

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-975-2023
Reserved on: 01.04.2025
Pronounced on: 28.04.2025

Beero ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Navneet Singh, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
252	09.05.2022	City Thanesar	20(b)(ii)(C), 27A, 29 of NDPS Act

Criminal before Court	Case Sessions	CNR No.HRKU010090822022 Bail Application No.1843 of 2022 Date of order: 30.11.2022
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1. Aggrieved by the grant of default bail under Section 167(2) CrPC 1973 till the filing of FSL report instead of till the disposal of the trial, the accused had come up before this Court by filing the present Criminal Revision Petition.
2. Vide order dated 13.09.2023, Coordinate Bench of this Court had extended the interim bail for three months and after that turn of the case did not come. Thereafter, case was taken up on 20.03.2025 and this Court had extended the interim order which is continuing till date.
3. I have heard counsel for the parties and gone through the record and its analysis would lead to the following outcome.
4. Facts relevant to decide the present petition are being taken from the reply dated 03.07.2023 filed by the DySP, Kurukshetra. On 09.05.2022, when the police officials were patrolling at Kurukshetra to detect the narcotics substances, they received a secret

information that the petitioner along with Tarun Kumar, deals in Ganja. The informer also told them that now she had Ganja and if raid is conducted, they can be apprehended with contraband. Police found the information to be reliable and proceeded towards the spot after allegedly complying with the requirements of Section 42 of NDPS Act. The information was sent to the police station, based on which the current FIR was registered. In between the police recovered 11 kg Ganja from the petitioner's possession which was in the petitioner's bag and also 11 kg Ganja from possession of co-accused. After that police conducted investigation and arrested the petitioner.

5. The investigation continued however police report under Section 173 CrPC was not filed and as such petitioner filed an application for default bail under Section 167(2) CrPC, which was listed on 30.11.2022, on that date, the Additional Sessions Judge-cum-Judge Special Court Kurukshetra, allowed the default bail till filing of the FSL Report.

6. Petitioner's grievance is that a default bail cannot have any conditions attached to that and it cannot be for a limited duration.

7. State counsel opposes the above said grievance and submits that FSL report was not filed because of the massive workload and it was not intentionally. After analysing the arguments and counter arguments, there cannot be any doubt that bail orders have always conditions attached to it and even that is inferable from the statute book itself. Needless to say that bail is not absolute freedom but a temporary release subject to certain conditions. For illustration if a bail order is granted without even direction to an accused to join investigation or attend the trial or not to hamper with the investigation in case of non-compliance of such conditions, it might be difficult for the Court to cancel the bail. This Court does not want to deal with further in this matter for the reason that quantity involved was intermediate. The total Ganja recovered from the petitioner is 11 kg and the same quantity of 11 kg from co-accused. Since they were separately possessing Ganja as such prima facie for the purpose of bail there is no reason for this Court to take recovery as joint possession. Simply because the informer had told the police that both, petitioner and her accomplice were carrying ganja, would not mean that they were jointly carrying such contraband. The informer's role was limited only to supply information to the police and after that it is the evidence gathered at the spot. A perusal of the reply filed by the concerned DySP, explicitly mentioned that police had recovered 11 kg Ganja from the bag carried by the petitioner, which was intermediate quantity.

8. Perusal of the petition and the order reflects that petitioner filed application for bail u/s 167(2) CrPC instead of 439 CrPC, but keeping in view the facts of this case, instead of asking the petitioner to file fresh petition u/s 439 CrPC on the ground that quantity is intermediate, this Court proceed to consider this revision petition as regular bail petition u/s 439 CrPC.

9. Thus, considering the quantity involved, it was unjust for the trial Court to have granted interim bail for limited period, whereas rigorous of Section 37 did not apply to the present case because quantity was not commercial. Thus, it was highly unjust for the Special Judge to have imposed a condition on interim bail till filing of FSL Report, in a case involving intermediate quantity or when the restrictions under Section 37 of NDPS Act did not apply, as such on this ground alone, the impugned order dated 30.11.2022 is modified and set aside. The words mentioned in the order dated 30.11.2022 “till filing of FSL report”, are deleted from para 10 of the said order. As such, bail granted vide order dated 30.11.2022 is made absolute and be treated as granted till the disposal of the trial subject to the conditions as mentioned in the order dated 30.11.2022.

10. Petition is allowed with the aforesaid observations. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

28.04.2025

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Whether speaking/reasoned	:	Yes
Whether reportable	:	No