

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

CRR-1320-2020 (O&M)

Date of Decision: 27.05.2021

GURMAIL SINGH @ GELA

.....Petitioner

V/s.

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

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

Ms. Tanushree Gupta, DAG, Haryana.

MANJARI NEHRU KAUL, J. (Oral)

Instant petition is directed against the order dated 26.11.2020 passed by the learned Additional Sessions Judge, Sirsa whereby the application filed under Section 167 (2) of the Cr.P.C. seeking regular bail for the petitioner has been dismissed.

Learned counsel for the petitioner inter alia contends that the petitioner has been in custody since 25.05.2020 and only challan has been presented till date. Hence, there is no likelihood of the trial concluding in the near future. He further submits that no doubt 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 to the grant of default bail. In support of his submissions, learned counsel for the petitioner has placed reliance on the Division Bench judgment in case of *Inderjeet Singh @ Laddi and others vs. State of Punjab, 2014(3) RCR (Cr.) 953*.

Per contra, learned State counsel while opposing the prayer of learned counsel for the petitioner on instructions has submitted that the

petitioner was found in possession of 407 grams heroine (Chhitha) wrapped in a glazed paper which falls in the commercial quantity. He however, has not been able to controvert the factum of FSL report not having been filed along with the challan. Still further, on a pointed query put to learned State counsel, he has conceded that the learned Public Prosecutor did not make 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.

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 **CRM-M-11271-2021** titled as **Saleem @ Mulla vs. State of Haryana** 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, it would be deemed to be an incomplete challan, hence, entitling the petitioner to the grant of default bail. Accordingly, present petition is allowed and the petitioner is admitted to bail to the satisfaction of the trial Court/Duty Magistrate. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

May 27, 2021

Ess Kay

[MANJARI NEHRU KAUL]
JUDGE

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>