

CRR No.2889 of 2023

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2024:PHHC:015597

**223 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.2889 of 2023
Date of decision : 02.02.2024

Kayum

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Devneet Sangwan, Advocate
for the petitioner.

Mr. R.K. Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (ORAL)

Present revision petition is directed against the order dated 6th of December, 2023 passed by Additional Sessions Judge, Yamuna Nagar whereby the application filed under Section 167(2) Cr.P.C. seeking default bail stands dismissed on the ground that the incomplete report under Section 173 Cr.P.C. has been filed sans FSL report.

2. As per the contents of the FIR it was alleged as under :

“Today at 01.25 PM, then the Secret informer gave a secret information that Kayum son Nazar and his wife Maina wife Qayum are residents of Shadipur Colony whose house is near the board adjacent to Tamir Mecca Masjid. Both the husband and wife have been doing the work of selling heroin inside their house for a long time. Even today both of them are selling heroin at their home. If it is raided immediately, both Kayum and Maina can be arrested from their home with heroin intoxicant. That the information is confirmed and is of trustworthy person, the ASI

informed Shri Pramod Kumar HPS Deputy Superintendent of Police, Yamuna Nagar-II on the mobile number 8818000107 at 01.30 PM by calling from his personal mobile number 9991192865 and the ASI gave the notice 42 NDPS Separately prepared Constable Varyam Singh No. 936/YNR was sent to Mr. Pramod Kumar HPS Deputy Superintendent of Police, Yamuna Nagar for information at Yamuna Nagar at 01.35 PM and prepared to register the information of the informer. On duty female constable Shakshi no 1008 near Sadar Yamuna Nagar I2, / YNR was sent at time 01.40 PM and then ASI told the informers to join the raiding party to the coming people who all went away from the spot without telling their names and then I ASI and my companion officials reached at the spot told by the secret informer According to the secret informer, the vehicle reached the Madrasa street at 01.50 PM, where the informer stopped the vehicle and told the official that a board of Tamir Mecca Masjid was visible near it. The house belongs to Kayum son of Najar and Maina wife of Kayum and the informer got down from the official car at the same time. That I ASI told Kayum son Najar and Maina wife Kayyum's house outside the gate of the house stopped the vehicle of the government officials in the street, the gate of the house was open and a woman in the house, seeing the arrival of the police, ran away from the stairs near the gate through the roof and went to the house. On calling, there was no sound from inside the house, nor did anyone come to the main gate, then at 02.00 PM, I ASI called from his personal mobile number 9991192865 and Gazetted Officer Mr. Ankit Kumar, Haryana State Agricultural Marketing Board, Yamunanagar on his mobile. Bajariya phone number 9254443333 informed about coming on the spot. Mr. Ankit Kumar, Haryana State Agricultural Marketing Board, Yamunanagar, gave his consent to come on the spot after some time on the spot and then I ASI at 02.05 PM, Mr. Sanjeev Kumar, son of Mr. Gurdial Singh, resident of House No. 220-221, Vikas Nagar Police Station, Gandhi Nagar Yamuna Nagar MC Ward No. 12 Yamuna Nagar by calling on his mobile

number 9416454498 and told about the situation and informed him to come to the spot, which Sanjeev Kumar MC gave his consent to come to the spot and the name of the woman who was running away from the nearby people was found out. The name of that woman was Maina wife Kayum resident Shadipur Colony police station Sadar Yamuna Nagar and told the matter of the locality that these people have been selling drugs for a long time and harassing whoever complaints about them, so we do not want to get involved in the matter which all Accidentally left without giving his name and address. After getting the information Mr. Sanjeev Kumar and Mr. Gurmval Singh resident of house no. 220-221 Vikas Nagar police station Gandhi Nagar Yamuna Nagar MC ward no. 12 Yamuna Nagar came to the spot in his private car at 02.30 PM and at the same time Mr. Ankit Kumar Haryana State Agricultural Marketing Board Mr. Ankit Kumar, Haryana State Agricultural Marketing Board, Yamunanagar, reached the spot by riding in his private car, according to the method, I ASI searched, which apart from daily use goods, no drugs were recovered from house, I ASI and Mr. Ankit Kumar Haryana State Agriculture Marketing Board Yamunanagar ordered me ASI to search all the employees present on the spot or the existing Ward MC. According to the orders of Mr. Ankit Kumar Haryana State Agricultural Marketing Board, Yamunanagar, the ASI searched the clothes of all the employees who were present on the spot according to the method, which apart from the items of daily use, no intoxicants were recovered and the employees were prepared for the search signed and on the spot in the presence of gazetted officer and MC at the house of Kayum s/o Najar was searched on suspicion of possessing narcotics, which during the search, a foil plastic transparent kept inside a glass bowl kept on the slab made in the kitchen, containing narcotic powder, brown colored, which I ASI, based on his experience, found heroin. Identified in the form whose drug was prepared, on which the witnesses put their signatures and Mr. Ankit Kumar, Haryana State Agricultural

