

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

Criminal Revision No.496 of 2021 (O&M)

Date of Decision: September 20, 2021

Pardeep Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Raman Chawla, Advocate for the petitioner.
Mr.Surender Singh, AAG, Haryana.

HARINDER SINGH SIDHU, J.

Challenge herein is to the order dated 20.04.2021 passed by learned Addl. Sessions Judge, Rohtak, whereby, the application of the petitioner for grant of default bail under Section 167(2) Cr.P.C, was dismissed.

The petitioner is an accused in case FIR No.704 dated 06.10.2020 under Section 20 of the Narcotic Drugs and Psychotropic Substances Act No.61 of 1985, registered at Police Station City Rohtak. Allegations against him are that he was apprehended in Auto Market, Rohtak and 9 Kilograms *sulfa* was recovered from his conscious possession.

Learned counsel for the petitioner has argued that the Police had filed the challan which was not accompanied by the FSL report and, thus, the challan being incomplete, the petitioner, who is behind bars for the last more than 11 months, is entitled to default bail under Section 167(2) CrPC.

Ld. State counsel referring to the short affidavit of Rahul Sharma, IPS, Superintendent of Police, Rohtak, has submitted that though

the FSL report was received in the Police Station on 02.01.2021, however, it was produced before the Ld.Trial Court on 15.04.2021.

Heard Ld. Counsel for the parties and perused the paper-book.

A Division Bench of this Court in **Ajit Singh @ Jeeta and another vs. State of Punjab, 2018 SCC Online P&H 6941** has held that a Challan presented without Chemical Examiner's Report can only be termed as an incomplete one, which would entitle the accused to default bail, unless an application was moved by the Investigating Agency apprising the Court of status of investigation with a prayer for extension of time to the satisfaction of the Court.

Single Bench of this Court in **CRR No.1731 of 2019 (Akash Kumar @ Sunny vs. State of Haryana)** and **Shankar versus State of Haryana 2020(4) Cri.CC 8** held that the above decision of the Division Bench was per incuriam. Thereafter, a Single Bench in **Julfkar vs. State of Haryana, 2020(4) Law Herald 3188**, referred the matter to the Division Bench regarding the validity and correctness of the aforesaid judgments.

In **Suresh vs. State of Haryana 2021(1) RCR(Crl.) 648**, a Single Bench took notice of the Reference having been made for consideration afresh and allowed the Criminal Revision at that stage. The petitioner was ordered to be conditionally released on bail. It was however clarified that in case in the Reference a different view was taken from that in **Ajit Singh alias Jeeta's case (supra)**, the State would be at liberty to seek cancellation/modification of the order, if warranted at that stage.

The submission of the Ld. State counsel that the FSL report was

received in the Police Station on 10.09.2021 and was produced before the Trial Court on 15.04.2021, does not adversely affect the right of the petitioner. The Legislature has already, keeping in view the seriousness of the crime under NDPS Act, made a provision by incorporating Section 36(A) therein substituting the time for presentation of the Police Report from 90 days to 180 days with a further provision for extension of the time upto the period of one year. In the present case, the petitioner was arrested on 06.10.2020 and the FSL report was filed before the Trial court on 15.04.2021 i.e., after a lapse of more than 180 days. It is not the case of the respondent – State that any application for extension of time had been filed and the Ilqa Magistrate acceded to the same.

The matter [**Ajit Singh alias Jeeta's case (supra)**] is still pending consideration before Division Bench.

In the circumstances, the petition is allowed at this stage. The impugned order is set aside. The petitioner is ordered to be conditionally released on bail subject to his furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned. It is however clarified that in case in the Reference a different view is taken from that in **Ajit Singh alias Jeeta's case (supra)**, the State would be at liberty to seek cancellation/modification of this order, if warranted at that stage.

September 20, 2021

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(**HARINDER SINGH SIDHU**)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No