

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-986-2021 (O&M)

Date of Decision: 02.09.2022

Sanjay

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Gaurav Soni, Advocate, for the petitioner.

Mr. Surender Kumar Dagar, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

The present revision petition has been filed seeking setting aside of the order passed by the learned Additional Sessions Judge, Hisar dated 06.08.2021 whereby the application for grant of default bail under Section 167(2) of the Code of Criminal Procedure was dismissed.

It has been submitted by the learned counsel for the petitioner that in the present case the petitioner was arrested on 05.02.2021 and thereafter, he was produced before the learned Magistrate and was sent to police custody on 06.02.2021 and thereafter was sent to the judicial remand. In this way, the petitioner was produced before the Court for the first time on 06.02.2021. He further submitted that thereafter the police presented incomplete challan without FSL Report on 03.05.2021 and the period of 180 days expired on 04.08.2021 but the FSL Report was still not filed. He

further submitted that since the alleged recovery in the present case was of commercial quantity, the challan was supposed to have been filed within a period of 180 days in view of Section 36A of the NDPS Act. He further submitted that even till the expiry of 180 days on 04.08.2021, the FSL Report was not filed and immediately on the next day i.e. 05.08.2021, he filed an application for grant of default bail under Section 167(2) of the Code of Criminal Procedure. He further submitted that once the period of 180 days expired and the challan is an incomplete challan an indefeasible right vested in the petitioner for grant of default bail in view of the judgment of the Hon'ble Supreme Court in ***M. Ravindran Versus The Intelligence Officer, Directorate of Revenue Intelligence [2021(2) SCC 485]***. He further referred to a Division Bench judgment of this Court in ***Ajit Singh @ Jeeta and another Vs. State of Punjab [Crl. Revision No.4659 of 2015]*** in which it was held that when in the NDPS matters when an incomplete challan is filed without FSL Report, then after the expiry of the period of 180 days in commercial quantity the right of default bail accrues in favour of the accused. He further submitted that after the expiry of 180 days an application for extension of period was filed on 05.08.2021 and the said application was also decided on 06.08.2021 whereby extension was granted till 06.10.2021. He further submitted that still the Investigating Agency could not file the FSL Report even within the extended period and the FSL Report was filed after 06.10.2021 and there was no extension of time sought from the Court. He further submitted that in view of the aforesaid position, the impugned order dated 06.08.2021 passed by the learned Additional Sessions Judge, Faridabad is liable to be set aside and the petitioner is entitled for the grant of regular bail.

Mr. Surender Kumar Dagar, learned Deputy Advocate General, Haryana has submitted that so far as the aforesaid dates stated by the learned counsel for the petitioner are concerned, the same are correct. He further submitted that after the expiry of 180 days an application was moved by the petitioner on 05.08.2021 for grant of default bail and the Investigating Agency also moved an application on the same date for grant of extension which was extended on 06.08.2021 till 06.10.2021. He has submitted on specific instructions from ASI Mehar Singh that in fact in the present case the FSL Report was filed in the Court on 10.11.2021 which was after 06.10.2021 whereby the extension period had also expired but no application was filed for further extension of time. He further submitted that while calculating the period of 180 days the date on which the remand was taken is to be excluded and in case that date is excluded, then the period of 180 days would expire on 05.08.2021 and not on 04.08.2021.

I have heard the learned counsel for the parties.

Admittedly, the petitioner was produced for the first time before the Court on 06.02.2021. So far as the counting of the period of 180 days is concerned and as to whether the date on which the accused is produced for the first time before the Court is to be excluded or not, there had been conflicting judgments of the Hon'ble Supreme Court and now in ***Enforcement Directorate, Government of India Versus Kapil Wadhawan and another***, Criminal Appeal No.701-702 of 2020, decided on 23.02.2021 by virtue of two Judges Bench order of the Hon'ble Supreme Court the matter has been referred to a larger Bench in view of the conflict of law as aforesaid.

Two aspects are to be seen in the present case. Firstly, in case

the date of 06.02.2021 is to be counted in the period of 180 days, then indefeasible right accrued in favour of the petitioner immediately on the expiry of 180 days i.e. on 05.08.2021 and when he filed application on 05.08.2021 his rights were to be protected and he was entitled for the grant of default bail, even though on the next day the application for extension of time was allowed. The second aspect is that even when the extension of time was allowed and was extended only till 06.10.2021 but as per the learned counsel for the State till the aforesaid date i.e. 06.10.2021 FSL Report was not filed and it was filed on 10.11.2021 and in this way, even by ignoring the earlier aspect the petitioner would be entitled for the grant of default bail in view of the second aspect and on 06.10.2021 also he was entitled for grant of default bail.

In view of the aforesaid position, the impugned order dated 06.08.2021 passed by the learned Additional Sessions Judge, Hisar is hereby set aside. The petitioner is entitled to a Statutory right of default bail under Section 167(2) of the Code of Criminal Procedure. The petitioner shall be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

02.09.2022

rakesh

**(JASGURPREET SINGH PURI)
JUDGE**

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No