

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

243

CRR-1138-2022

Date of Decision: 31.05.2022

Deepak Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amit Chaudhary, 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 Addl. District and Sessions Judge, Fatehabad dated 10.05.2022, whereby the learned Court has dismissed the bail application filed under section 167(2) of the Cr.P.C. read with Section 36-A of the NDPS Act.

Learned counsel for the petitioner submitted that the impugned order passed by learned Additional District and Sessions Judge, Fatehabad was perverse and against the law laid down by the Division Bench of this court in *Ajit Singh @ Jeeta and Another vs. State of Punjab (CRR 4659 of 2015)*. He submitted that the petitioner in the present case was arrested on 24.12.2021 and in the present case the alleged recovery was 75 grams of heroin which does not fall in the category of commercial quantity and the challan was required to be presented within a period of 60 days and the period of 60 days expired on 28.02.2022 and challan was presented in the present case on 21.02.2022 without FSL report and therefore it was an

incomplete challan.

He further submitted that the FSL report has not been received till date and has not been filed by the police and therefore in view of the judgement of this court in ***Ajit Singh (Supra)***, the petitioner is entitled for the grant of default bail under Section 167(2) of the CR.P.C.

In the present case notice of motion was issued by this court on 26.05.2022 and the learned Addl. Advocate General, Haryana had prayed for some time to ascertain the factual position.

Today the learned Addl. Advocate General, Haryana has stated that so far as the aforesaid dates are concerned the same are correct and it is also correct that FSL report has not been received till date.

I have heard learned counsel for the parties.

The challan was presented in the present case although within a period of 60 days but it was an incomplete challan without the FSL report. The law regarding effect of filing of incomplete challan in NDPS matters has been laid down by the Division Bench of this court in ***Ajit Singh (Supra)***, it was held that when a challan is presented without the FSL report then the same shall be an incomplete Challan and the benefit of default bail under section 167(2) of the Cr.P.C. will be available to the accused on that ground only. The relevant portion of the judgement 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 is entitled for the grant of default bail under Section 167(2) of Cr.P.C., in view of the law laid down by the Division Bench of this court in ***Ajit Singh (Supra)***.

Consequently, the present petition is allowed. The impugned order passed by learned Addl. District and Sessions Judge, Fatehabad dated 10.05.2022, 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

31.05.2022
Sunil Devi

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