

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

228

CRR-1106-2021 (O&M)

Date of Decision: October 11, 2021

Neeraj @ Neeru

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Aditya Sanghi, Advocate, for the petitioner.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana.

JASGURPREET SINGH PURI. J. (Oral)

The present revision petition has been filed challenging the order passed by the learned Additional Sessions Judge, Sirsa dated 06.07.2021 wherein the application filed by the petitioner under Section 167(2) of the Code of Criminal Procedure for the grant of default bail has been dismissed.

The learned counsel for the petitioner has submitted that in the present case the petitioner was arrested on 03.01.2021 and thereafter, the police presented an incomplete challan on 29.06.2021 within a period of 180 days. However, the said challan was not accompanied by the FSL

report, hence it was incomplete. Thereafter, the FSL report was submitted before the Court on 23.08.2021 which was beyond the period of 180 days and, therefore, the petitioner was entitled for the grant of statutory default bail under Section 167(2) of Cr.P.C. He submitted that the learned Additional Sessions Judge, Sirsa had erred in law inasmuch as, the case of the petitioner was in fact covered by a Division Bench judgment of this Court in ***Ajit Singh @ Jeeta and another Vs. State of Punjab, Criminal Revision No. No.4659 of 2015***. He submitted that the reliance was made on other judgments but they were either of the learned Single Bench or they were not pertaining to the NDPS Act and, therefore, the order passed by the learned Additional Sessions Judge, Sirsa by declining bail to the petitioner deserves to be set aside.

He submitted that the law with regard to the grant of default bail under Section 167(2) of Cr.P.C. under the NDPS Act in case of incomplete challan has been now settled by a Division Bench of this Court in ***Ajit Singh @ Jeeta and another Vs. State of Punjab, Criminal Revision No.4659 of 2015***. He submitted that admittedly the challan was not accompanied by the FSL report and, therefore, the challan was incomplete and thereafter, the FSL report was filed after the expiry of 180 days and, therefore his case is covered by a Division Bench judgment of this Court. Furthermore, the prosecution had not filed any application seeking extension of 180 days. He has prayed that the order passed by the learned Additional Sessions Judge, Sirsa be set aside and he may be

released on bail under the provisions of Section 167(2) of Cr.P.C.

On the other hand, Mr. Ranvir Singh Arya, learned Additional Advocate General, Haryana has submitted that so far as the factual position is concerned with regard to filing of challan without FSL report is correct. He further submitted that the FSL report was filed after the expiry of 180 days and no application for extension of time was filed. He submitted that the FSL report could not be filed in time due to the procedural hassles due to Covid-19 pandemic and has stated that a reply has been filed by the State in this regard.

I have heard learned counsel for the parties.

The petitioner was admittedly arrested on 03.01.2021 and the challan was filed under Section 173 of Cr.P.C. on 29.06.2021 which was within a period of 180 days but without FSL report. The FSL report was filed after 180 days on 23.08.2021. Admittedly, there was no application for extension of 180 days. The law in this regard has been settled by a Division Bench of this Court in ***Ajit Singh @ Jeeta and another Vs. State of Punjab(Supra)***. The relevant portion of the judgment of the Division Bench of this Court in ***Ajit Singh @ Jeeta and another Vs. State of Punjab(Supra)*** is reproduced as under:-

“For this reason as well, it is essential that the report of the Chemical Examiner be included in the report under Section 173 Cr.P.C. and without which it can at best be termed to be an incomplete challan depriving the Magistrate of relevant material take cognizance and if it is not submitted within the requisite period of 180 days, it would essentially result in a

default benefit to the accused unless an application is 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.

We emphasize on the stringent aspect of the N.D.P.S. Act which would compellingly persuade us to take the aforesaid view. Without determining the nature and content of the contraband, it would be draconian to propel an accused into the throes of a trial. The liberty of an individual would constantly be imperiled at the hands of dubious officials of the police who may venture to falsely implicate a person.

It is for this reason that we would unhesitatingly conclude that the Chemical Examiner's report is an essential; integral and inherent part of the investigation under the N.D.P.S. Act as it would lay the foundation of an accused's culpability without which a Magistrate would not be enabled to form an opinion and take cognizance of the accused's involvement in the commission of offence under the Act.

We are conscious of the fact that these issues have arisen largely on account of the inability of the State to provide the Chemical Examiner's report in time ostensibly for the reason that it is not equipped with enough laboratories to examine the contraband but for that, it is the State which has to be faulted and it would do well to hone up its own infrastructure so that the accused who deserves punishment, does not get the benefit of law and go scot free and gain access to a undeserving liberty.”

In view of the aforesaid position, the impugned order dated 06.07.2021 passed by the learned Additional Sessions Judge, Sirsa is hereby set aside. The present petition is therefore allowed. The

petitioner is entitled to a Statutory right of default bail under Section 167(2) of the Code of Criminal Procedure. The petitioner shall be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

October 11, 2021
rakesh

(JASGURPREET SINGH PURI)
JUDGE

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