time for investigation under Section 36A(4) of the NDPS Act and granting default bail to the accused, though it definitely depicts a highly concerning state of affairs. However, since the State has not made any specific prayer in the petition to impugn the aforesaid rejection, this Court would not be inclined to entertain its oral prayer at this stage.

23. Adverting to the most pivotal issue which requires consideration of this Court is as to whether the default bail granted to the accused under Section 167(2) of the Cr.P.C. can be cancelled on merits, as has been prayed for by the State or a Court would be precluded from doing so, as has been argued by the learned counsel for the accused.

24. Hon'ble the Supreme Court in ***Criminal Appeal No.37 of 2023 titled as 'State through CBI Vs. T. Gangi Reddy @ Yerra Gangi Reddy'*** decided on 16.01.2023 has delineated the legal framework surrounding the cancellation of bail granted to an accused under

Section 167(2) of the Cr.P.C. Hon'ble the Supreme Court held that mere

filing of a charge sheet subsequent to the release of an accused on default bail would not automatically warrant cancellation of bail. However, if upon conclusion of the investigation, a strong case is made out indicating that the accused had committed a non-bailable offence, the bail so granted to him could be cancelled on special grounds, as provided under Sections 437(5) and 439(2) of the Cr.P.C., in addition to the other grounds such as tampering with evidence or witnesses or non-cooperation with the investigating agency or during the course of trial before the learned Trial Court. Furthermore, and most importantly Hon'ble the Supreme Court emphasized that there was no absolute bar on cancelling bail granted under Section 167(2) of the Cr.P.C., on merits. The importance of considering the specific circumstances of each case, particularly wherein an accused had been released on default bail due to the failure of the investigating agency to file a charge sheet within the prescribed time frame was also highlighted. The Apex Court further warned against allowing such a scenario to reward any negligence or even any deliberate delay on the part of the police/investigating agency, as it would undermine the integrity of the legal process. Hon'ble the Supreme Court still further underscored the powers of the Court to examine the merits of a case and cancel bail granted under Section 167(2) of the Cr.P.C., if the investigation revealed the involvement of an accused in serious offences. It cautioned against construing the provisions of Section 167(2) of the Cr.P.C. in a manner that would frustrate the dispensation of justice or disregard the gravity of offences allegedly committed by the accused. Ultimately, it was affirmed by the Apex Court that the Courts retained the power to

cancel default bail and evaluate the merits of a case, notwithstanding an accused having been released on default bail, prior to the submission of a charge sheet.

24 (a). The relevant observations made by Hon'ble the Supreme Court including the issue in question in ***T. Gangi Reddy @ Yerra Gangi Reddy's case (supra)***, are as follows:-

“10. From the above, the law, which emerges is that mere filing of the chargesheet subsequent to a person is released on default bail under Section 167(2) Cr.P.C. cannot be a ground to cancel the bail of a person, who is released on default bail. However, on filing of the chargesheet on conclusion of the investigation, if a strong case is made out and on merits, it is found that he has committed a non-bailable offence/crime, on the special reasons/grounds and considering Section 437(5) and Section 439(2) Cr.P.C, over and above other grounds on which the bail to a person, who is released on bail can be cancelled on merits.

11. Therefore, there is no absolute bar as observed and held by the High Court in the impugned judgment and order that once a person is released on default bail under Section 167(2) Cr.P.C., his bail cannot be cancelled on merits and his bail can be cancelled on other general grounds like tampering with the evidence/witnesses; not cooperating with the investigating agency and/or not cooperating with the concerned Trial Court etc.

12. As such, we are in complete agreement with the view taken by this Court in the aforesaid decisions. The submission on behalf of the respondent – original Accused No. 1 and the view taken by the High Court in the impugned judgment and order that once an accused is released on default bail under Section 167(2) Cr.P.C., his bail cannot be cancelled on merits is accepted, in that case, it will be giving a premium to the lethargic and/or negligence, may be in a given case of deliberate attempt on the part of the investigating agency not to file the chargesheet within the prescribed time period. In a given case, even if the accused has committed a very serious offence, may be under the NDPS or even committed murder(s), still however, he manages through a convenient investigating officer and he manages not to file the chargesheet within the prescribed time limit mentioned under Section 167(2) Cr.P.C. and got released on default bail, it may lead to giving a premium to illegality and/or

dishonesty. As observed hereinabove, such release of the accused on default bail is not on merits at all, and is on the eventuality occurring in proviso to sub-section (2) of Section 167. However, subsequently on curing the defects and filing the chargesheet, though a strong case is made out that an accused has committed the very serious offence and non-bailable crime, the Court cannot cancel the bail and commit the person into custody and not to consider the gravity of the offence committed by the accused, the Courts will be loathe for such an interpretation, as that would frustrate the justice. The Courts have the power to cancel the bail and to examine the merits of the case in a case where the accused is released on default bail and released not on merits earlier. Such an interpretation would be in furtherance to the administration of justice.”

