

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

210-A

**CRR-7-2021 (O&M)
Decided on : 05.04.2021**

Kuldeep Singh and another

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

PRESENT: Mr. Aditya Sanghi, Advocate
for the petitioner(s).

Ms. Tanushree Gupta, DAG, Haryana
assisted by ASI Sukhjeet.

MANJARI NEHRU KAUL, J. (Oral)

Instant revision petition has been preferred against the order dated 16.12.2020, passed by the learned Additional Sessions Judge, Sirsa, vide which the bail application filed by the petitioner under Section 167(2) Cr.P.C. in case FIR No. 134, dated 08.06.2020, under Section 22-B of the NDPS Act, registered at Police Station Kalanwali, has been declined.

Brief facts of the case as set out by the prosecution may be noticed thus. On 08.06.2020, a police party headed by ASI Ashok Kumar, was on patrolling and going towards village Behman from village Singhpura. When the police party reached near Chahal Mobile repairing shop, Singhpura, two persons were coming from opposite side on a motorcycle and a plastic bag was kept in between them. On seeing the police party, they tried to turn back, however, the motorcycle slipped and they both fell down. Both the persons were apprehended and then the

motorcycle rider disclosed his name Hardeep Singh and the pillion rider disclosed his name Kuldeep Singh. After complying with the provisions of the NDPS Act, FIR was registered against the petitioner. Thereafter, investigation was set into motion leading to the presentation of challan before the trial Court on 04.12.2020.

Learned counsel for the petitioner has submitted that the petitioners were arrested on 08.06.2020. He has further submitted that no doubt the challan was presented within the prescribed statutory period of 180 days, however, it was not accompanied by the FSL report. Hence, the challan was incomplete entitling the petitioners to the grant of default bail under Section 167 (2) Cr.P.C.

In support of his contentions, learned counsel for the petitioners has placed reliance upon the decision rendered by the Division Bench of this Court in **Ajit Singh @ Jeeta & Anr. Vs. State of Punjab**, in **CRR No.4659 of 2015** and the Single Bench in **CRM-M-11271-2021**, titled as, **“Saleem @ Mulla Vs. State of Haryana”**, decided on **26.03.2021**.

Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioners, on instructions from ASI Sukhjeet, has submitted that the petitioner was found in possession of 3000 Tramadol tablets having B.No.TDP-20001, MFG-May-2020, EXP. APR-2023. She has, however, not been able to controvert the factum of FSL report not having been filed along with the challan. Still further, on a pointed query put to learned State counsel, she has conceded that the learned Public Prosecutor did not make any application or report to the Special Court concerned under the provisions of Section 36-A(4) of the NDPS Act, seeking extension of time for filing the FSL report.

Heard.

Admittedly, the challan has been presented in the Court without the FSL report. This Court has no hesitation in holding that indefeasible right of the petitioner to grant of default bail under Section 167(2) read with Section 439 Cr.P.C. has accrued. This Court in Saleem @ Mulla's case (supra), has held that in cases under the NDPS Act, FSL report is a decisive document to link the accused with the commission of crime. In the absence of FSL report not being a part of the challan so presented by the prosecution, it would be deemed to be an incomplete challan, hence, entitling the petitioners to the grant of default bail. Accordingly, the petition as such is allowed and the petitioners are admitted to bail to the satisfaction of trial Court/Duty Magistrate. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

April 05, 2021

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*