IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-1960-2025 (O&M)
Date of decision: 03.09.2025

Sandeep Kumar alias Raju and another ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MS. JUSTICE AARADHNA SAWHNEY

Present : Mr. Ajay Pal Singh Rehan, Advocate for the petitioners.

Mr. Gautam Thapar, Sr. DAG, Punjab.

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AARADHNA SAWHNEY, J.(ORAL)

CRM-35175-2025

This is an application filed by the applicant-petitioner under Section 528 of BNSS for placing on record the amended grounds of revision, mentioning therein that petitioners became entitled to the concession of *default bail* under Section 187(3)(1) of BNSS (Section 167(2) of Cr.P.C.), on completion of 60 days, on account of investigating agencies having failed to file the challan within the said period. However, in the original grounds of revision, inadvertently, instead of '60' days, the word '90' days was mentioned in para 3, 4 and 5. The mistake being unintentional and bonafide, applicants pray for granting them the permission to correct the same.

Contents of the application perused. In view of the reasons mentioned therein, the present application is allowed.

Amended grounds of revision taken on record.

Registry is directed to tag the same at the appropriate place.

Main Case

1. By virtue of the present petition, petitioners who are accused in case bearing FIR No.93 dated 29.04.2025, registered against them under Section 21 and 29 of NDPS Act, at Police Station Model Town, Hoshiarpur, have assailed order dated 02.07.2025 passed by learned Special Court,

Hoshiarpur, vide which an application filed by them (petitioners) for grant of *'default bail'* under Section 187(2) BNSS (167(2) Cr.P.C.), was dismissed.

2. Relevant facts as emerging from documents on record, be noticed hereinbelow:-

As per prosecution, on 29.04.2025, both the petitioners were caught keeping in their illegal possession, 16 and 14 grams of contraband, respectively. After complying with the statutory formalities at the site, they were taken in custody on the same day i.e. 29.04.2025. The contraband was also taken into possession and aforesaid FIR was lodged.

Admittedly, an application for grant of *default bail* was filed by petitioners, on 02.07.2025 at 10.00 a.m., whereas challan was presented later at about 11:18 a.m. and that too without the report of FSL. Learned Additional Sessions Judge, Hoshiarpur, dismissed the said application.

Para 8 and 9 of the impugned order read as under:-

> *"8. From the perusal of the record, there is no doubt that the bail application was received at 10 AM today and the challan was presented at 11:18 AM without FSL report. There is no doubt that incomplete challan has been presented as FSL report is not there. In this regard the authorities Omkar (supra) and Kayum (supra) are stated to be applicable. However, in both these cases the statutory period of 180 days was required in terms of Section 36A (4) of the NDPS Act. It is not so in the case in hand in which 65 days has expired. Whether contraband so recovered falls within commercial quantity or not, the same depends upon the FSL report and the period of 180 days has been prescribed under Section 36A (4) of NDPS Act. At this stage, it will not be appropriate to presume that the intoxicant so recovered was heroin and it was not a commercial quantity.*
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> *9. So far as the authority Mohammad Sajjid (supra) by Hon'ble Kerala High Court is concerned, the same is also distinguishable on the ground that in the said case it was clear that the accused were found to have possession of MDMA.*

> *However, in the case in hand, it is yet to be determined as to which psychotropic substance was recovered from the accused and as to whether it falls within commercial or intermediate quantity. As such, the application filed by the applicants for grant of default bail is devoid of merits and the same is hereby dismissed, without expressing any opinion on the merits of the case. Police record be returned and bail application file be attached with the main challan.*"

As is apparent, learned Additional Sessions Judge, Hoshiarpur, in terms of impugned order held that in the absence of FSL report, the nature of the contraband cannot be determined, neither can it be ascertained as to whether, the same falls within the "Commercial" or "Small" Quantity. It was further held that only after the FSL report is placed on record, a finding can be returned as to whether, the challan had to be filed within 60 days or 180 days.

Aggrieved of these findings, the present revision petition has been filed. On notice, status report by way of affidavit of Mr. DevDutt Sharma, Deputy Superintendent of Police, Hoshiarpur, was filed. It is accompanied by FSL report dated 29.08.2025, wherein it has been opined that on analysis, *Diacetylmorphine* (Heroin) was found present in the samples drawn from the contraband recovered from the petitioners. At this stage, it would also be appropriate to refer to the notification No. S.O 1055(E) dated 19.10.2001, issued by the Central Government. At Sr. No.56 of the said notification, it has been specified that upto 5 grams of Heroin (Diacetylmorphine) falls within the "Small" Quantity and that 250 grams and above, comes within the ambit of "Commercial" Quantity. It has already been noted hereinabove, that both the petitioners were caught keeping in their illegal possession 14 grams and 16 grams, respectively of *Heroin.* Thus, petitioners are alleged to have committed an offence punishable under Section 21 and 29 of NDPS Act.

