

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

236

CRR-1516-2021

Date of Decision : **February 21, 2022**

PAWAN KUMAR

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Keshav Pratap Singh, Advocate for the petitioner.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed challenging the order passed by learned Additional Sessions Judge, Fatehabad dated 2.9.2021 whereby the application filed by the petitioner under Section 167(2) Cr.P.C. for the grant of default bail has been dismissed.

The learned counsel for the petitioner has submitted that in the present case the petitioner was arrested on 27.2.2021 and the alleged recovery was of a non-commercial quantity and, therefore, the police was under an obligation to present the challan within a period of 60 days i.e. 27.4.2021. However, the challan was presented on 20.5.2021 but it was an incomplete challan as it was not accompanied by the FSL report. He submitted that thereafter assumingly the days are to be counted upto 180 days, the same period of 180 days has also expired on 27.8.2021 and still the FSL report was not presented and thereafter only in the month of September, 2021 the FSL report was presented before Court and as per the FSL report which has been attached alongwith the reply filed by the State, the date of the FSL report is mentioned as 14.9.2021. He submitted

that it is a settled law that if incomplete challan is presented without any FSL report in NDPS matters then the accused is entitled for the default bail. He has referred to the judgment of a Division Bench of this Court in ***Ajit Singh @ Jeeta and another Vs. State of Punjab, Criminal Revision No.4659 of 2015*** to contend that the petitioner is entitled for the default bail.

On the other hand, the learned State counsel has submitted while referring to the reply that it is correct that the petitioner was arrested on 27.2.2021 and incomplete challan without FSL report was presented on 20.5.2021 and thereafter the FSL report was prepared on 14.9.2021 and it was thereafter that the FSL report has been filed in the Court. The learned State counsel, however, could not distinguish the present case from the law laid down by a Division Bench of this Court in Ajit Singh's case (Supra) but he has submitted that the petitioner is involved in a number of cases and most of them were pertaining to Excise Act.

I have heard the learned counsels for the parties.

The present revision has been filed to challenge the order passed by the learned Additional Sessions Judge, dated 2.9.2021. The dates in the present case are not disputed by the learned counsels for the parties. Admittedly, the challan was presented on 20.5.2021 which was an incomplete challan without FSL report and the statutory period of 60 days expired on 27.4.2021 and the period of 180 days have expired on 27.8.2021 and still the FSL report was not filed and thereafter the FSL report was prepared on 14.9.2021 vide Annexure R-1. The law in this

regard has been laid down categorically by a Division Bench of this Court in Ajit Singh's case (Supra). The relevant portion of the same is reproduced as under:-

“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. 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.

We emphasize on the stringent aspect of the N.D.P.S. Act which would compellingly persuade us to take the aforesaid view. Without determining the nature and content of the contraband, it would be draconian to propel an accused into the throes of a trial. The liberty of an individual would constantly be imperiled at the hands of dubious officials of the police who may venture to falsely implicate a person.

It is for this reason that we would unhesitatingly conclude that the Chemical Examiner's report is an essential; integral and inherent part of the investigation under the N.D.P.S. Act as it would lay the foundation of an accused's culpability without which a Magistrate would not be enabled to form an opinion and take cognizance of the accused's involvement in the commission of offence under the Act.

We are conscious of the fact that these issues have arisen largely on account of the inability of

the State to provide the Chemical Examiner's report in time ostensibly for the reason that it is not equipped with enough laboratories to examine the contraband but for that, it is the State which has to be faulted and it would do well to hone up its own infrastructure so that the accused who deserves punishment, does not get the benefit of law and go scot free and gain access to a undeserving liberty.””

Therefore, considering the ratio of law laid down by a Division Bench of this Court, the petitioner shall be entitled for the grant of default bail.

Consequently, the present petition is allowed and impugned order dated 2.9.2021 is set-aside.

It is directed that 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, if not otherwise required in any other case.

A copy of this order be sent to the DGP, Haryana who will look into this issue as to why in such sensitive matters where particularly the accused is involved in a number of cases, the FSL report does not come in time and is not filed in time and thereafter the accused becomes entitled for default bail.

Let a copy of the order be sent to the DGP, Haryana for his information.

(JASGURPREET SINGH PURI)
JUDGE

February 21, 2022

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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No