

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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1. **2024:PHHC:022881**
CRR-2639-2023 (O&M)
Date of decision: February 16, 2024

ANITA
.....Petitioner
Versus

STATE OF PUNJAB
.....Respondent

2. **CRR-2644-2023 (O&M)**
MARJINA
.....Petitioner
Versus

STATE OF PUNJAB
.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Prabhjot Singh Walia, Advocate
for the petitioner.

Mr. Navdeep Singh, Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J.

1. This order shall dispose of the above-mentioned petitions as they arise out of same FIR i.e. FIR No.46 dated 03.04.2023 under Sections 20,61,85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Shambu, District Patiala. For the sake of convenience, the facts are being taken from CRR-2639-2023. The petitioner has filed the instant revision petition under Section 401 of the Code of Criminal Procedure, 1973 for seeking the grant of default bail under Section 167(2) read with Section 482 of the Cr.P.C. in case FIR mentioned above.

2. Learned counsel for the petitioner submits that in the instant case, the petitioners were arrested on 03.04.2023. Thereafter, though the

challan was presented before the expiry of the statutory period of 180 days, i.e. on 28.06.2023, however, it was presented without the report of the FSL. Though later, the report was received, but it was still not annexed or presented before the learned trial Court even after the expiry of 180 days. The investigation, thus, in the instant case remained incomplete, for which the petitioner stood entitled to the grant of default bail under Section 167(2) of the Cr.P.C. Resultantly, the petitioner moved an application for grant of default bail on 19.10.2023 before the learned trial Court. The learned trial Court erroneously dismissed his prayer for being released on default bail vide the impugned order. It has been further submitted that it was also a matter of record that no report/application under Section 36A(4) of the NDPS Act was ever filed by the Public Prosecutor before the learned trial Court for extension of time to complete investigation. Therefore, the supplementary challan which was presented along with the FSL Report on 26.10.2023 i.e. much after the petitioner had already moved an application for being enlarged on default bail, could not in any manner extinguish his right for being enlarged on default bail.

3. *Per contra*, learned State counsel, while opposing the prayer and submissions made by the counsel opposite, has submitted that the investigation in the instant case stood completed before the expiry of statutory period of 180 days and challan had also been presented, thus, no right, much less under Section 167(2) of the Cr.P.C., stood accrued in favour of the petitioner. It was further submitted that the FSL Report had also been received on 18.07.2023. However, on a

pointed query put to the learned State counsel as to whether the FSL Report after being received by the investigating agency on 18.07.2023, had been annexed with the challan or presented before the learned trial Court prior to the petitioner moving an application under Section 167(2) of the Cr.P.C. or furthermore, whether the learned Public Prosecutor had moved any application/report for seeking extension of time as mandated under Section 36A(4) of the NDPS Act, learned State counsel, on instructions, fairly replied in the negative, and that the FSL report had been annexed only with the supplementary challan, which was presented on 26.10.2023.

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

5. It is trite to assert that should an investigation remain incomplete beyond the prescribed statutory period of 180 days, a clear and unequivocal right under Section 167(2) of the Cr.P.C. would accrue in favour of an accused to be enlarged on default bail. Specifically concerning cases falling under the purview of the NDPS Act, the completion of an investigation hinges upon the report of the Chemical Examiner regarding the identity and nature of the substance(s) seized from an accused. Furthermore, reliance being solely placed on the sensory observations (such as smell or sight) by investigating agency cannot serve as conclusive evidence with respect to the involvement of an accused in offences under the NDPS Act. The absence of the FSL Report, which is pivotal in establishing the link of the accused to an

offence under the NDPS Act, would impede the Court from proceeding further or taking cognizance of the matter.

6. It would be relevant to refer to the observations by the Hon'ble Division Bench of this Court in ***Ajit Singh @ Jeeta and another versus State of Punjab, CRR No.4659 of 2015***, wherein this Court categorically held that a challan presented in cases under the NDPS Act, without it being accompanied with the FSL Report, would constitute an incomplete challan.

7. In the present case, concededly, the initial challan was presented on 28.06.2023, before the expiry of the statutory period of 180 days, however, it was *sans* the requisite FSL Report. Subsequently, although a supplementary challan along with the FSL Report was indeed submitted, however, it has remained uncontested that they were presented, well after the petitioner had already invoked the provisions of default bail under Section 167(2) of the Cr.P.C. Furthermore, it has also not been refuted by the learned State counsel on instructions, that any report/application as mandated under Section 36A(4) of the NDPS Act seeking extension of time from the learned trial Court, had not been moved by the learned Public Prosecutor.

8. In the light of the foregoing, it is indisputable that since the investigation remained incomplete at the time when the petitioner moved an application under Section 167(2) of the Cr.P.C. subsequent to the expiry of the stipulated period of 180 days, the petitioner became entitled to avail his indefeasible right to be released on default bail.

9. In the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the extraordinary concession of default

bail to the petitioner. Accordingly, the instant petition is allowed; the petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned.

10. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

11. Needless to add here, in case the petitioner is found misusing the concession of bail, the State would be at liberty to approach this Court to seek cancellation of bail to him.

12. Photocopy of this order be placed on the file of the connected case.

February 16, 2024
Jaspreet Kaur

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No