

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

**CRM-M-51527-2021 (O&M)**

**Date of decision: 04.04.2022**

Amit

...Petitioner

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present:- Mr. K.S. Dhaliwal, Advocate for the petitioner.

Mr. Surender Singh, AAG Haryana.

Mr. Ajit Sihag, Advocate for the complainant.

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**HARNARESH SINGH GILL, J. (ORAL)**

Through this petition, the petitioner seeks bail under Section 167(2) Cr.P.C., in case bearing FIR No.344 dated 23.07.2021, registered at Police Station Purani Sabzi Mandi, District Rohtak, under Sections 8, 21-B, 25 and 27 NDPS Act, 1985 and Sections 304, 34 and 328 (added later on) IPC.

Learned counsel for the petitioner contends that the petitioner was arrested on 23.07.2021; that he was produced before the Court on 24.07.2021 and that the challan in the present case was presented before the Court on 29.09.2021, but without FSL and viscera reports. It is further submitted that the petitioner filed an application under Section 167(2) Cr.P.C. for grant of bail, before the learned Area Magistrate on 29.10.2021, but the same was dismissed. It is further submitted that no application was moved by the prosecution for extension of time under Section 36A(4) of the

NDPS Act, for filing the FSL and viscera reports. He relies upon the order dated 11.12.2021 passed by Hon'ble Supreme Court in Petition(s) for Special Leave to Appeal (Crl.) Nos. 8164-8166/2021- Mohd. Arbaz and others Vs. State of NCT Delhi; Division Bench judgment dated 30.11.2018 of this Court in CRR-4659-2015 -Ajit Singh @ Jeeta and another Vs. State of Punjab, order dated 17.06.2021 passed by a Coordinate Bench in CRR-523-2021- Hari Singh @ Sonu Vs. State of Haryana.

He further submits that the provisions of Section 167(2) Cr.P.C. are meant for protection of personal liberty and in event charge-sheet being not filed by the police within the stipulated period, the petitioner is entitled to default bail as contemplated under Section 167(2) Cr.P.C.

On the other hand, learned State counsel assisted by the learned counsel for the complainant submit that the instant one is not an exclusive case under the NDPS Act, but also under Sections 304, 328 IPC read with Section 34 IPC and therefore, merely because the challan was filed short of FSL and viscera reports, would be no ground to grant concession of bail to the petitioner. However, they do not dispute the custody period of the petitioner.

Learned State counsel further submits that in CRR-1125-2020 titled as Julfkar Vs. State of Haryana, the matter has been referred for an authoritative decision of the Full Bench.

Learned counsel for the complainant relies upon the judgment dated 16.10.2019 of the Coordinate Bench in CRR-1731-2019 - Akash Kumar @ Sunny Vs. State of Haryana, to contend that non filing of FSL report with the challan, would not entitle the accused to be enlarged on bail.

I have heard the learned counsel for the parties.

In the present case, the petitioner was arrested on 23.07.2021 and was produced before the Court on 24.07.2021 and the challan was presented before the Court on 29.09.2021 but without FSL and viscera reports. It is a settled law that right for default bail is an indefeasible right which cannot be allowed to be frustrated by the prosecution. Admittedly, the challan was presented without FSL report, therefore, this Court finds that the petitioner is entitled to the benefit of bail under Section 167(2) Cr.P.C. Moreover, the issue whether the challan without the FSL report is a complete challan or otherwise, is pending adjudication before the Full Bench.

Without commenting anything on the merits, lest it should prejudice the case of either side, the present petition is allowed and the petitioner is ordered to be released on default bail under Section 167(2) Cr.P.C. on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

**(HARNARESH SINGH GILL)**  
**JUDGE**

**04.04.2022**

*Mangal Singh*

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No