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**IN THE COURT OF
Additional Sessions Judge
at Panchkula.
(Presided Over by Sunil Kumar-II)
UID No.HR-0233**

(Sunil Kumar-II)
ASJ, PKL 31.12.2022

allegedly recovered from the applicant/accused. No proceedings were conducted by the police and no independent witness was joined by the police at the time of alleged recovery of contraband as well as at the time of search of the applicant/accused. Recovery of 1.5 Kg opium is not a commercial quantity. No other FIR is pending against the applicant/accused. The applicant/accused was arrested on 14.06.2022. The children of the applicant/accused are of minor age. The trial would take sufficiently long time to conclude. No useful purpose would be served by keeping the applicant/accused behind the bars. The earlier bail application under Section-167 (2) of Cr.P.C. was dismissed by this Court with the observation that allegedly recovered contraband from both the accused persons in this FIR is to be considered as joint recovery which is commercial quantity. Now six months have expired and the FSL report has not yet been filed by the prosecution. The report under Section-173 of Cr.P.C. was filed by the police before this Court on 24.08.2022 and the applicant/accused was arrested on 14.06.2022. The challan has been filed without the report of FSL and same cannot be considered as complete challan. On 13.12.2022, six months have completed and the prosecution has not filed the application for extension of time for filing the FSL report. Therefore, the applicant/accused is entitled to the default bail. On bare perusal of the contents of the FIR, no offence is made out so far as the applicant/accused is concerned. The applicant/accused is not involved in the alleged crime nor has any role to play. Nothing is to be

recovered from the applicant/accused and the recovery, if any, showed by the police from the applicant/accused was a planted one. The first application for regular bail filed by the applicant/accused was dismissed by this Court vide the order dated 12.08.2022. The second bail application under Section-167 (2) of Cr.P.C. filed by the applicant/accused was dismissed on 22.09.2022. The third application for regular bail filed by the applicant/accused was dismissed on 01.12.2022. No other similar application for bail has been filed by the applicant/accused either before the Hon'ble High Court of Punjab & Haryana at Chandigarh or before the Hon'ble Supreme Court of India. The applicant/accused is the only bread earner in the family. The applicant/accused undertakes to abide by all the terms and conditions imposed by this Court while granting the bail. She undertakes not to leave the country without prior permission of the Court. She undertakes not to threaten the witnesses and not to tamper with the evidence of prosecution. The applicant/accused is ready to furnish the bail bond and surety bond to the satisfaction of this Court. It is on the above grounds that the applicant/accused has prayed for bail under Section-167(2) of Cr.P.C.

2. On notice of the bail application, reply to the same through the learned Public Prosecutor has been filed. In the reply, it is stated that on 14.06.2022, a secret information was received by P/SI Tajinder Pal Singh from one Nirmal Singh who was in custody in connection with FIR No.

335/2022 that one Amar Kusari @ Jeewan @ Nepali was known to said Nirmal Singh from whom he procures the Opium. Said Nirmal Singh disclosed that Amar Kusari @ Jeewan @ Nepali often comes to a place near Bharat Petrol pump situated at Pinjore-Baddi road in the evening with an unknown girl for the purpose of selling opium. On the basis of said secret information supplied by Nirmal Singh, police party headed by P/SI Tajinder Pal Singh put the barricades near Bharat Petrol pump, Pinjore-Baddi road. After sometime, a person with a bag in his left hand along with a girl with ladies's bag in her left hand were spotted coming on foot. Said Nirmal Singh pointed out to P/SI Tajinder Pal Singh that the person coming with the girl is Amar Kusari @ Jeewan @ Nepali. On looking the police party in front of them, said Amar Kusari @ Jeewan @ Nepali and the girl in his company took a 'U' turn and started to run away. However, they were apprehended by P/SI Tajinder Pal Singh with the help of fellow police officials. The person apprehended disclosed his name as Amar Kusari @ Jeewan @ Nepali whereas the girl disclosed her name as Vipana. On checking, said Amar Kusari @ Jeewan @ Nepali was found in possession of opium weighing 3 Kg whereas Vipana was found in possession of opium weighing 1 Kg 500 Gm. Recovered quantity of opium was taken into police custody. The accused persons along with narcotic substance were produced before the Court concerned and inventory was prepared. On completion of remaining part of investigation, report under Section-173 Cr.P.C. was submitted in the

Court on 18.08.2022. The report from FSL after examination of the samples of the recovered contraband is not received till date though communication is going on. If the applicant/accused is granted bail, she may jump the same as she belongs to Nepal and she may conceal herself. It is on the above grounds that the application for bail is sought to be dismissed.

3. I have gone through the contents of the bail application as well as the reply filed to the same. Arguments led by learned counsel for the applicant/accused as well as learned Public Prosecutor have been heard at length by me.

4. In the instant case, the applicant/accused Vipana is in custody since 14.06.2022. The application for statutory bail under Section-167 of Cr.P.C. has been filed by the applicant/accused on 20.12.2022. The period of custody undergone by the applicant/accused upto 20.12.2022 comes out to be 188 days. As per the provisions contained in Section-36A (4), in respect of the persons accused of an offence punishable under Section-19 or Section-24 or Section-27A or for offences involving commercial quantity, the references in sub-section (2) of Section-167 of the Code of Criminal Procedure, 1973 thereof to 'ninety days', where they occur, shall be construed as reference to 'one hundred and eighty days'.