25. Considering the above observations of Hon'ble the Supreme Court in ***T. Gangi Reddy @ Yerra Gangi Reddy's case (supra)***, it is crucial to address the argument which has been raised by learned counsel for the accused that default bail cannot be subsequently cancelled on merits. The said argument would be untenable, as such a view could potentially incentivize sluggishness or negligence, or in certain cases, even deliberate inaction by the investigating agency in filing charge sheet within the prescribed statutory time frame. Even in cases of serious offences like those under the NDPS Act, accused could exploit procedural loopholes to obtain default bail by currying a favour with a derelict investigating officer or some other unscrupulous official, which without doubt would pose a threat to the criminal justice delivery system.

26. Adverting to the instant case, examination and perusal of the challan (Annexure R-2) reveals various irregularities which were discovered during an inspection on 03.05.2023 at the Centre of the

accused by a team led by Additional Deputy Commissioner, Panchkula. As per the accused himself, though his Centre was registered vide registration No.HRY.SJE-2019/17438 dated 12.09.2019, its licence to run a De-addiction centre had expired on 11.09.2022 and had not since been renewed. During the inspection, discrepancies were found in the records of patients, who purportedly received treatment on that day. Some patients denied visiting the Centre while others stated receiving lower doses than had been recorded in their OPD cards. One patient, Mulakh Raj, claimed to have received medication at the Centre on 03.05.2023 but there was no record maintained at the Centre qua the medicines dispensed/prescribed to him. Furthermore, during inspection many discrepancies came to light with respect to the prescribed and dispensed doses of drugs. The accused admitted that no indoor admissions had taken place since January, 2023. In addition, Buprenorphine was allegedly being dispensed without proper consultation, and a significant quantity (6 kgs and 995 grams of intoxicant tablets of Buprenorphine) was allegedly seized from the Centre, far exceeding the commercial threshold prescribed under the NDPS Act. FSL report which was received subsequent to the grant of default bail, confirmed the presence of Buprenorphine in the seized property, further prima facie implicating the accused in the crime in question.

27. The accused, a practicing psychiatrist, is allegedly involved in the illicit distribution of narcotics without possessing any valid licence. Such a transgression alleged against a medical practitioner would not only violate the settled medical ethics but also

would significantly contribute to proliferation of drug addiction and substance abuse in society, thereby posing substantial risks to both individual well being and the community at large. Furthermore, it is prima facie evident that the accused prioritized personal gain over patient welfare, demonstrating a blatant disregard for ethical standards. The consequences of a medical professional engaging in such illicit activities extends beyond the realm of patient care, as the easy availability of addictive narcotics would have perpetuated a cycle of dependency with profound and devastating effects on individuals, their families and the society as a whole.

28. It would not be out of place to observe that in the instant case it is evident the accused blatantly and cleverly concealed the pendency of CRM-M-41613-2023, before the learned Trial Court and made a false representation in the affidavit also, filed along with application under Section 167(2) of the Cr.P.C. which has been reproduced in earlier part of this order in paragraph No.17. It needs to be emphatically observed that suppression or concealment of material facts is impermissible whether as a litigant or as a technique of advocacy. Litigants must approach the Courts with honesty and integrity by presenting true and accurate facts in their petitions including their affidavits before Court of law. The Hon'ble Apex Court has time and again observed that whenever a person approaches a Court of law, he must approach it not only with clean hands but also with a clean mind, a clean heart and clean objectives, else it would amount to polluting the stream of justice.

