

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

**CRR-933 of 2022(O&M)
Date of Decision:- 01.06.2022**

Rohtash @ Raju

....Petitioner

Vs.

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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

Mr. Gaurav Bansal, AAG, Haryana.

KARAMJIT SINGH, J.(Oral)

The petitioner is seeking default bail in criminal case having FIR No.336 dated 22.09.2021 under Sections 22-C/27A NDPS Act, Police Station Sadar Dabwali.

The counsel for the petitioner contends that as per the prosecution version, the petitioner was arrested and presented in the court on 23.09.2021 and the challan was presented against the petitioner on 17.03.2022 by the police. The counsel further contends that the said challan was without the FSL report and therefore, is to be considered as incomplete challan. The counsel for the petitioner

further contends that no application was moved by the public prosecutor or additional public prosecutor, as per the provisions of Section 36A(4) NDPS Act seeking extension of time to complete the investigation in the present case. The counsel further contends that as per prosecution such an application, Annexure P-2, was filed on 17.03.2022 and indisputably same was allowed by the trial Court vide order dated 31.03.2022, Annex. P-1. The counsel further contends that for seeking extension of time, the public prosecutor after an independent application of mind to the request of the investigating agency, is required to make a report to the Court indicating therein the progress of investigation. That however, in the present case no such report was submitted along with Annex. P-2, and as such, order dated 31.03.2022, Annex. P-1, is not at all justified. The counsel further contends that the petitioner's right to default bail had accrued on the presentation of the application dated 23.03.2022 filed under Section 167(2) Cr.P.C., as the challan which was filed by the police on 17.03.2022 was without any FSL and thus, is to be considered as incomplete challan. In support of his contentions the counsel for the petitioner referred to order dated 09.08.2021 passed by the Coordinate Bench of this Court in CRR No.361 of 2021, Jagvinder Singh Vs. State of Haryana, wherein it was held that the report of FSL with regard to nature of recovered substance would go to the root of the matter and a challan filed without the FSL report with regard to the same would be an incomplete challan and would not

satisfy the requirement envisaged under Section 167(2) Cr.P.C. and the accused in such circumstances would be entitled to be released on default bail. The counsel further relied upon the decision of the coordinate Bench of this Court in CRR-40-2022 Ajaib Singh Vs. State of Haryana, decided on 17.02.2022.

The counsel for the State on the other hand contends that there is no illegality in the impugned order. The State counsel further submits that the challan was filed on 17.03.2022 and along with the same an application under Section 36A(4) NDPS Act was moved and the request for seeking extension of time was accepted by the trial Court and resultantly the bail application moved by the petitioner under Section 167(2) Cr.P.C was dismissed. The State counsel further contends that admittedly the aforesaid challan was filed without the FSL report but still it cannot be treated as an incomplete challan. In support of his contentions the State Counsel referred to CRR No.1731 of 2019, Akash Kumar @ Sunny Vs. State of Haryana, decided on 16.10.2019 by the coordinate Bench of this Court.

I have considered the submissions made by the counsel for the parties.

As per prosecution, the present case is with regard to recovery of commercial quantity of contraband and the petitioner was sent to custody on 23.09.2021. The police presented challan against the petitioner on 17.03.2022, without FSL report. Along with the challan SHO of the concerned police station filed an application,

(Annx. P-2) under Section 36A(4) NDPS Act seeking extension of time. Admittedly, the said application was not forwarded by the public prosecutor or additional public prosecutor. The law requires that such an application should be supported by a report of public prosecutor, which indicates the progress of the investigation and further specify the compelling reasons for seeking the detention of the accused beyond the period of 180 days. In this context reference be made to *Sanjay Kumar Kedia Vs. Narcotics Control Bureau (2009) 17 SCC 631*. In the case in hand no such report of public prosecutor was filed along with the application moved under Section 36A(4) of NDPS Act. So, the aforesaid request for extension of time made by the prosecution agency was not in accordance with law. Thus, the order dated 31.03.2022, Annexure P-1, passed by the trial Court is not sustainable in the eyes of law.

The report of the FSL goes to the root of the case and is a material document and as such, filing of challan without the same is not to be treated as complete challan, as has been held by the coordinate Bench of this Court in *Jagvinder Singh case (supra)* and *Ajaib Singh's case (supra)*. The similar view has been taken by the coordinate Bench of this Court in Criminal Revision No.1314 of 2021, *Joginder Singh Vs. State of Haryana*, decided on 11.02.2022. Even the Hon'ble Apex Court in *SLP (Criminal) No.8164-8166/2021 Mohammad Arbaz and others Vs. State of NCT and Delhi*, also granted relief to the accused, under the similar circumstances.

In the light of the above, the impugned order dated 24.03.2022 rejecting default bail to the petitioner is hereby set aside and he is ordered to be released on default bail on furnishing requisite bail bonds to the satisfaction of concerned trial Court/Special Judge (Duty).

The present petition stands disposed of accordingly, so also the pending miscellaneous application(s), if any.

01.06.2022
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No