

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

**Criminal Revision No. 2790 of 2023 (O&M)
Date of Decision: 27.02.2024**

Jaskaran Singh alias Jassa

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Manvinder Sidhu, Advocate
for the petitioner.

Mr. Rajiv Sidhu, Deputy Advocate General, Haryana

HARKESH MANUJA, J. (ORAL)

CRM-51064-2023

Prayer in the present application moved on behalf of the applicant-petitioner, is for condonation of delay of 128 days in filing the present revision petition.

Notice of the application stood issued vide order dated 11.12.2023 passed by this Court; however, no reply has been filed.

For the reasons stated in the application, which make out sufficient cause, the same is **allowed** and the delay of 128 days in filing the revision petition is condoned.

MAIN CASE

The petitioner, by way of present revision petition, seeks setting aside the order dated 18.04.2023 passed by learned Additional District & Sessions Judge-II, Sirsa, vide which an application filed by the petitioner under provisions of Section 167(2) Cr.P.C. for grant of default /

regular bail stands declined.

[2] Brief facts of the case are that an FIR No. 454 dated 16.10.2022, under Section 15/61/85 of the NDPS Act at Police Station Sadar, Dabwali, was lodged against the petitioner wherein the allegations broadly were to the effect that on 16.10.2022, the petitioner alongwith co-accused Sukhpal Singh @ Sukha was found in conscious possession of 146 kgs. Doda Post (poppy husk) without any permit or license, which falls under the **commercial quantity**.

[3] The petitioner was arrested on 16.10.2022 and the statutory period of 180 days in filing the challan was to complete on 14.04.2023. However, the prosecution filed an application for extension of time to file challan alongwith the report of Forensic Science Laboratory on 11.04.2023, which was allowed vide order dated 17.04.2023 (Annexure P-3) passed by the learned Additional Sessions Judge, Sirsa and the prosecution was granted the extension period of 30 days for filing the FSL report.

[4] In the meanwhile, the petitioner moved an application for grant of default bail before the Court below under the provisions of Section 167(2) Cr.P.C. on 15.04.2023, i.e. after the expiry of statutory period of 180 days in filing the challan, but the same was dismissed on 18.04.2023 by the learned Additional District and Sessions Judge, Sirsa, with the observations that since the application for extension of time moved by the prosecution stands allowed vide order dated 17.04.2023 while granting 30 days time to file FSL report, the application for grant of default bail was not maintainable, hence the present revision petition,

assailing the same on the ground that the FSL report was filed before the Court on 15.09.2023, i.e. much after the expiry of the extension granted.

[5] Learned counsel for the petitioner 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 petitioner, 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] On the other hand, 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 180 days in the instant instance, no case for

grant of default 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 and 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 petitioner in terms of Section 167 (2) of Cr.P.C., especially keeping in view that the petitioner is behind the bars since 16.10.2022, i.e. for the last about one year and four 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 dated 18.04.2023 passed by the learned Additional District & Sessions Judge-II, Sirsa, is, accordingly, set aside and the petitioner is ordered to be released on bail on his 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 27, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

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