Let us, at this stage, also focus our attention to Section 21 of the NDPS Act, 1985, which reads as under:-

> *21. Punishment for contravention in relation to manufactured drugs and preparations.—*
> *Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,--*
> *(a) xxxx xxxx xxxx*
> *(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;*
> *(c) xxxx xxxx xxxx"*

A bare perusal of this provision makes it clear that the maximum imprisonment that can be imposed upon the accused, alleged to have committed an offence of the like nature, is 10 years; there being no mandatory minimum of 10 years.

3. Learned counsel for the petitioners submits that though in Section 187(3)(1) BNSS, words used are "for a term of 10 years or more", as against that used in Section 167(2)(a)(i) Cr.P.C., "for a term of not less than 10 years", however, in view of the judgment of Hon'ble Supreme Court in ***Rakesh Kumar Paul vs. State of Assam, 2017(15) SCC 109***, wherein, while interpreting Section 167(2)(a)(i), it was held that in all cases where the minimum sentence is less than 10 years but maximum sentence is not death or life imprisonment, the accused would get benefit of "*default bail"* after 60 days, in case the challan has not been filed, in the present scenario as well, the offences with which petitioners have been charged are punishable with term which may extend to 10 years, there being nothing in the said provision

that the accused would have to be awarded minimum punishment of 10 years, the charge-sheet not having been filed within 60 days of the first remand, petitioners would be held entitled to *default bail*.

4. In the status report filed by the State, apart from reiterating the factual aspects of the case leading to the lodging of the FIR, against both the petitioners and highlighting the FSL report, as per which recovery of *Diacetylmorphine* (Heroin) was effected from both of them, lot of emphasis was laid on the questionable past antecedents of the petitioners (petitioner No.1 being involved in 4 cases and petitioner No.2 being involved in 3 cases of the like nature). Primarily with this backdrop, dismissal of the bail application has been prayed for.

5. Sh. Ajay Pal Singh Rehan, learned for the petitioners and Sh. Gautam Thapar, Sr. DAG, Punjab, have been heard. Documents on the record have also been perused.

6. In the light of admitted case of the prosecution that both the petitioners were found keeping in their illegal possession 16 grams and 14 grams of *Diacetylmorphine* (Heroin), which as per the notification of the Central Government (No. S.O 1055(E) dated 19.10.2001), does not fall within the ambit of "Commercial" Quantity, Section 36A(4) of the NDPS Act, which permits investigation of cases involving offences punishable under Section 19, 24 or 27A or for offences of Commercial Quantity under the Act, to be completed within a period of 180 days, extendable upto a period of 1 year based on the report of the Public Prosecutor, would not be applicable to the facts scenario of the case in hand. Reason being that petitioners in the present case have been charged for committing an offence punishable under Section 21(b) of NDPS Act, which is punishable with an imprisonment which may extend to 10 years and with fine which may extend to Rs.1 lakh. This also leads to a clear inference that with respect to

any offences not mentioned in Section 36A(4), provisions of 187(3)(1) BNSS (167 (2)(a)(ii) Cr.P.C.) would be applicable.

As has been pointed out by learned counsel for the petitioners, the words used in both the aforesaid statutory provisions (Section 187(3)(1) of BNSS or Section 167(2)(a)(i) of Cr.P.C.) are slightly different, it would, thus, be beneficial to carefully go through the judgment of the Hon'ble Supreme Court in ***Rakesh Kumar Paul*** *(supra)*, wherein while interpreting Section 167(2)(a)(i), it was held as under :-

> *"24. In the context of the word "punishable" occurring in Clause (i) and the meaning attached to this word taken from several dictionaries, this Court held in Bhupinder Singh that where a minimum and maximum sentence is prescribed, both are imposable depending upon the facts of the case. Therefore, if an offence is punishable with imprisonment that may extend upto or beyond or including 10 years, then the period available for completing investigations would be 90 days before the provision for 'default bail' kicks in. It was said in paragraph 15 of the Report:*
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> > *"Where minimum and maximum sentences are prescribed, both are imposable depending on the facts of the cases. It is for the court, after recording conviction, to impose appropriate sentence. It cannot, therefore, be accepted that only the minimum sentence is imposable and not the maximum sentence. Merely because minimum sentence is provided that does not mean that the sentence imposable is only the minimum sentence."*
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> *25. While it is true that merely because a minimum sentence is provided for in the statute it does not mean that only the minimum sentence is imposable. Equally, there is also nothing to suggest that only the maximum sentence is imposable. Either punishment can be imposed and even something in between. Where does one strike a balance? It was held that it is eventually for the court to decide what sentence should be*

imposed given the range available. Undoubtedly, the Legislature can bind the sentencing court by laying down the minimum sentence (not less than) and it can also lay down the maximum sentence. If the minimum is laid down, the sentencing judge has no option but to give a sentence "not less than" that sentence provided for. Therefore, the words "not less than" occurring in Clause (i) to proviso (a) of Section 167(2) of the Cr.P.C. (and in other provisions) must be given their natural and obvious meaning which is to say, not below a minimum threshold and in the case of Section 167 of the Cr.P.C. these words must relate to an offence punishable with a minimum of 10 years imprisonment.