29. In view of the law laid down by Hon'ble the Supreme Court in *T. Gangi Reddy @ Yerra Gangi Reddy's case (supra)*, the involvement of the accused, who is a psychiatrist, in serious offences under the NDPS Act, wherein allegedly large quantity of contraband was recovered from his Centre which he was illegally operating, the default bail under Section 167(2) of the Cr.P.C. granted to the accused is hereby cancelled. The accused is directed to surrender before the learned Trial Court, Panchkula on or before 07.03.2024, failing which the learned Trial Court shall take necessary steps to secure his presence. The Trial Court record be sent back.

30. 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.

31. Before parting, it is imperative to address a critical issue that has been repeatedly brought to the notice of this Court regarding the alarming delays in the preparation and despatch of Forensic Science Laboratory (FSL) Reports, which significantly affects criminal cases, particularly those under the NDPS Act. In the instant case, a surprising revelation has emerged regarding the delay in examining the case property. It was stated that although the case property was opened at FSL Madhuban on 29.08.2023, however, due to the breakdown of the relevant equipment and machines, the examination/analysis of the substances sent, could not be carried out promptly. Still further, it was averred that despite the instant case being labeled a "priority case" the case property **inadvertently got mixed with routine cases**, further contributing to the delay in processing. Furthermore, contrary to

previous claims, it was stated that the FSL report was finalized on 23.11.2023 and not on 03.11.2023, and **this discrepancy was due to an inadvertent error**. In this regard, it would be most pertinent to reproduce the relevant part of the affidavit so filed by Sh. O.P. Singh, IPS, Director of the Forensic Science Laboratory, Madhuban, Haryana as thus:-

“2. That the deponent submits and states that on receipt of the orders of this Hon'ble Court, the detailed report in this matter was sought from the concern reporting officer who is also Assistant Director-cum-Incharge of NDPS division. Copy of which is attached as Annexure R-1.

Correction of Date and Accountability: That the deponent submits and states that the FSL, report was actually prepared on 23.11.2023, not on 3.11.2023. The discrepancy in dates is done inadvertently.

Procedure followed by the Laboratory/Information to Field Unit: It is submitted that the standard process being followed for intimating field units/concerned Police Authority for collection of report is that concerned police units are intimated through WAN message by the concerned Laboratory Assistant about test report being ready for collection at the end of each month. However, in priority cases, the Field Units are informed immediate on test report being ready in such cases.

It is further submitted that after the preparation of test report the case file and the parcel(s) containing remains of the sample is handed over to the laboratory assistant. The laboratory assistant is re-stitch and reseal the parcel(s) with wax seal, having inscription of officer's identity who has examined the samples. Then entries are made in all the registers to maintain further record i.e. priority case register, Master case register, district wise case record register etc. Further to dispatch the report, report envelops is prepared also sealed with wax seals. After compilation and maintenance of record, case gets ready for collection. In the above mentioned procedure requires at least 10 days. Laboratory makes all effort to dispatch the intimation message to concerned unit within 10 to 15 days.

It is respectfully submitted that inadvertently the report of the present case was clubbed with the routine reports pending for collection by the Laboratory Assistant.

3. *Report Collection by the Investigation agency: That the deponent submits and states that the investigating agency collected the report on 05.12.2023. As per record the intimation for collection of the case report was not sent to the Field unit by the concerned Laboratory Assistant and the FSL report was collected in routine by the field unit on 05.12.2023.*

4. *Reasons for Delay: That the deponent submits and states that the delay, in examining case exhibits and dispatch thereof, occurred due to following reasons:*

(a) That in the Forensic Science Laboratory Madhuban, Karnal, the exhibits are barcoded by the investigative officers and deposited in Forensic Science Laboratory, Haryana through a software called "Trakea" designed to receive the crime exhibits in confidentiality and instantly the case is randomly allotted among the reporting officers of the concerned division automatically in the software. The present case was received in NDPS division of Forensic Science Laboratory, Madhuban on 10.05.2023. At that time the NDPS division had two reporting officers handling approximately 3700 NDPS cases. It is also pertinent to mention here that NDPS division is facing acute shortage of supporting scientific staff persons. Out of total 15 scientific sanctioned posts only 4 scientific persons are working, appointed through outsource policy. However, FSL Haryana is making all efforts to recruit the scientific person/staff. The recruitment of 53 posts of scientific persons is under process through Haryana Staff Selection Commission.

