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

232/2

CRR-755 of 2021

Date of decision : 29.11.2021.

Krishan Singh

... Petitioner

Versus

State of Haryana

.. Respondent

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Manu Loona, Advocate for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

Anupinder Singh Grewal, J. (Oral)

The petitioner has challenged the order dated 31.05.2021 passed by the trial Court whereby his application for grant of bail under Section 167(2) Cr.P.C. has been dismissed.

Learned counsel for the petitioner contends that FIR No.532 dated 08.12.2020, under Sections 17/61/85 of the NDPS Act was registered at Police Station Rania, District Sirsa. The allegations against the petitioner are that a polythene bag containing 1.5 kg. opium was recovered from the dickey of the scooter. The petitioner was allegedly pillion riding the scooter and was arrested at the spot on 08.12.2020. After completion of investigation, the police filed challan on 05.02.2021 without the FSL report and therefore, the petitioner would be entitled to default bail in terms of Section 167(2) Cr.P.C. He has placed reliance on the judgments of the Division bench of this court in the case of **Ajit Singh @ Jeeta and another Vs. State of Punjab, CRR No.4659 of 2015** and **State of Haryana Vs. Dildar Ram @ Dari, CRM-M-25600-2021**, decided on 15.07.2021.

Learned State counsel upon instructions from SI Ranbir Singh, states that challan filed without the FSL report would be a complete challan. In support of his submission, he has cited the judgments of the Supreme Court in the cases of **Narendra Kumar Amin Vs. CBI, 2015 (1) RCR (Criminal) 566** and **Abdul Azeez P.V. Vs. NIA, 2014 (3) ACR 3335**, Full Bench of this court in **State of Haryana Vs. Mehal Singh and others, 1978, PLR 480**, and the judgments passed by the coordinate benches of this court in **Rahul Vs. State of Punjab, CRR No.1016-2020, decided on 21.12.2020**, **Azuka Vs. State of UT, Chandigarh, CRR-765-2020, decided on 13.03.2020**, **Shankar Vs. State of Haryana, CRM-M-44412-2019, decided on 20.12.2019** and **Akash Kumar @ Sunny Vs. State of Haryana, CRR No.1731-2019 decided on 16.10.2019**. In response to a query of this Court, learned State counsel contends that the FSL report has not been received till date.

Heard.

The FIR was registered against the petitioner on 08.12.2020 on the allegations that 1.5 kg. opium (non-commercial quantity) was recovered from the dicky of the scooter. The petitioner was a pillion rider. The challan is stated to have been filed on 05.02.2021. The FSL had not been filed along with the challan. The petitioner had sought bail from the Sessions court in terms of Section 167(2) Cr.P.C. but his application was dismissed on 31.05.2021. This court in the case of **State of Haryana Vs. Dildar Ram @ Dari (supra)** had held that filing of the challan without FSL report would not be regarded as a complete challan and, therefore, the accused would be entitled to default bail in terms of Section 167(2) Cr.P.C.

The specific question with regard to the significance of filing a challan under Section 173(2) Cr.P.C. without the FSL report in a case under the

NDPS Act had been referred to a Division Bench of this court. The Division Bench of this court in the case of **Ajit Singh @ Jeeta and another Vs. State of Punjab** (supra) held that the report of the FSL with regard to the nature of the recovered substance would go to the root of the matter and, therefore, a challan filed without the FSL report with regard to the nature of the substance would be an incomplete challan and would not satisfy the requirement envisaged under Section 167(2) Cr.P.C.

The judgments of the Supreme court and Full bench of this court which are cited by the learned counsel for the State are distinguishable on facts from the instant case. The judgments of the Supreme court in the cases of **Narendra Kumar Amin Vs. CBI** (supra) and **Abdul Azeez P.V. Vs. NIA** (supra), did not pertain to a case under the NDPS Act.

The coordinate Benches of this court in the aforementioned cases had held that the challan under Section 173(2) Cr.P.C. having been filed even without the FSL report would not entitle the accused to be released on default bail under Section 167(2) Cr.P.C. However, different view had been taken by the coordinate Bench of this court in the case titled **Julfkar Vs. State of Haryana, CRR-1125-2020** had referred the matter to the Division Bench in view of the conflict in judgments. It was also observed by a Coordinate Bench in **CRR-1135-2020, Suresh Vs. State of Haryana**, decided on 18.11.2020, while granting default bail to petitioner therein as challan was filed without FSL report, that in the event of the division bench opining that the challan filed without FSL report would be a complete challan, the State would be at liberty to prefer an application for cancellation of bail.

Another coordinate Bench of this court in **CRR-1150-2020**, titled **Rinku Vs. State of Haryana** vide order dated 03.11.2020, had also opined that

as the matter had been referred to the larger bench, in the meantime, the accused would be entitled to be released on default bail.

This court, in the case of **State of Haryana Vs. Dildar Ram @ Dari** (supra) has held that challan filed without FSL report would not be regarded as a complete challan and the accused would be entitled to default bail in terms of Section 167(2) Cr.P.C.

Therefore in the present case, as the challan had been filed without the FSL report in the instant case, the petitioner would be entitled to be released on default bail in terms of Section 167(2) Cr.P.C.

In view of the above, without expressing any opinion on the merits of the case, the instant petition is allowed and the order dated 31.05.2021 passed by the Additional Sessions Judge, Sirsa, is set-aside. The petitioner is ordered to be released on default bail on his furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

In the event of the Division Bench opining that the challan filed without FSL report would be a complete challan, the State would be at liberty to prefer an application for cancellation of bail.

(ANUPINDER SINGH GREWAL)
JUDGE

November 29, 2021

sonia gugnani

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No