

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Criminal Revision No. 2558 of 2023 (O&M)
Date of Decision: 15.02.2024

Sandeep and another

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sandeep Kotla, Advocate
for the petitioners.

Mr. Gurmeet Singh, Assistant Advocate General, Haryana

HARKESH MANUJA, J. (ORAL)

The petitioners, by way of present revision petition, seek setting aside of the order dated 26.10.2023 passed by learned Additional Sessions Judge, Panipat, vide which an application filed by the petitioners under provisions of Section 167(2) Cr.P.C. for grant of regular bail stands declined.

[2] Brief facts of the case are that an FIR No. 342 dated 17.08.2023, under Section 15 of the NDPS Act at Police Station Israna, Panipat, was lodged against the petitioners wherein the allegations are broadly were to the effect that on 17.08.2023, the petitioners were found in possession of 23 kgs. Doda Post (poppy husk), which is **heavy intermediate quantity / non-commercial quantity**.

[3] The matter was investigated by the police and a report under Section 173 Cr.P.C. was presented before the trial Court on

13.10.2023. The said report was, however, not accompanied by the report of FSL.

[4] The period of 60 days, which is mandated for filing of challan in cases of recovery of non-commercial quantity, as per provisions of the NDPS Act read with Section 167 Cr.P.C. expired on 15.10.2023. Since the prosecution did not file the FSL report even by the said date, the petitioners moved an application dated 21.10.2023 under Section 167(2) Cr.P.C. for their release on bail before the Court of learned Additional Sessions Judge, Panipat on the ground that in the absence of report of FSL, the challan could not be said to be complete. The said application was considered by the trial Court but was dismissed vide order dated 26.10.2023, which has been assailed by way of filing the instant petition.

[5] Learned counsel for the petitioners submits that since there has been some conflict in judgments of this Court as regards the issue in hand, the matter has been referred to a Larger Bench vide order dated 16.09.2020 passed in *Julfkar Versus State of Haryana, 2020 (4) Law Herald 3188 [CRR-1125-2020]* to consider as to whether a challan filed without report of FSL would be an incomplete challan.

[5.1] Learned counsel for the petitioners, while referring to a judgment of this Court rendered in *State of Haryana Versus Dildar Ram @ Dari [CRM-M25600-2021]* has submitted that a Co-ordinate Bench of this Court while referring extensively to the case law on the subject has distinguished the judgment of the Supreme Court in case

“Narendra Kumar Amin Versus CBI”, reported as 2015(1) RCR (Criminal) 566, and also the Full Bench of this Court in case *“State of Haryana Versus Mehal Singh and others”* reported as 1978 PLR 480, on the ground that the same did not pertain to NDPS Act whereas a case under NDPS Act is on an entirely different footing than a case for other offences like IPC. It has been submitted that several Co-ordinate Benches have granted bail in view of the fact that the matter in hand has been referred to a Division Bench and is still pending.

[6] Learned State Counsel vehemently opposes the prayer made in the petition while submitting that since the mandate of Cr.P.C. is filing of challan within the stipulated period and since the challan had been filed within 60 days in the instant instance, no case for grant of bail is made out.

[7] I have heard learned counsel for the parties and gone through the paper-book as well as considered the rival submissions.

[8] Considering the fact that on account of conflicting judgments of this Court in the matter being subjudice before the Division Bench of this Court, while relying upon an order dated 29.11.2022 passed by Co-ordinate Bench in *CRR No. 1046 of 2022*, titled *“Mukesh Pal @ Makhan Versus State of Haryana”*, in the humble opinion of this Court, it may be appropriate to extend the concession of bail in favour of the petitioners in terms of Section 167 (2) of Cr.P.C., especially keeping in view that the petitioners are behind the bars since 17.08.2023, i.e. for the last about six months. Relevant para

Nos. 11 & 12 of the order dated 29.11.2022 is re-produced hereunder:-

“ 11. As noticed above, there are some conflicting judgments of this Court and the matter stands referred to a Division Bench and is still subjudice. In this context a reference may also be made to an order of Hon’ble Supreme Court passed on 9.11.2022 in Special Leave to Appeal (Crl.) Nos. 8164-8166/2021 titled as “Mohd. Arbaz and others Versus State of NCT of Delhi” which has been cited by learned counsel for petitioner to contend that the matter as regards the challan in NDPS cases being incomplete on account of absence of FSL report is also being adjudicated by Hon’ble Apex Court. The said order dated 9.11.2022 of Hon’ble Supreme Court in *Mohd. Arbaz’s case* reads as follows :-

“ In all these petitions the question that arises for consideration is relating to the completeness of the charge sheet in accordance with law if the same is filed without the CFSL Report. The matter would require detailed consideration. In the meantime, all parties to complete their pleadings. For the present, though the issue of default bail is to be considered in the petitions since it would require some time, without reference to that aspect of the matter, keeping in view that the petitioners in SLP(Crl.) Nos. 6876- 6877/2022, SLP (Crl.) No. 532/2022 and SLP (Crl.)No. 5190/2022 are still in custody, we order that they be released on bail subject to the conditions to be imposed by - 5 - CRR-1046-2022 (O&M) the concerned trial courts. While indicating so we also take note of the objection put forth by learned counsel for the respondent-State in SLP(Crl.) No.2666/2022 who objects to the grant of bail since the petitioner therein has not surrendered despite the bail being cancelled by the High Court. Though in a normal circumstances we would have taken a serious view of the matter, keeping in view the fact that the petitioner has approached this Court immediately

after cancellation of the bail and the petition has been tagged alongwith similar matters and could not be taken up, we allow the benefit of bail to the petitioner. Hence, the order cancelling bail which is impugned in SLP (Crl.) No. 2666/2022 shall remain stayed. List all these petitions on 17.01.2023.

12. In view of discussion made above, this Court deem appropriate to extend the concession of bail in terms of Section 167(2) Cr.P.C. to the petitioner while also keeping in view the fact that the petitioner has been behind bars since the last more than 9 months.”

[9] In view of the above, the present petition is accepted / **allowed**. The impugned order is accordingly set aside and the petitioners are ordered to be released on bail on their furnishing adequate bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

[10] It is, however, clarified that the prosecution would be at liberty to move for cancellation of bail/recall of this order in case the reference made to Larger Bench in **Julfkar’s case (supra)** is answered in favour of prosecution or in case, the matter pending in Hon’ble Supreme Court i.e. **Mohd. Arbaz’s case (supra)** is decided in favour of prosecution.

[11] Pending miscellaneous application(s), if any, shall also stand disposed off.

February 15, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No