

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

CRR-134-2019

Date of Decision : October 31, 2019

Balwinder Singh @ Binder

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 8.1.2019 passed by the Additional Sessions Judge, Sirsa, vide which the application filed by the petitioner under Section 167(2) Cr.P.C. for grant of default bail was dismissed.

Counsel for the petitioner submits that the petitioner was arrested on 9.4.2018 and the challan was presented on 8.10.2018 without attaching the report of the FSL/Chemical Examiner. Later on, the report of the FSL was submitted before the trial Court on 16.2.2019 and prior to the same, the petitioner has filed an application under Section 167(2) Cr.P.C. on 4.1.2019 for releasing him on bail, as incomplete challan was presented.

Counsel for the petitioner has relied upon order dated 30.11.2019 passed in CRR-4659-2015 titled as '**Ajit Singh alias Jeeta and another Vs. State of Punjab**' and others, vide which a Division Bench of this Court has held that when a challan is submitted by the police before the Illaqua Magistrate, the Court is required to apply its mind to see whether the disclosure of commission of offence so as to enable it to subject to the accused to rigor of a trial. It is further held that in the absence of a report of the FSL/Chemical Examiner, the Court cannot proceed further and, therefore, it is held that it is essential that the report of the Chemical

Examiner be include in the report under Section 173 Cr.P.C. and without which it will be termed as an incomplete challan depriving a Magistrate to take cognizance on the basis of the relevant material on record.

In the absence of the Chemical Examiner's report, which is an essential and integral part of the investigation under the NDPS Act, the Court cannot form an opinion and to take cognizance regarding the involvement of the accused in the commission of the offence under the NDPS Act.

Counsel for the petitioner further submits that the trial has not proceeded as after the arrest of the co-accused, the police has again submitted a supplementary challan.

Learned State counsel could not disputed the date on which the petitioner was arrested; the date on which the challan was presented as well as when the FSL report was submitted subsequent to filing of the application under Section 167(2) Cr.P.C.

In view of the above, the present petition is allowed; order dated 8.1.2019 is set aside and the petitioner is directed to be released on bail under the provisions of Section 167(2) Cr.P.C., subject to furnishing of bail/surety bonds to the satisfaction of the trial Court.

October 31, 2019
satish

(ARVIND SINGH SANGWAN)
JUDGE

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