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

CRM-M-36117-2022

Date of Decision: 29.09.2022

Neeraj

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Narinder Singh Sindher, Advocate,
for the petitioner.

Mr. Naveen S. Panwar, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.118 dated 25.03.2022, under Sections 18 & 29 of the N.D.P.S. Act, 1985, registered at Police Station Parao, Ambala Cantt., District Ambala.

Learned counsel appearing on behalf of the petitioner has submitted that the petitioner is in custody since 25.03.2022 and the allegations against the petitioner were with regard to the confiscation of 2 kgs. & 600 grams of *Opium* which was marginally higher than the prescribed commercial quantity under the NDPS Act. He further submitted that it is a case where the petitioner was arrested on 25.03.2022 and on 06.07.2022, the investigating agency presented the challan which was an incomplete challan without any FSL report. He also submitted that as of

today, 188 days have elapsed and the prosecuting agency has not even moved an application for extension of time, and therefore, otherwise also the petitioner is entitled for the grant of default bail under Section 167(2) of the Cr.P.C..

On the other hand, Mr. Naveen S. Panwar, learned DAG, Haryana has submitted that it is correct that the petitioner was arrested on 25.03.2022 and he was produced before the Court on 26.03.2022, and thereafter, the challan was presented on 06.07.2022, which was an incomplete challan without FSL Report and in this way today is the 188th day whereas the investigating agency was supposed to present a complete challan within a period of 180 days unless an extension was granted but as per his instructions, no such application for extension of time has been filed. He further on instructions from S.I. Jarnail Singh submitted that till date the FSL Report has not been filed.

I have heard the learned counsel for the parties.

Since during the pendency of the present petition, a right under Section 167(2) of the Cr.P.C. has accrued to the petitioner, this Court will, therefore, deal with the right of the petitioner for grant of default bail. As per the learned counsel for the parties, the challan was presented on 06.07.2022 which was an incomplete challan without FSL report. Today is 188th day but as per the learned State counsel, who has obtained instructions from the concerned I.O. till date FSL report has not been filed. In other words, period of 180 days have already elapsed, the challan which was filed was an incomplete challan without FSL report, no application for extension of time has been filed by the prosecution and FSL report has not been filed

as yet.

The law with regard to grant of default bail under Section 167 (2) of the Cr.P.C. in NDPS matters has been laid down by the Division Bench of this Court in ***Criminal Revision No.4659 of 2015*** titled as “***Ajit Singh @ Jeeta and another Vs. State of Punjab***”, therefore, following the ratio of the aforesaid judgment of the Division Bench of this Court, the petitioner would be entitled for default bail under Section 167(2) of the Cr.P.C.

In view of the aforesaid facts and circumstances of the case, this Court deems fit and proper to grant bail to the petitioner. Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

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

29.09.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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