

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

**Criminal Misc.No.M-38041 of 2021 (O&M)
Date of Decision: September 15, 2021**

State of Haryana

...Petitioner

Versus

Aajam @ Kala

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Surender Singh, AAG, Haryana
for the petitioner – State.

HARINDER SINGH SIDHU, J.

Challenge herein is to the order dated 30.04.2021 passed by learned Addl. Sessions Judge-cum-Judge, Special Court, Yamuna Nagar at Jagadhri, whereby, the application of the respondent Aajam @ Kala for grant of default bail under Section 167 (2) Cr.P.C. was allowed, as the prosecution agency had filed the challan without the FSL report. He has been ordered to be released on bail subject to furnishing bail bonds in the sum of Rs.1,00,000/- with two local/sound sureties each in the like amount to the satisfaction of the Trial Court.

The respondent is an accused in case FIR No.21 dated 12.01.2021 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act No.61 of 1985, registered at Police Station Sadar Yamuna Nagar. Allegations against him are that he was apprehended on the basis of secret information and 50 grams 'smack' was found in his possession.

Learned counsel for the petitioner – State has argued that the report filed under Section 173 CrPC in a case of NDPS Act without a report

from the Forensic Science Laboratory cannot be said to be incomplete and thus, the respondent could not be extended the benefit of Section 167(2) CrPC. Relying on the decision of this Court in **CRR-1731-2019** titled '**Akash Kumar @ Sunny vs. State of Haryana**' decided on 16.10.2019, it is contended that in NDPS cases, challan/final report under Section 173(2) filed without FSL report is a complete challan and will not entitle the accused to be released on default bail.

Heard.

There have been different opinions of the Ld. Single Benches of this Court. In view of the conflict, Reference was made to Larger Bench in **Ajit Singh @ Jeeta and another vs. State of Punjab, 2018 SCC Online P&H 6941** with the following question:-

"Whether the presentation of report under Section 173 (2) Cr.P.C. by the police without the report of Chemical Examiner/Forensic Science Laboratory amounts to incomplete challan and in the absence of an extension of time under Section 36A (4) of the N.D.P.S. Act , the accused is entitled to bail under Section 167 (2) Cr.P.C.?"

The Division Bench 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 **Akash Kumar's case (supra)** 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 matter is still pending consideration before Division Bench.

In the circumstances, the impugned order dated 30.04.2021 granting bail to the respondent under Section 167(2) is modified to the extent 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.

Petition stands disposed of accordingly.

September 15, 2021

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No