

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

1. CRM-M-17329-2021 (O&M)

Mang Singh @ Mangu

...Petitioner

Versus

State of Haryana

...Respondent

2. CRR-14-2021 (O&M)

Kuldeep Singh

...Petitioner

Versus

State of Haryana

...Respondent

Date of decision: 06.05.2022

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Lokesh Sharma, Advocate for
Mr. Aditya Sanghi, Advocate
for the petitioners in both the cases.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This common order shall dispose of above noted two petitions
as they are similar in nature.

Prayer in the first petition, filed under Section 167(2) read with
Section 482 Cr.P.C., is for releasing petitioner Mang Singh @ Mangu on
bail/default bail in case FIR No. 113 dated 29.03.2020, registered under
Section 22 (C) of the NDPS Act, 1985 at Police Station Sadar Fatehabad,
District Fatehabad.

Prayer in the second petition is for setting aside the order dated 16.12.2020, vide which the application filed by petitioner Kuldeep Singh for grant of default bail, under Section 167(2) Cr.P.C., was dismissed.

On 28.06.2021, the following order was passed in CRM-M-17329-2021:

“Learned counsel for the petitioner submits that while submitting the report under Section 173 Cr.P.C., the Investigating Officer has not attached the FSL report and, therefore, the complete challan was not submitted before the Magistrate/Special Judge and in view of the same, the petitioner is entitled to get the default bail.

Learned counsel has relied upon a Division Bench judgment of this Court in **Ajit Singh @ Jeeta Vs. State of Punjab, CrI. Rev. No.4659 of 2015**, wherein it has been held that if the challan is presented without report of Chemical Examiner/FSL, it is incomplete challan and in such case, the accused is entitled to grant of default bail under Section 167 (2) Cr.P.C. Learned counsel has further relied upon a recent order dated 16.09.2020 passed in **CRR-1125-2020 (Julfkar Vs. State of Haryana)**, wherein the following observations were made: -

“...I am now faced with a situation where I am confronted with two Single Bench judgments in Akash Kumar alias Sunny (supra) and Shankar (supra) and a binding Division Bench judgement in Ajit Singh alias Jeeta (supra). By virtue of the doctrine of stare decisis, the Single Bench judgements in Akash Kumar alias Sunny (supra) and Shankar (supra) are binding on me as they lay down a proposition of law although at variance with the law laid down by the Division Bench in Ajit Singh alias Jeeta (supra). However, I express my respectful

disagreement with the aforementioned Single Bench judgements on the ground that a smaller Bench could not have declared the judgement of a larger Bench to be per incuriam in view of the doctrine of stare decisis and also that the principle of per incuriam has been applied erroneously. Judicial discipline demands that a reference be made to a Division Bench regarding the validity and correctness of the aforementioned Single Bench judgements. The file of this case be, thus, placed before Hon'ble the Chief Justice with a request to constitute a Division Bench for consideration of this matter. Since the law has been unsettled and is leading to confusion amongst the trial Courts, the matter may be considered urgently.

Meanwhile, it is directed that the petitioner be released on bail on furnishing bail and surety bonds to the satisfaction of the trial Court.

A copy of this order be sent to all the District and Sessions Judges in the States of Punjab, Haryana and U.T. Chandigarh, for their information.

List again on 07.04.2021.

In the meantime, the petitioner is directed to be released on interim bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.”

List again on 11.08.2021.

To be listed with ***CRR-14-2021***.

In the meantime, the petitioner is directed to be released on interim bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.”

On 08.01.2021, a similar order was passed in CRR-14-2021 granting concession of interim bail to petitioner Kuldeep Singh.

Learned counsel for the parties are *ad idem* that the matter is

still pending before the Division Bench and the disposal of the same may take some time.

Learned State counsel submits that the trial is going on and the cases are now fixed for prosecution evidence.

In view of the above, these petitions are allowed. The order dated 28.06.2021, granting interim bail to petitioner Mang Singh @ Mangu as well as order dated 08.01.2021, granting interim bail to petitioner Kuldeep Singh, passed in the respective petitions, are hereby confirmed, subject to final outcome of the case pending before the Division Bench.

A photocopy of this order be placed on the file of other connected case.

06.05.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No