

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

CRR No.766 of 2019 (O&M)
DATE OF DECISION : 19th JULY, 2019

Sunil Kumar Gupta

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

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

Mr. M. K. Sangwan, Deputy Advocate General, Haryana.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition challenging order dated 07.02.2019 passed by learned Additional Sessions Judge, Sirsa, whereby the application filed by the petitioner under Section 167(2) of Cr.P.C. for enlarging him on default bail on account of non-filing of the proper challan/Police report, has been declined.

It is the case of the petitioner that in case FIR No.751 dated 02.08.2018 registered under Sections 18-C, 18-A, 17, 26A of Drugs and Cosmetics Act, 1940 and Section 22 of the NDPS Act, 1985, the petitioner was arrested on 06.08.2018. The petitioner has been in continuous custody since this date. Although, the challan was filed in this case on 19.12.2018, however at that time it was not complete; because the FSL report was not attached with the same. Therefore, the challan was not filed by the police in terms of and within the period prescribed by Section 167 Cr.P.C. Hence, the petitioner became entitled to default bail under Section 167(2) Cr.P.C.

Accordingly, in exercise of his right under Section 167(2) Cr.P.C the application was filed before the trial court for releasing the petitioner on bail. However, that application has been dismissed by the trial court by observing that since the challan has been filed, therefore, even if the same is not accompanied by the FSL report, it would not tantamount to non-filing of challan. Therefore, the moment the challan is filed by the police, the requirement of Section 167 Cr.P.C. stands fulfilled.

The counsel for the petitioner has submitted that the above said order passed by the trial court is against the Division Bench judgment of this court passed in ***Criminal Revision No.4659 of 2018*** on 30.11.2018 titled as ***Ajit Singh alias Jeeta and another versus State of Punjab***. As per the judgment, the petitioner is entitled to default bail. Hence the present petition be allowed and the petitioner be ordered to be released on bail.

Having heard learned counsel for the petitioner and perusing the case file, this court finds substance in the arguments of the learned counsel for the petitioner. It is not disputed that FSL report was not filed along with the challan. Although the challan was filed on 19.12.2018 but the FSL report was filed subsequently on 19.03.2019. In such a situation; the Division Bench of this Court in case of ***Ajit Singh (supra)***, has held that the accused would be entitled to the bail under Section 167(2) Cr.P.C. It has further been held by the Division Bench that even if the FSL report is filed subsequently, before the release of the petitioner, but

after expiry of the statutory prescribed under Section 167(2) Cr.P.C., then also the accused would be entitled to default bail.

In view of the above, the present petition is allowed. The impugned order dated 07.02.2019 passed by the trial Court is set aside. The petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety to the satisfaction of the Trial Court/Duty Magistrate, concerned.

19th JULY, 2019
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>