

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

247-A

CRR-779-2022

Date of Decision: 17.05.2022

Sunny

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Yatin Sharma, Advocate for
Mr. Keshav Pratap Singh, Advocate,
for the petitioner.

Ms. Shivani Sharma, AAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

The present is a revision petition challenging the orders passed by learned Judge Special Court, Ambala dated 07.12.2021. Since the present petition pertains to the grant of default bail and the matter was earlier heard along with CRM-M-14192-2022, CRM-M-40988-2021 and CRR-252-2022 which have been adjourned. It is directed that the present case be segregated from the aforesaid cases.

Learned counsel for the petitioner submitted that in the present case, the petitioner was arrested on 04.06.2021 and thereafter, challan was presented on 13.08.2021 and since the present case pertains to the commercial quantity under the NDPS Act, the period of 180 days expired. The aforesaid challan dated 13.08.2021 was presented without FSL report and on 02.12.2021, the petitioner moved an application for grant of default bail under Section 167(2) of the Cr. P.C. He submitted that even till date the FSL report has not been filed and therefore, the challan was incomplete. He submitted that the law with regard to the same has been laid down by

Division Bench of this court in *Ajit Singh @ Jeeta and Another vs. State of Punjab (CRR 4659 of 2015)* and in view of the ratio of the aforesaid judgment, the petitioner was entitled for the grant of default bail under Section 167(2) of the Cr.P.C. He submitted that the impugned order was therefore erroneous and perverse and not in accordance with law laid down by this court in *Ajit Singh (Supra)*.

Ms.Shivani Sharma, AAG, Haryana on instructions of ASI Jaspal Singh has submitted that so far as the aforesaid dates are concerned, the same are not in dispute and it is correct that the challan was presented on 13.08.2021 without FSL report and the FSL report has not been received or filed till date.

I have heard the learned counsel for the parties.

In the present case the period of 180 days expired on 01.12.2021 and challan was presented on 13.08.2021 without FSL report and therefore the said challan was an incomplete challan. It is almost one year now that FSL report has not been filed till date.

On the specific query being asked to the learned counsel for the parties, as to whether any application for extension was filed or not, it was submitted by both the learned counsels for the parties as well as learned AAG, Haryana that no application seeking extension of time has been filed. This court in *Ajit Singh (Supra)* had observed that in such like situation in the NDPS cases where challan had been filed without FSL report and a period of 180 days had expired in case of commercial quantities then it will be deemed to be an incomplete challan and the accused is entitled for the grant of default bail under Section 167(2) of the Cr.P.C. The relevant portion of the aforesaid judgment is reproduced as under:-

“25. 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., 1973 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 position this court is of the view that the petitioner was entitled for the grant of default bail under Section 167(2) of Cr.P.C., in view of the law laid down by this court in ***Ajit Singh (Supra)***.

Consequently, the present petition is allowed. The impugned order passed by learned Judge Special Court, Ambala dated 07.12.2021 is hereby set aside. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

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

(JASGURPREET SINGH PURI)
JUDGE

17.05.2022
Sunil Devi

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