

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

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CRR-522-2022 (O&M)

Date of decision: 18.05.2022

NISHANT

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Johan Kumar, Advocate
for the petitioner.

Mr. Surender Singh, AAG Haryana.

HARNARESH SINGH GILL, J. (ORAL)

Challenge is to the order dated 09.03.2022 passed by the learned Additional Sessions Judge, Faridabad, vide which the application filed by the petitioner seeking default bail under Section 167(2) Cr.P.C. in FIR No.52 dated 14.02.2021, under Section 20 and 29 of the NDPS Act, 1881, Police Station Central Faridabad, District Faridabad, has been dismissed.

Learned counsel for the petitioner submits that FIR in question was registered on 14.02.2021; that the petitioner was taken into custody on the same day and that the challan in the present case was presented before the Court on 06.05.2021, but without FSL report. It is further submitted that, on 08.03.2022, the petitioner filed an application under Section 167(2) Cr.P.C. for grant of default bail, before the trial Court, but the same was dismissed. It is further submitted that no application was moved by the prosecution for extension of time under Section 36A(4) of the NDPS Act, for filing the FSL report.

Learned counsel for the petitioner further submits that the prosecution took a totally incorrect stand before the learned trial Court that the FSL report could not be filed due to inadvertence. He further submits that, though, as per the prosecution story, the FSL report was received on 10.06.2021, yet the fact remains that the same was not placed/filed before the learned trial Court till 09.03.2022. Still further, it is submitted that the provisions of Section 167(2) Cr.P.C. are meant for protection of personal liberty and in the event, challan being not filed by the police within the stipulated period, the petitioner is entitled to default bail, as contemplated under Section 167(2) Cr.P.C.

In support of his contentions, learned counsel for the petitioner relies upon the the order passed by this Court in CRM-M-1041-2021 titled Rajender Kumar @ Surender @ Chhinda vs. State of Haryana, decided on 03.03.2022 (Annexure P-3),

On the other hand, learned State counsel submits that merely because the challan was filed short of FSL report, would be no ground to grant concession of bail to the petitioner. He, however, does not dispute the custody period of the petitioner. He further submits that the petitioner is a habitual offender, inasmuch as, one more FIR of similar nature, is registered and pending against him.

I have heard the learned counsel for the parties.

In the present case, the petitioner was arrested on 14.02.2021 and was produced before the Court. Admittedly, the challan was presented before the Court on 06.05.2021 but without FSL report. It is the settled law that right for default bail is an indefeasible right which

cannot be allowed to be frustrated by the prosecution.

Since, the challan was presented without FSL report, this Court finds that the petitioner is entitled to the benefit of default bail under Section 167(2) Cr.P.C. Moreover, the issue whether the challan without the FSL report is a complete challan or otherwise, is pending adjudication before the Full Bench.

Consequently, without commenting anything on the merits, lest it should prejudice the case of either side, the present petition is allowed; the impugned order dated 09.03.2022 passed by the learned Additional Sessions Judge, Faridabad, is hereby set aside and the petitioner is ordered to be released on default bail under Section 167(2) Cr.P.C. on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

(HARNARESH SINGH GILL)
JUDGE

18.05.2022

Aman Jain

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No