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

**CRR No.1870 of 2022
Date of Decision: 22.12.2022**

Sattar

..... Petitioner

Versus

State of Haryana

..... Respondent

CRR No.2775 of 2022

Neeraj @ Shera

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amit Chaudhary, Advocate
for the petitioner in CRR-1870-2022.

Mr. Johan Kumar, Advocate,
for the petitioner in CRR-2775-2022.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana.

JASGURPREET SINGH PURI J. (ORAL)

Both these revision petitions are being taken up together for final disposal with the consent of the learned counsels for the petitioners, since the prayer made in both the petitions for grant of default bail under Section 167(2) of Cr.P.C. and they arise out of the same FIR bearing No.86 dated 19.02.2022, under Sections 20 & 61 of the NDPS Act, registered at Police Station Faridabad Old, District Faridabad and the facts pertaining to the dates are also similar.

CRR-1870-2022 has been filed by the petitioner, namely, Sattar and CRR-2775-2022 has been filed by the petitioner, namely, Neeraj @ Shera. Learned counsels for both the petitioners have submitted that both the petitioners were arrested on 19.02.2022 and they were produced for the first time before the Court on 20.02.2022. They further submitted that the subject matter of the alleged confiscated quantity in the present case was falling within the category of commercial quantity under the NDPS Act which was 40.150 kgs. of *Ganja* and therefore, the challan was required to be presented within a period of 180 days, in view of Section 167(2) of the Cr.P.C. read with Section 36-A of the NDPS Act. They also submitted that the period of 180 days after excluding 20.02.2022 expired on 20.08.2022. They further submitted the challan in the present case was presented on 20.05.2022 but the challan was incomplete challan because it was not accompanied by the FSL report. Therefore, an indefeasible right had been vested to both the petitioners immediately on the expiry of 180 days in view of the law laid down by the Division Bench of this Court in *CRR No.4659 of 2015* titled as “*Ajit Singh @ Jeeta and another vs. State of Punjab*”, decided on 30.11.2018. They further submitted that after the expiry of 180 days an application for default bail was moved by both the petitioners on 22.08.2022 and the FSL report was submitted to the Court on 23.08.2022 which was after the expiry of period of 180 days.

Mr. Ranvir Singh Arya, learned Additional Advocate General, Haryana, has referred to the affidavit filed on behalf of the respondent-State and has submitted that so far as the aforesaid dates as stated by learned counsels for the petitioners is concerned, the same are correct.

I have heard learned counsel for the parties.

The prayer in both these petitions is for grant of default bail under Section 167(2) Cr.P.C. read with Section 36-A of the NDPS Act by impugning the orders passed by the learned Additional Sessions Judge, Faridabad on 24.08.2022 (in both the revision petitions). The aforementioned dates are not disputed by the learned State counsel. Therefore, it is clear that the period of 180 days had expired on 20.08.2022 but before that the challan which was filed was an incomplete challan because it was admittedly not accompanied by the FSL report and the FSL report was presented before the Court on 23.08.2022 which was after the expiry of 180 days, therefore, an indefeasible right had vested to both the petitioners immediately on the expiry of 180 days. The law in this regard has been discussed and laid down by the Division Bench of this Court in **Ajit Singh's case (supra)** and 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.”

Therefore, in view of the aforesaid facts and circumstances and the law laid down by the Division Bench of this Court in **Ajit Singh's case (supra)**, this Court deems it fit and proper to allow both the revision petitions.

Consequently, both the impugned orders dated 24.08.2022 passed

by the learned Additional Sessions Judge, Faridabad in both the revision petitions are hereby set aside and quashed. The petitioners shall be entitled for the grant of default bail under Section 167(2) Cr.P.C. read with Section 36-A of the NDPS Act and they shall be released on default bail to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate of the concerned area.

22.12.2022
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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