

217 **IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-12904-2021

Date of Decision: 02.12.2022

State of Haryana

.....Petitioner

Versus

Jagdeep Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Surender Kumar Dagar, DAG, Haryana.

None for the respondent/accused.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition is filed by the State of Haryana under Section 439 (2) read with Section 482 of Code of Criminal Procedure for cancellation of default bail granted to the respondent under Section 167(2) Cr.P.C., in case FIR No.153 dated 21.09.2020 under Section 18(c) of NDPS Act, 1985 (Section 29 of the Act added later on) registered at Police Station Guhla, District Kaithal.

Learned State counsel has given the relevant dates for the purpose of considering the issue as to whether the respondent was granted default bail by the learned trial court correctly or not. The respondent was arrested on 21.09.2020 and he was produced before the Court on 22.09.2020 i.e. on the next day. After excluding the aforesaid date of 22.09.2020, the total days for calculating 60 days comes out to be on 21.11.2020. The alleged confiscated quantity from the respondent was 1kg and 830 grams of opium which does not fall in the category of commercial quantity and therefore, the challan was required to be presented within a period of 60 days. The challan in the present case was presented on 16.11.2020 prior to the expiry of 60 days but it was an

incomplete challan because it was not accompanied by the FSL report. The FSL report was filed in the month of June, 2021 much later than the presentation of challan and the expiry of 60 days.

Learned Special Court while considering the law laid down by the Division Bench of this Court in *Ajit Singh @ Jeeta and another Vs. State of Punjab and ors. In criminal Revision No.4659 of 2015 (O&M)* granted default bail under Section 167(2) of Cr.P.C. to the respondent.

I have heard the learned counsel for the State.

After perusing the impugned order (Annexure P-1) by which default bail was granted to the respondent and considering the factual position as aforesaid whereby the challan was required to be presented within 60 days, since the confiscated quantity does not fall in the category of commercial quantity, it is clear that the period of 60 days had expired on 21.11.2020 and challan was presented on 16.11.2020 without FSL report and therefore it was an incomplete challan. A Division Bench of this Court in *Ajit Singh @ Jeeta* (supra) while dealing with this issue observed that in such like cases, the challan would be an incomplete challan if it is not accompanied by FSL report in the matters pertaining to NDPS Act. The relevant portion of the aforesaid judgment 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. ”

In view of the aforesaid facts and circumstances, finding no merit in the arguments raised by learned State counsel as there is no illegality or perversity in the impugned order passed by the learned trial Court, the present petition is dismissed.

However, anything observed herein above shall not be treated as an expression of opinion on merits of the case & is only meant for the purpose of decision of present petition.

29.11.2022

(JASGURPREET SINGH PURI)

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JUDGE

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No