Marketing Board, Yamunanagar, attested the drug's identity and near the glass bowl kept on the slab made in the kitchen. Indian currency notes of Rs 9900/- kept in were recovered, for which a separate inventory was prepared, which was seized by the police as evidence, recovery memo was prepared, and a cot of currency notes was prepared separately and the cot was marked as JS. Everything was stamped with a stamp,, the witnesses put their signatures on recovery memo and the gazetted officer attested the recovery memo. I ASI weighed the heroin on the porch with a mobile fork kept in the car along with the foil, which was 312.70 grams, which was found to be foil to the heroin. Weighed out from the plastic which net weight of heroin was 311.07 grams or the weight of empty foil plastic was 1.63 grams which put the heroin in the same transparent foil and separately prepared a sealed packh and I put 3 stamps of my stamp JS on the seal pack cloth heroin. Mr. Ankit Kumar, Haryana State Agricultural Marketing Board, Yamunanagar, stamped with his AK's 1 stamp, and after preparing separate verandah glass bowl, sealed pack was stamped by I ASI with his own stamp JS, which was stamped by I ASI. After the experiment, handed over to ASI Ranbir Singh No. 129/YNR and Mr. Ankit Kumar, Haryana State Agricultural Marketing Board, Yamunanagar kept his stamp after the experiment, which was 335.95 grams after weighing sealed pack Heroin with double stamp and prepared the sample seal separately. The seal pack heroin double stamp was seized as proof, Fard was taken by the police, the above mentioned accused and the witness signed their respective signatures. According to the oral order of the Gazetted Officer, the accused Sanjeev Kumar MC has kept the key of the main gate of the above said house locked with him as a precaution, who was instructed to hand over the key to the accused on his arrival. The accused Kayum S/o Najar and Maina wife Qayum R/o Shadipur Colony Police Station Sadar Yamuna Nagar committed the offence by keeping 311.07 grams of heroin in their residential house under Section 21 (c) NDPS ACT.”

3. Counsel for the petitioner submits that the petitioner was arrested on 5th of June, 2023 and is in custody since then. Challan was presented on 02.12.2023 but without FSL report. He submits that the complete challan was to be filed within 180 days and in the absence thereof, petitioner is entitled to grant of default bail.

4. Per contra, State Counsel while opposing the bail plea has referred to the reply filed by way of affidavit of Kanwaljeet Singh, HPS, Deputy Superintendent of Police, Yamuna Nagar, dated 12.01.2024.

Operative part thereof reads as under :

“7- That it is further submitted that that a letter No. 72166, dt. 04-10-2023 was written by Superintendent of Police, Yamuna Nagar and requested Director, FSL, Madhuban (Karnal) to expedite the preparation of examination report in question, so that further necessary action in the matter could be taken. In response to the aforesaid letter, it has been intimated that "the said case is not ready. You will be informed when case is ready". The photocopy of letter dt. 05-10-2023 is enclosed herewith as Annexure R-1. As such best efforts have been made to collect the FSL Report, which has not so far been received.

8- That no other criminal case has been found registered against petitioner.

9- That in view of submissions made above, it is submitted that commercial quantity of contraband Heroin / smack, weighing 311.07 gram was recovered from the house of the petitioner. It has been held by Hon'ble Supreme Court held in case titled as "Narendra Kumar Amin Vs. CBI (2015) 3 SCC 417, that if charge-sheet filed and incorporated all the necessary details under section 173 (2) Cr.P.C. but the final report not accompanied by full set of documents, the same will not entitle the accused to bail under section 167 (2) Cr.P.C. As such the

present petition has got no force or merits and the same deserves to be dismissed.”

5. Thus the fact of investigation report being incomplete for want of FSL report is an admitted fact.

6. Learned counsel for the petitioner in the aforesaid circumstances relies upon order dated 02.12.2023 passed by Co-ordinate Bench in **CRR No.1600 of 2021** titled as **Rakesh Kumar @ Kaka Vs. State of Haryana** observing as under :-

9. On a combined reading of the above provisions outlined in Section 167 (2) of the Cr.P.C. and Section 36A(4) of the NDPS Act, it is evident that the legislature has accorded significant importance to the conclusion of investigation. The term ‘investigation’ inherently encompasses all proceedings conducted by the investigating agency after the registration of an FIR to gather pertinent material and evidence in aiding the Court to ascertain as to whether there has been any commission of an offence. In cases falling under the NDPS Act in particular, the investigation would be considered to be complete only subsequent to the opinion received from the Chemical Examiner regarding the nature of the substance recovered and submitted for analysis. Without receipt of any such opinion from the Chemical Examiner, the discernment of the nature of substance cannot be relied solely on sensory perceptions like sight and smell.

10. Hence, the FSL report or the Chemical Examiner’s report would be a pivotal document in prima facie proving the potential offences falling under the NDPS Act. In its absence, the investigation would not be deemed to have concluded. The failure to include the FSL report with the chargesheet would also incapacitate a Court from proceeding further to take cognizance or frame charges concerning the alleged offences. It would be

relevant to refer to the judgment of a Division Bench of this Court in Ajit Singh alias Jeeta's case (supra), wherein it has been underscored that a chargesheet filed without FSL would be deemed to be incomplete thereby entitling the accused to the grant of default bail."

7. In the light of aforesaid settled proposition of law, once it is an admitted case of the prosecution that the chargesheet though filed is without FSL report, the statutory period of 180 days as contemplated under Section 36A(4) of the NDPS Act stands expired, this Court finds that the trial Court ought not have rejected the claim of the petitioner for default bail under Section 167(2) Cr.P.C.

8 In view of above, present revision petition is allowed.

9. Petitioner is held to be entitled for default bail under Section 167(2) of the Cr.P.C. subject to his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.

- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cell phone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

February 02, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No