

119

CRR-1300-2021 (O&M)

DATE OF DECISION: 28.10.2021

BHIM SAIN

... Petitioner(s)

Versus

STATE OF HARYANA

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. V.B. Godara, Advocate for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner is seeking default bail in FIR No.602 dated 22.12.2020, under Section 20(b) of the NDPS Act, registered at Police Station City, Fatehabad.

Learned counsel for the petitioner contends that the challan had been filed in the instant case on 11.02.2021 without the FSL report, and therefore, he would be entitled to default bail in terms of Section 167(2) Cr.P.C. He has placed reliance on the judgments of the Division bench of this court in the case of **Ajit Singh @ Jeeta and another Vs. State of Punjab, CRR No.4659 of 2015** and **State of Haryana Vs. Dildar Ram @ Dari, CRM-M-25600-2021**, decided on 15.07.2021.

Learned State counsel upon instructions states that FSL report has not been filed till date. He, however, contends that challan filed without even FSL report would be a complete challan. In support of his submission, he has cited the judgments of the Supreme Court in the cases of **Narendra Kumar Amin Vs. CBI, 2015 (1) RCR (Criminal) 566** and **Abdul Azeez P.V. Vs. NIA, 2014 (3) ACR 3335**, Full

Bench of this court in **State of Haryana Vs. Mehal Singh and others, 1978, PLR 480**, and the judgments passed by the coordinate benches of this court in **Rahul Vs. State of Punjab, CRR No.1016-2020, decided on 21.12.2020**, **Azuka Vs. State of UT, Chandigarh, CRR-765-2020, decided on 13.03.2020**, **Shankar Vs. State of Haryana, CRM-M-44412-2019, decided on 20.12.2019** and **Akash Kumar @ Sunny Vs. State of Haryana, CRR No.1731-2019 decided on 16.10.2019**.

Heard.

The FIR was registered against the petitioner on 22.12.2020 on the allegations that 1kg 600 grams of 'ganja' was recovered from the petitioner. The challan is stated to have been filed on 11.02.2021. The FSL had not been filed along with the challan. The petitioner had sought bail from the Sessions court in terms of Section 167(2) Cr.P.C. but his application was dismissed on 11.10.2021. This court in the case of **State of Haryana Vs. Dildar Ram @ Dari (supra)** had held that filing of the challan without FSL report would not be regarded as a complete challan and, therefore, the accused would be entitled to default bail in terms of Section 167(2) Cr.P.C.

The specific question with regard to the significance of filing a challan under Section 173(2) Cr.P.C. without the FSL report in a case under the NDPS Act had been referred to a Division Bench of this court. The Division Bench of this court in the case of **Ajit Singh @ Jeeta and another Vs. State of Punjab (supra)** held that the report of the FSL with regard to the nature of the recovered substance would go to the root of the matter and, therefore, a challan filed without the FSL report with regard to the nature of the substance would be an incomplete challan and would not satisfy the requirement envisaged under Section 167(2) Cr.P.C. The accused, in such

circumstances, would be entitled to be released on default bail. The relevant extract of the judgment is reproduced hereunder:-

“We emphasize on the stringent aspect of the N.D.P.S. Act which would compellingly persuade us to take the aforesaid view. Without determining the nature and content of the contraband, it would be draconian to propel an accused into the throes of a trial. The liberty of an individual would constantly be imperiled at the hands of dubious officials of the police who may venture to falsely implicate a person.

It is for this reason that we would unhesitatingly conclude that the Chemical Examiner's report is an essential ; integral and inherent part of the investigation under the N.D.P.S. Act as it would lay the foundation of an accused's culpability without which a Magistrate would not be enabled to form an opinion and take cognizance of the accused's involvement in the commission of offence under the Act.”

The judgments of the Supreme court and Full bench of this court which are cited by the learned counsel for the State are distinguishable on facts from the instant case. The judgment of the Supreme court in the case of **Narendra Kumar Amin Vs. CBI** (supra) did not pertain to a case under the NDPS Act. In that case, complete set of documents had not been filed along with the challan and it was in such circumstances it was held that merely because these documents were not filed, the accused would not have right to be released on default bail. In the case of **Abdul Azeez P.V. Vs. NIA** (supra), although challan had been filed but foreign bank transaction details were yet to be collected and call data records had to be analysed and,

therefore, further investigation was sought. It was not a case under the NDPS Act.

The Full Bench of this court in the case of **State of Haryana Vs. Mehal Singh and others, 1978, PLR 480**, decided on 12.04.1978, had held that the challan without the report of experts including chemical examiner, serologist, ballistic and finger print expert would be considered to be a complete challan for the purposes of deciding concession of default bail under Section 167(2) Cr.P.C. This case also did not pertain to an offence under the NDPS Act and, therefore, it would not be applicable to the facts of this case.

The judgment of the Full Bench in **State of Haryana Vs. Mehal Singh and others** (supra) has also been distinguished by the Division Bench in the case of **Ajit Singh @ Jeeta and another Vs. State of Punjab** (supra). It was held by the Division Bench that the Full Bench was interpreting the provisions and scope of Cr.P.C. in the backdrop of general offences pertaining to IPC and other statutes but was not seized of the NDPS Act.

Subsequently, the coordinate Benches of this court in the cases of **Rahul Vs. State of Punjab, CRR No.1016-2020, decided on 21.12.2020**, **Azuka Vs. State of UT, Chandigarh, CRR-765-2020, decided on 13.03.2020**, **Shankar Vs. State of Haryana, CRM-M-44412-2019, decided on 20.12.2019** and **Akash Kumar @ Sunny Vs. State of Haryana, CRR No.1731-2019 decided on 16.10.2019**, had held that the challan under Section 173(2) Cr.P.C. having been filed even without the FSL report would not entitle the accused to be released on default bail under Section 167(2) Cr.P.C. However, different view had been taken by the

coordinate benches and the coordinate Bench of this court in the case titled **Julfkar Vs. State of Haryana, CRR-1125-2020** had referred the matter to the division bench in view of the conflict in judgments. It was also observed by a coordinate Bench in **CRR-1135-2020, Suresh Vs. State of Haryana**, decided on 18.11.2020, while granting default bail to petitioner therein as challan was filed without FSL report, that in the event of the division bench opining that the challan filed without FSL report would be a complete challan, the State would be at liberty to prefer an application for cancellation of bail.

Another coordinate Bench of this court in **CRR-1150-2020**, titled **Rinku Vs. State of Haryana** vide order dated 03.11.2020, had also opined that as the matter had been referred to the larger bench, in the meantime, the accused would be entitled to be released on default bail.

This court, in the case of **State of Haryana Vs. Dildar Ram @ Dari (supra)** has held that challan filed without FSL report would not be regarded as a complete challan and the accused would be entitled to default bail in terms of Section 167(2) Cr.P.C.

Therefore, as the challan had been filed without the FSL report in the instant case, the petitioner would be entitled to be released on default bail in terms of Section 167(2) Cr.P.C.

In view of the above, without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on default bail on his furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

WWW.LIVELAW.IN

In the event of the division bench opining that the challan filed without FSL report would be a complete challan, the State would be at liberty to prefer an application for cancellation of bail.

28.10.2021

(ANUPINDER SINGH GREWAL)

JUDGE

SwarnjitS

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No

