

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

265

CRR-40-2022 (O&M)
Date of Decision: 17.02.2022

Ajaib Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

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

Mr. Rajiv Sidhu, DAG, Haryana.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 06.11.2021 vide which an application filed by the petitioner under Section 167(2) Cr.P.C. has been dismissed.
2. A few facts necessary to notice for disposal of this petition are that FIR No.38 dated 08.02.2021, Police Station Ellenabad, District Sirsa, under Section 17 NDPS Act, was lodged against the petitioner wherein the allegations are broadly to the effect that the petitioner was found in possession of 6 Kgs and 285 Gms of 'Opium' on 08.02.2021. The matter was investigated by the police. The period of 180 days for filing the challan was to expire on 07.08.2021. However, no challan was filed. Rather on 04.08.2021, an application seeking extension of time for presentation of challan was filed by the prosecution which

was accepted on the same day i.e. vide order dated 04.08.2021 (Annexure P-4) which reads as follows:

“Present:- Shri Deepak legha, PP for the State.

An application for extending the time to file challan in the Court is moved stating that FSL report has not been received as yet and challan is to be filed till 07.08.2021. In view of said reason, the application is allowed and IO is directed to file challan in the Court immediately after receipt of FSL report. Papers be tagged with remand papers.

Dated:-04.08.2021

sd/-

Rajesh Malhotra,
Sessions Judge, Sirsa
(UID No.HR0059)”

3. Thereafter, the petitioner moved an application under Section 167(2) Cr.P.C. seeking grant of default bail, which was dismissed vide order dated 21.08.2021 (Annexure P-3). The concluding paragraph of the said order reads as follows:-

“8. I am satisfied with the contention of Ld. Public Prosecutor for the State as mentioned in the preceding para, as investigation qua present accused is completed except FSL report and thus, I.O. wants to file the complete challan, instead of filing the challan awaiting FSL report. Therefore, I do not see any irregularity in giving permission to Public Prosecutor in granting time for filing the challan, vide order dated 04.08.2021. However, in the interest of justice, Investigating Officer is hereby directed to file challan at the earliest and preferably within 15 days with or without FSL report. Hence, present application for default bail is hereby dismissed. Papers be attached with the remand papers. Dismissed.”

4. Thereafter, challan was presented on 10.09.2021, though the same was not accompanied by FSL report. Thereafter, another application under Section 167(2) Cr.P.C. was moved by the petitioner on 01.11.2021 which was again dismissed vide impugned order dated 06.11.2021

holding therein that even if the challan is not accompanied by report of FSL, the same cannot be said to be an incomplete challan.

5. Learned counsel for the petitioner places reliance upon judgment of a Division Bench reported as Ajit Singh alias Jeeta and another Vs. State of Punjab in CRR No.4659 of 2015 and also a judgment dated 18.11.2021 of this Court in a case titled as Sant Lal Vs. State of Haryana in CRR-534 of 2021.
6. Learned counsel has further submitted that in any case, the order passed by the trial Court granting extension of period of filing challan beyond 180 days vide order dated 04.08.2021 (Annexure P-4) cannot sustain inasmuch as the same has been passed without giving any notice of the application to the accused and that even the application as moved by the SHO concerned has simply been forwarded by the Public Prosecutor without there being any kind of endorsement or reasoning furnished by the Public Prosecutor. Learned counsel in order to hammer forth his aforesaid submission places reliance upon a judgment of Hon'ble Supreme Court rendered in Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotics Control Bureau and another 2010(1) RCR (Criminal) 942. Learned counsel submits that the aforesaid judgment has recently been followed by this Court and in a judgment dated 11.02.2022 titled as Joginder Singh Vs. State of Haryana in Criminal Miscellaneous No.M-48705 of 2021. Learned counsel submits that since in view of the judgment of the Hon'ble Supreme Court, order dated 04.08.2021 granting extension cannot sustain, therefore, the challan which was presented on 10.09.2021, having been filed beyond a period of 180 days and that too without a report of the FSL was apparently filed beyond the prescribed period

and as such, the petitioner deserved to be released on default bail and the impugned order dated 06.11.2021 cannot sustain and is liable to be set aside.

7. Opposing the petition, learned State counsel has submitted that the question as to whether a challan presented without report of FSL is an incomplete challan or not has been referred to a Division Bench and as such the petitioner cannot contend that the challan in question as filed is incomplete on account of omission to file report of FSL. Learned State Counsel, however, has fairly conceded the legal position as regards the filing of an extension application by the prosecution being against the settled position of law inasmuch a notice of the same is required to be furnished to the accused whenever any such extension application is filed and in fact such extension application is also required to be filed after due satisfaction of the Public Prosecutor which is absolutely missing in the present case, who is required to furnish adequate reasons, justifying extension of period for filing challan.
8. In the instant case, it is admitted case that challan has been filed beyond the period of 180 days and the same was filed without report of FSL. Order dated 04.08.2021 (Annexure P-4) cannot be said to be a valid order on account of there being omission to furnish notice of the application (Annexure P-5) to the accused and also on account of the fact that the said application has merely being forwarded by the Public Prosecutor without there being any reasoning having been furnished by the Public Prosecutor as to why the prayer for extension of period was justified. Hon'ble the Supreme Court in Sanjay Kumar

such application is to be filed a prior notice is required to be furnished to the accused. In these circumstances, the challan having been filed beyond the statutory period of 180 days and which has been filed without the report of FSL has to be termed as an incomplete challan which has been filed beyond the prescribed period of 180 days. As such, a right came to be vested in the accused for his release on default bail upon expiry of period of 180 days. Consequently, the impugned order dated 06.11.2021 cannot sustain and is hereby set aside.

9. The petitioner, in any case, has been behind bars for a period of about 1 year. The petition as such is accepted and the impugned order dated 6.11.2021 is set aside. The petitioner is ordered to be released on bail subject to his furnishing bail bonds to the satisfaction of learned trial Court/Illaq Magistrate/Chief Judicial Magistrate/Duty Magistrate, concerned.

17.02.2022

VY/Mohan

**(GURVINDER SINGH GILL)
JUDGE**Whether speaking/reasoned: **Yes/No**Whether reportable: **Yes/No**