

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

CRR No.809 of 2021

Date of Decision: 29-09-2021

Balkar Singh @ Lali

.....Petitioner.

Versus

State of Haryana

.....Respondent.

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Rahil Mahajan, Advocate
for the revisionist-petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

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MEENAKSHI I. MEHTA, J.

By way of the instant petition, the revisionist-petitioner (here-in-after referred to as “the petitioner”) assails the order dated 02.08.2021 passed by learned Additional Sessions Judge, Sirsa, whereby the application moved by him under Section 167(2) Cr.P.C for seeking the default bail in the criminal case pertaining to the FIR bearing No.07 dated 05.01.2021 registered at Police Station Sadar, Dabwali, under Section 22 (C) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”), has been dismissed.

2. Bereft of unnecessary details, the allegations, as levelled in the subject FIR, are that the petitioner was apprehended by the police party headed by ASI Madan Lal and the search of the polythene bag, which he was holding

in his hand, had resulted in the recovery of 6500 Tramadol Hydrochloride 100 mg, Clovedol-100 SR Tablets.

3. Reply filed on behalf of the respondent-State by way of the affidavit of the Deputy Superintendent of Police, Dabwali, District Sirsa, is already available on the file and the same is taken on the record.

4. I have heard learned counsel for the petitioner as well as learned State counsel in the present petition and have also perused the file thoroughly.

5. Learned counsel for the petitioner has contended that the petitioner was arrested on 05.01.2021 and though the Challan was presented against him on 17.06.2021 but the same was incomplete as the FSL report had not been annexed therewith, so as to enable the trial Court to take cognizance in the matter and therefore, the petitioner was entitled to the default/statutory bail as envisaged under Section 167(2) Cr.P.C. To buttress his contentions, he has placed reliance upon the observations made by the Division Bench in *Ajit Singh @ Jeeta and another vs. State of Punjab, Criminal Revision No.4659 of 2015 (O&M) Decided on 30.11.2018* and the verdicts as rendered by the Single Benches of this Court in *Akash Kumar @ Sunny vs. State of Haryana, CRR No.1731 of 2019 Decided on 16.10.2019; Shankar vs. State of Haryana CRM-M No.44412 of 2019 Decided on 20.12.2019; Julfkar vs. State of Haryana CRR No.1125 of 2020 Decided on 16.09.2020; Suresh vs. State of Haryana CRR No.1135 of 2020 Decided on 18.11.2020; Dilawar Singh vs. State of Haryana CRR No.37 of 2021 Decided on 19.01.2021; Sumit @ Mittu vs. State of Haryana CRR No.1221 of 2020 Decided on 15.02.2021; Melody Yudhanpuri vs. State of Punjab CRR No.983 of 2020 Decided on 12.10.2020;*

Devender vs. State of Haryana CRR No.1286 of 2020 Decided on 02.02.2021;
Saleem @ Mulla vs. State of Haryana CRM-M No.11271 of 2021 Decided on
26.03.2021; and **Jaswant @ Jagdish vs. State of Haryana CRM-M No.15804**
of 2020 Decided on 27.07.2021.

6. Per contra, learned State counsel has argued that the Challan has been presented against the petitioner within the stipulated period, on completion of the investigation and the FSL report would also be submitted for being enclosed therewith, on its receipt and the Challan, so presented, can not be termed to be incomplete on the said count and therefore, the petitioner is not entitled to the default bail and this revision petition deserves dismissal.

7. Though, the petitioner has averred that the Challan was presented on 17.06.2021 but it is pertinent to mention here that it has, specifically, been deposed in Para 5 of the said Reply-cum-affidavit that the Challan was presented in the Court on 17.05.2021. Be that as it may, the fact remains that the Challan was, concededly, presented within the prescribed/stipulated period as envisaged under Section 36-A(4) of the NDPS Act. Although, the report of the FSL had not been submitted along-with the Challan as the same was still awaited on the date of its presentation in the Court but it is worth-while to mention here that a three Judges' Bench of the Apex Court has categorically observed in **Suresh Kumar Bhikam Chand Jain vs. State of Maharashtra and another, SLP (Criminal) No.147 of 2013 Decided on 13.02.2013** that "*where a public servant was arrested under the provisions of Prevention of Corruption Act and the investigation was conducted without the sanction of the Competent Authority and the charge-sheet was filed within the stipulated period of 90*

days but the cognizance was not taken by the Magistrate for want of sanction, the accused was not entitled to bail under Section 167(2) Cr.P.C and the filing of the charge-sheet was sufficient compliance with the provisions of Section 167(2)(a)(ii) Cr.P.C in the case and whether cognizance was taken or not was not material as far as Section 167 Cr.P.C was concerned".

8. The case in hand is squarely covered by the above-cited verdict because the plea taken therein was that the cognizance was not taken by the Magistrate for want of the sanction as required to be sought from the State Government concerned and in the present case also, the stand of the petitioner is that in the absence of the report of the FSL, the Court would be unable to take cognizance in the matter. It being so, it is quite explicit that the Challan presented in the Court, cannot be construed to be incomplete so as to entitle the petitioner to seek the statutory/default bail.

9. In view of the above-discussed observations as made by Hon'ble Supreme Court, the verdicts as rendered by the Division Bench in **Ajit Singh @ Jeeta (supra)** and by the Single Benches of this Court in **Julfkar (supra); Suresh (supra); Dilawar Singh (supra); Sumit @ Mittu (supra); Melody Yudhanpuri (supra); Devender (supra); Saleem @ Mulla (supra); Jaswant @ Jagdish (supra)** are of no avail to the petitioner to claim the default bail and as regards the judgments handed down in **Akash Kumar @ Sunny (supra)** and **Shankar (supra)**, it is necessary to point it out here that the claim of the petitioner for the default bail on the ground of non-submission of the FSL report along-with the Challan, has been declined therein.

10. As a sequel to the fore-going discussion, it follows that the

petitioner is not entitled to seek default/statutory bail and the impugned order dated 02-08-2021 does not suffer from any illegality, irregularity, infirmity or perversity so as to call for any interference by this Court and hence, the instant revision petition, being *sans* any merit, deserves dismissal. Resultantly, the same stands dismissed accordingly.

29-09-2021

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**(MEENAKSHI I. MEHTA)
JUDGE**

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>