27. It is true that an offence punishable with a sentence of death or imprisonment for life or imprisonment for a term that may extend to 10 years is a serious offence entailing intensive and perhaps extensive investigation. It would therefore appear that given the seriousness of the offence, the extended period of 90 days should be available to the investigating officer in such cases. In other words, the period of investigation should be relatable to the gravity of the offence – understandably so. This could be contrasted with an offence where the maximum punishment under the IPC or any other penal statute is (say) 7 years, the offence being not serious or grave enough to warrant an extended period of 90 days of investigation. This is certainly a possible view and indeed the Cr.P.C. makes a distinction in the period of investigation for the purposes of 'default bail' depending on the gravity of the offence. Nevertheless, to avoid any uncertainty or ambiguity in interpretation, the law was enacted with two compartments. Offences punishable with imprisonment of not less than ten years have been kept in one compartment equating them with offences punishable with death or imprisonment for life. This category of offences undoubtedly calls for deeper investigation since the minimum punishment is pretty stiff. All other offences have been placed in a separate compartment, since they provide for a lesser

> *minimum sentence, even though the maximum punishment could be more than ten years imprisonment. While such offences might also require deeper investigation (since the maximum is quite high) they have been kept in a different compartment because of the lower minimum imposable by the sentencing court, and thereby reducing the period of incarceration during investigations which must be concluded expeditiously. The cut-off, whether one likes it or not, is based on the wisdom of the Legislature and must be respected."*

It is, thus, clear that while interpreting the words "for a term of not less than 10 years (which is almost at par with the words "for a term of 10 years or more" used in Section 187(3)(1)), Hon'ble Supreme Court clarified that if an offence is punishable with death or imprisonment for life or with minimum sentence of 10 years, accused can apply for *default bail* only if the investigating agency does not file the charge-sheet within 90 days. But it was further held that in all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment, accused would be entitled to grant of '*default bail'* after 60 days, in case the charge-sheet is not filed. Most apposite here would be to point out that in ***Rakesh Kumar Paul*** (supra), Hon'ble Supreme Court further held that where on reading the statute two views are possible, the provision that curtails the individual liberty should be strictly read, as also that Court should lean in favour of interpretation that protects the personal liberty of the accused.

In exactly similar situation, the Kerala High Court in ***Mohammad Sajjid vs. State of Kerala, 2025 NCKERHC 10727***, while relying upon judgments of Hon'ble Supreme Court in ***Rakesh Kumar Paul*** (supra), ***Enforcement Directorate, Govt. of India vs. Kapil Wadhawan, 2023 (2) KHC 663***, judgment of Karnataka High Court in ***State of Karnataka by Kavoor Police station vs. Kalandar Shafi, 2024 KHC Online***

5417, held that in a situation where the offence does not impose the minimum sentence of 10 years, but is extendable upto 10 years, the investigation should be completed within a period of 60 days, failing which the right of accused for grant of default bail fructifies.

7. In the case in hand as well, as noted hereinabove, the offences for which petitioners have been charged are punishable with imprisonment for a term which may extend upto 10 years, there being no minimum of 10 years, relying upon judgment of ***Mohammad Sajid (supra) and State of Karnataka by Kavoor Police station (supra)***, charge-sheet not having been filed within 60 days of the first remand, both the petitioners are entitled to grant of '*default bail*'. Before parting with this judgment, it would also be appropriate to point out that simply because the petitioners are alleged to be habitual offenders, that would not disentitle them for grant of statutory bail.

8. In view of the facts and circumstances mentioned hereinabove, without expressing opinion on the merits of the case, the present revision petition is allowed and petitioners are granted the concession of default bail subject to their furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned. The petitioners shall abide by the following conditions:-

(i) The petitioners will not tamper with the evidence during the trial.

(ii) The petitioners will not pressurize/ intimidate the prosecution witnesses.

(iii) The petitioners will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.

(iv) The petitioners shall not commit an offence similar to the offence of which, they are an accused, or for commission of which they are suspected of.

(v) The petitioners shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.

(vi) The petitioners shall not in any manner misuse their

liberty.

(vii) The petitioners shall furnish their addresses and mobile numbers to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioners seek to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.

(viii) The petitioners shall not leave the country without prior permission of the trial Court.

(ix) The trial Court/Duty Magistrate may impose any other condition, as deemed appropriate while releasing the petitioners.

9. It is made abundantly clear that in case there is any breach of the aforesaid conditions, the State shall be at liberty to seek cancellation of '*default bail'* as granted to the petitioners by this order.

10. In view of the above, it is clarified that the observations made herein are limited for the purpose of present proceedings and would not be construed as an opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

11. Pending applications, if any, also stand disposed of.

(AARADHNA SAWHNEY)
JUDGE

03.09.2025
Hemant

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