(b). As per Standards on Work Norms for Evidence Material Analysis issued by Directorate of Forensic Sciences Services, New Delhi on 15.01.2020, an officer is expected to examine and report 120-150 cases (10 normalized exhibits per case) per year. As per the BPR&B norms an officer is expected to examine and report 400 cases per year i.e. 33 cases per month. Against above mentioned norms, reporting officers are disposing off 1200 cases per year.

(c). The case exhibit in the present case was received on 10.05.2023 and was automatically allocated to the reporting officer Mrs. Karishma, Assistant Director (NDPS) and in pursuance of the first come first served policy, the exhibits was due to be examined after 18 months i.e. in the year 2025 as per current pendency and working capacity of the division.

(d). However, the examination is prioritized and taken for

examination out of turn on Hon'ble court's orders or priority letter of gazetted police authority. In this case, in response to the DO letter of Deputy Commissioner of Police, Panchkula, the case was taken for examination on priority on 29.08.2023 by the reporting officer. The examination was completed on 23.11.23 (Thursday). But inadvertently the date was written as 03.11.23. The case was handed over to concerned Laboratory Assistant as per usual practice. The intimation for collection of the case report was not sent immediately to the Field unit by the concerned Laboratory Assistant and the FSL report was collected in routine by the field unit on 05.12.23.

(e). However, depending on the nature and complexity of sample, exhibits like synthetic drugs with complicated composition, take more time for examination as per the requirement of improvising of the methods required in such type of cases.

(f). That during this period there was also a break down in advanced equipment facilities such as GCMS and UV Spectrophotometer which are required for the analysis/examination of said case.

5. Guidelines for Prioritization and Future Measures: That the deponent submits and states that the examination is prioritized and taken for examination out of turn on Hon'ble court's orders or priority letter of gazetted police authority. In this case, in response to the DO letter of Deputy Commissioner of Police, Panchkula, the case was taken for examination on priority on 29.08.2023 by the reporting officer. The examination was completed on 23.11.23 (Thursday). But inadvertently the date was written as 03.11.23. The case was handed over to concerned Laboratory Assistant as per usual practice. The intimation for collection of the case report was not sent to the Field unit by the concerned Laboratory Assistant and the FSL report was collected in routine by the field unit on 05.12.23. The case in hand was prioritized; however, the delay in dispatching the report was due to the reasons mentioned in Para no. 4 of this affidavit. Copy of notification No. 4/2/2022-2HC, Haryana Government, Home Department dated 14.09.2022 is annexed herewith as Annexure R-2."

32. In the present case, for instance, the chemical examination was completed only on 03.11.2023/23.11.2023, after a staggering delay

of nearly 06 months, despite the case being labeled as “priority case”. This delay is not an isolated incident but exemplifies the recurring problem of delayed FSL reports in Forensic Science Laboratories across both the States of Punjab, Haryana and U.T. of Chandigarh. It is crucial to acknowledge the pivotal role of FSL reports in criminal cases, particularly in cases under the NDPS Act, where the entire case of the prosecution hinges on the Chemical Examiner's Report. Such undue delays not only impede timely investigations but also prolong the conclusion of trials, infringing upon the fundamental right to speedy trial guaranteed under the Constitution of India. Merely being a passive observer to these recurrent issues would constitute a failure of the constitutional duty of this Court.

33. In the light of these concerns, this Court in exercise of its inherent powers under Section 482 of the Cr.P.C., deems it expedient to constitute a Committee of three members each to look into the functioning of the Forensic Science Laboratories across the States of Haryana and Punjab, specifically focusing on the inordinate delay and lapses that have been repeatedly coming to the notice of this Court during the hearing of multiple cases. The mandate of the Committee would include identification of underlying administrative and technical causes leading to delays in the preparation and submission of reports by the FSL. The Committee will recommend remedial measures to fast track and streamline the entire process, for timely preparation and submission of reports by the FSL.

34. Accordingly, the learned Advocate Generals of Haryana and Punjab are directed to submit (in sealed cover) names of 03 senior

CRM-M-41613-2023 (O&M)
CRM-M-2775-2024 (O&M)

IAS Officers and 03 senior IPS Officers within a period of 10 days from today, from amongst whom, above said Committee can be constituted. The Registry shall put up this case thereafter.

35. As a sequel to the above, CRM-M-41613-2023 is disposed of and CRM-M-2775-2024 is allowed in the above terms.

36. A copy of this order be sent to the quarters concerned for compliance.

29.02.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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