

**221 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-18483-2021
Date of Decision: 28.07.2021**

SUNIL ALIAS GOLU

..... Petitioner

Versus

STATE OF HARYANA

..... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. Rajesh Khandelwal, Advocate for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana
assisted by ASI- Surender Singh.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (ORAL)

1. The petitioner has approached this Court seeking grant of default bail in terms of Section 167(2) Cr.P.C. as according to the petitioner an 'incomplete' challan was filed before the trial Court on 89th day, which was not accompanied by the report of FSL.

2. The petitioner is booked in a murder case registered vide FIR No.168 dated 13.06.2020 at Police Station Hansi Sadar, under Sections 147, 148, 149 & 302 IPC (Section 120-B of IPC added later on). As per the allegations levelled in the FIR lodged at the instance of Rajesh, the dead body of his brother Suresh was found in agricultural fields. Said Rajesh alleged that his brother Suresh was unmarried and about four months back, his brother had an altercation with Mandeep and Dalbir, residents of village

Kanwari. Both of them had beaten Suresh, but the said matter was

compromised. Thereafter, Amit and Mandeep threatened his brother to face dire consequences. On 12.06.2020, he (complainant) and deceased went to the fields after taking dinner. In the way, Mandeep, Amit, Bhagta and Bhupender @ Kali alongwith 3-4 other persons armed with rods, *lathies* and axes met them and they were under the influence of some contraband. Suresh went to the field near farm and he went to other field, which is 10-12 killa away, but in the morning, when he returned, he found the dead body of Suresh on a cot. Suresh received injuries on his arms and legs.

3. Accused Sunil @ Golu was arrested by the police on 17.06.2020. The matter was investigated by the police and a challan was presented on 12.09.2020 i.e. on 89th day of registration of the FIR. However, the said challan was not accompanied by the report of FSL as well as viscera report. After about 6 months of presentation the challan, an application was moved on behalf of the petitioner i.e. on 24.03.2021 seeking his release in terms of Section 167 (2) Cr.P.C. on the ground that an 'incomplete' challan had been presented sans the FSL report and sans viscera report. The trial Court vide its detailed order dated 19.04.2021 (Annexure P-2) dismissed the said application, which is being assailed in the instant petition.

4. Learned counsel for the petitioner submits that in the absence of the report of the FSL and the viscera report, the cause of death of Suresh cannot be determined and as such, the same being a material piece of evidence, the challan filed without such reports has to be termed as 'incomplete' and resultantly, the petitioner is entitled to the concession of default bail in terms of Section 167 (2) Cr.P.C.

5. Opposing the petition, learned State counsel has submitted that

since the factum of death of Suresh is evident from the post-mortem report, the mere fact that the challan was not accompanied by the FSL report would not be of much consequence particularly when the report under Section 173 Cr.P.C. came to be presented before the trial Court within the prescribed period of 90 days.

6. I have considered rival submissions addressed before this Court.

7. No doubt, a report of FSL is a material piece of evidence to establish the case of the prosecution, but in every case, it cannot be said that in the absence of the report of FSL, the challan has to be treated as 'incomplete'. In cases registered under NDPS Act, the entire case of the prosecution is based on the factum of recovery of contraband, which can only be established from the chemical examination of the allegedly recovered contraband and thus, the report of FSL is virtually the foundation of the case of the prosecution and the absence of the same would shatter its case from its very roots.

8. However, in a murder case, while the report of FSL in respect of examination of clothes of the deceased as regards presence of blood stains or viscera report would furnish a material piece of evidence, but the case of the prosecution cannot be said to be absolutely demolished in the absence of such evidence. The case of the prosecution could even be established from the statements and testimonies of the witnesses coupled with the Medico Legal Report (MLR)/ Post Mortem Report (PMR) provided the same are found to be trustworthy and inspire confidence. In such like cases, the absence of FSL report cannot be interpreted to mean that an 'incomplete' challan has been filed so as to extend the benefit of default bail

to the accused. The petition, as such, is sans merit and is hereby dismissed.

9. Needless to mention, the aforesaid order would not affect the right/s of the petitioner to approach the trial Court or this Court seeking grant of regular bail in terms of Section 439 Cr.P.C.

28.07.2021

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**(GURVINDER SINGH GILL)
JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No