

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-523-2021

Date of Decision: 17.06.2021

Hari Singh @ SonuPetitioner

Versus

State of Haryana..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

...
(through video conferencing)

Present: Mr. Manvinder Sidhu, Advocate
for the petitioner.

Mr. Deepak Bhardwaj, DAG, Haryana.

...

MANJARI NEHRU KAUL, J. (Oral)

The present petition has been filed for setting aside the order dated 01.04.2021 passed by the Additional Sessions Judge, Sirsa, whereby the bail application of the petitioner filed under Section 167 (2) Cr.P.C. in case FIR No. 299 dated 22.09.2020 under Section 15 of the NDPS Act and Sections 307, 332, 353, 186, 427, 420, 472 IPC registered at Police Station Ellenabad, District Sirsa, has been dismissed.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been in custody since 22.09.2020 and only challan has been presented till date. He further submits that although 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 for the grant of default bail under the provisions of Section 167(2) Cr.P.C. read with Section 36A (4) of the NDPS Act. Learned counsel in support of his contentions has placed reliance on the judgments

Haryana) dated 26.03.2021 and CRM-M-297-2021 (*Baljeet Singh v. State of Haryana*) dated 01.04.2021.

Per contra, the learned State counsel, on instructions from SI Ajay Kumar, while opposing the submissions and prayer of the learned counsel for the petitioner argued that since the challan stood presented within the prescribed statutory period of 180 days the petitioner's indefeasible right to default bail stood extinguished. On a pointed query put to the learned State counsel as to whether the Public Prosecutor had moved 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, he has replied in the negative.

Heard.

Admittedly, the challan has been presented in the court without the FSL report. This court has no hesitation in holding that the 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 the case of *Saleem @ Mulla (supra)* has held that in cases under the NDPS Act, FSL report is decisive document, which would 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 and no application or report being made by the Public Prosecutor for extension of time to file the report under the provisions of Section 36(A)(4) of the NDPS Act, it would be deemed to be an incomplete challan, hence, entitling the petitioner to the grant of default bail.

Accordingly, this petition is allowed and the order dated 01.04.2021 passed by the Additional Sessions Judge, Sirsa, is set aside. The petitioner is admitted to bail to the satisfaction of the trial court/Duty

Magistrate. However, it is made clear that any observation made herein shall not be construed as an expression of opinion on the merits of the case.

17.06.2021
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Note: Whether speaking/reasoned
Whether Reportable:

(MANJARI NEHRU KAUL)
JUDGE

Yes / No
Yes / No