

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

221

CRR-241-2021

Decided on : 05.04.2021

Shripal

. . . Petitioner(s)

Versus

State of Haryana

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

PRESENT: Mr. Manoj Tanwar, Advocate
for the petitioner(s).

Mr. Rajiv Goel, DAG, Haryana
assisted by SI Madan Lal.

MANJARI NEHRU KAUL, J. (Oral)

Instant revision petition has been preferred against the order dated 23.02.2021, passed by the learned Additional Sessions Judge, Rohtak, vide which the bail application filed by the petitioner under Section 167(2) Cr.P.C. in case FIR No. 309, dated 19.05.2020, under Section 20, 61 of NDPS Act and Section 188 IPC, registered at Police Station Shivaji Colony, Rohtak, has been declined.

Brief facts of the case as set out by the prosecution may be noticed thus. In pursuance to a secret information, the petitioner was caught along with 22 KG of Ganja Patti, which was lying in the vehicle driven by the petitioner. Accordingly, after complying with the provisions of the NDPS Act, FIR got registered against the petitioner. Thereafter, investigation was set into motion leading to the presentation of challan before the trial Court on 06.11.2020.

Learned counsel for the petitioner has submitted that the petitioner was arrested on 18.08.2020. 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 petitioner to the grant of default bail under Section 167 (2) Cr.P.C.

Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions from SI Madan Lal, has submitted that the petitioner was found in possession of 22 KG. of Ganja Patti, which falls in the commercial quantity. He 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, he 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 **CRM-M-11271-2021**, titled as, “**Saleem @ Mulla Vs. State of Haryana**”, decided on **26.03.2021**, 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 petitioner

to the grant of default bail. Accordingly, the petition as such is allowed and the petitioner is 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*