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor

indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

5. A bare perusal of the above provisions would reveal that a person, as in the instant case, accused of having committed an offence involving commercial quantity is entitled to statutory bail under Section-167 (2) of Cr.P.C. if he is in custody for a period exceeding 180 days and the investigation is not completed. In the instant case, there is no doubt that the applicant/accused is in custody for a period exceeding 188 days on the date of filing the present application. It is clear from the report of the Ahlmad as well as from the contents of the reply to the application that the FSL report after examination of the recovered substance has not been received till date. In the above circumstances, the question is as to whether the applicant/accused is entitled to statutory bail under Section-167 (2) of Cr.P.C. In the authority titled as Satpal Singh @ Satpala and Another Vs. State of Haryana, CRR No.708-2021 decided on 28.10.2022 by the Hon'ble High Court of Punjab & Haryana at Chandigarh, the FSL report was not filed during the stipulated period of 180 days and the accused filed an application under Section-167 (2) of Cr.P.C. on 183rd day of custody. The learned trial Court allowed the application for extension of time to complete the investigation on the sole ground of non-receipt of the FSL report vide the order dated 26.03.2021 and then dismissed the application for bail under

Section-167 (2) of Cr.P.C. Both the orders were challenged before the Hon'ble High Court. The Hon'ble High Court set aside the order dated 26.03.2021 on the ground that the same was passed without notice to the petitioner and that the sole ground seeking extension of time was the want of FSL report which was held as not conforming to the mandate of law. The petitioner was granted bail under Section-167 (2) of Cr.P.C.

6. In Rohtash @ Raju Vs. State of Haryana, CRR-933 of 2022 (O&M) dated 01.06.2022, the challan submitted was without the FSL report and the petitioner sought bail under Section-167 (2) of Cr.P.C. vide the application dated 23.03.2022. It was held by the Hon'ble High Court of Punjab & Haryana at Chandigarh that the report of FSL goes to the root of the case and is a material document and as such, filing of challan without the same is not to be treated as complete challan, as has been held by the Co-ordinate Bench of this Court in Jagvinder Singh's case (Supra) and Ajaib Singh's case (Supra). Similar view has been taken by the Co-ordinate Bench of this Court in Criminal Revision No.1314 of 2021 Joginder Singh Vs. State of Haryana decided on 11.02.2022. Even the Hon'ble Apex Court in SLP (Criminal) No.8164-8166/2021 Mohd. Arbaz & Others Vs. State of NCT and Delhi also granted relief to the accused under similar circumstances. The Hon'ble High Court set aside the impugned order dated 24.03.2022 rejecting default bail to the petitioner and granted default bail to him.

7. The right to bail under Section-167 (2) of Cr.P.C. accrued to the present applicant/accused on 12.12.2022 i.e. on completion of 180 days from the date of her arrest and filing the challan without the FSL report. No application for extension of time has been filed till date. In other words, the indefeasible right to statutory bail under Section-167 (2) of Cr.P.C. already accrued to the applicant/accused. This Court does not have any discretion now and is bound by the law propounded in the authorities cited above as well as by the provisions of law reproduced above. The applicant/accused has the statutory right to bail under Section-167(2) of Cr.P.C. and this Court is left with no discretion in the circumstances of the case.

8. For the reasons recorded above, the applicant/accused is granted statutory bail under Section-167 (2) of Cr.P.C. subject to furnishing personal bond in the sum of Rs.One lakh with one surety of the like amount to the satisfaction of this Court. **The release of the applicant/accused shall be subject to the condition that she shall not leave India without the prior permission of this court.** The requisite personal bond and surety bond are not furnished today. Let the papers be tagged with the main case file pending before this Court and fixed on 23.01.2023.

Dated : 31.12.2022
(Bhupinder)
Note: Each of the -8-pages of this order has been checked and signed by me.

(Sunil Kumar-II),
Duty Additional Sessions Judge,
Panchkula. (UID : HR0233)

(Sunil Kumar-II),
Duty/Additional Sessions Judge,
Panchkula.

(Sunil Kumar-II)
ASJ, PKL 31.12.2022

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Vipana Vs. State of Haryana

HRPK-01-00-4745-2022

BA/1560/2022

Present: Sh. Suneel Sharma, Advocate for the applicant/accused.
 Sh. Ranvijay Singh, Learned Public Prosecutor.

Arguments on the application for bail under Section- 167(2) of Cr.P.C. heard. Order pronounced. Vide my separate detailed order of even date, the applicant/accused is granted statutory bail under Section-167 (2) of Cr.P.C. subject to furnishing personal bond in the sum of Rs.One lakh with one surety of the like amount to the satisfaction of this Court. **The release of the applicant/accused shall be subject to the condition that she shall not leave India without the prior permission of this court.** The requisite personal bond and surety bond are not furnished today. Let the papers be tagged with the main case file pending before this Court and fixed on 23.01.2023.

Announced in open court.
Dated :31.12.2022
Bhupinder

(Sunil Kumar-II),
Duty/ Addl. Sessions Judge,
Panchkula. UID : HR0233

(Sunil Kumar-II)
ASJ, PKL 31.12.2022