

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

CRR No. 3146 of 2016

DECIDED ON: DECEMBER 19, 2016

JAGTAR SINGH & ANOTHER

.....PETITIONERS

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE JUSTICE JASPAL SINGH

Present: Mr. Jagjot Singh Lalli, Advocate for the petitioners.

Mr. J.S. Sekhon, AAG, Punjab.

JASPAL SINGH, J (ORAL)

Challenge in this revision petition is to the order dated August 02, 2016 passed by Judge, Special Court, Jalandhar, whereby, an application under Section 167(2) of the Code of Criminal Procedure (for brevity 'Code') has been dismissed.

Undoubtedly, report under Section 173(2) of the Code has been presented within a period of 180 days from the date of arrest of the petitioners but the same was presented without Chemical Examiner's report. Thus, the sole question, which is required to be determined through this revision petition is, whether in the absence of Chemical Examiner's report, presentation of challan can be treated to be a complete challan or not and the answer to this question of in the negative.

This Court in the case of **Ravinder @ Binder v. State of Haryana;**

2015 (4) RCR (Crl.) 441 in the facts and circumstances which have emerged in

this case, has granted the default bail under Section 167(2) of the Code by

observing that a report under Section 173(2) of the Code which is not accompanied by Chemical Examiner's report would not be a charge sheet. Similarly, the High Court of Andhra Pradesh in the case of **Matchumari China Venkatareddy; 1994 Crl. Law Journal 257** has held that filing of charge sheet under Section 173(2) of the Code is not complete unless it is accompanied by the paper contemplated under Section 173(2) of the Code. To the similar effect the judgment passed by Bombay High Court in the case of **Sunil Vasantrao Phulbande & another vs. State of Maharashtra; 2003 (2) RCR (Crl.) 171**. A similar matter also came up for hearing before a co-ordinate Bench of this Court in the case of **Gurpal Singh & another vs. State of Punjab** decided on April 23, 2016, CRR No. 791 of 2017 in which it was categorically observed that in the absence of Chemical Examiner's report, report furnished under Section 173(2) of the Code cannot be termed to be a complete challan and the in the said case, petitioner was granted the concession of bail under Section 167(2) of the Code.

On account of non furnishing of complete challan indefeasible right has been accrued to the petitioners, which cannot be scuttle down merely furnishing of a report under Section 173(2) of the Code.

In the light of what has been discussed above, instant revision petition is allowed and order dated August 02, 2016 is set aside. The application moved by the petitioner under Section 167(2) of the Code seeking bail is allowed and petitioners are ordered to be released bail at the satisfaction of learned trial Court/Duty Magistrate.

DECEMBER 19, 2016
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*