

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

CRR No.2202 of 2022

Date of Decision: 20.12.2022

Juned alias Kanha

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Abhinav Sood, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI J. (ORAL)

The present revision petition has been filed by the petitioner for setting aside the order dated 03.09.2022 by which the application filed by the petitioner for grant of default bail under Section 167 (2) of Cr.P.C. has been dismissed by the learned Judge, Special Court, Faridabad.

Learned counsel for the petitioner has submitted that it is a case where the petitioner was arrested on 11.02.2022 and allegation against him was with regard to confiscation of 21 Buprenorphine injections (2ml each) total 42 ml, 21 Avil Injections containing 10ml each total 210 ml, four needles, one syringe, five used syringes, 32 empty covers of Buprenorphine injections, 28 empty bottles of Avil was effected from the petitioner. He was produced for the first time before the

learned Court on 12.02.2022 and since the alleged quantity falls within the category of commercial quantity, the total period for the presentation of challan was 180 days, in view of Section 167 sub-section 2 of Cr.P.C. read with Section 36A of NDPS Act. The said period of 180 days expired on 11.08.2022. However, before expiry of the aforesaid period of 180 days, the police presented the challan on 11.04.2022 but the challan was incomplete challan because it was not accompanied by the FSL report. He submitted that no extension application has been filed by the prosecution in the present case and, therefore, after the expiry of 180 days, the petitioner was entitled for the grant of default bail especially in view of the law laid down by the division Bench of this Court in “**Ajit Singh @ Jeeta and another vs. State of Punjab**”, CRR No.4659 of 2015, decided on 30.11.2018. He submitted that even till date, the FSL report has not been received and therefore, the impugned order passed by the learned Additional Sessions Judge, Faridabad is perverse and in violation of the law laid down by this Court in *Ajit Singh's case (supra)*.

In compliance of order dated 01.12.2022, status report by Vinod Kumar, HPS, Assistant Commissioner of Police, Mujesar, Faridabad along with Annexures on behalf of the respondent-State has been filed in Court today, which is taken on record. Copy of the same has been supplied to the counsel opposite.

Mr. Naveen Singh Panwar, DAG, Haryana, has submitted that so far as the aforesaid dates are concerned, the same are correct and it is also correct that the period of 180 days had expired on 11.08.2022 and the challan was presented, which was without FSL report, because

even till date FSL report has not been received. He has further referred to the affidavit filed by the State in which it has been stated that no application for grant of extension of time was moved by the prosecution.

I have heard learned counsel for the parties.

It is a case, where the petitioner is seeking default bail under Section 167 sub-section (2) Cr.P.C. read with Section 36A of the NDPS Act. The aforesaid dates are not disputed by the learned State counsel. It is, therefore, apparent that till the expiry of 180 days, the police did not present a complete challan and the challan which was presented on 11.04.2022 was an incomplete challan without FSL report and as per learned State counsel, the FSL report has not been received even till date. The law in this regard has been discussed and laid down by the Division Bench of this Court in ***Ajit Singh's case (supra)***. 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 factual position 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 the present petition.

Consequently, the impugned order dated 03.09.2022 passed by the learned Additional Sessions Judge, Faridabad is hereby set aside and quashed. The petitioner shall be entitled for the grant of default bail under Section 167 sub-section (2) Cr.P.C. read with Section 36A of the NDPS Act and he shall be released on default bail to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate of the concerned area.

(JASGURPREET SINGH PURI)
JUDGE

20.12.2022

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No