

CRR-1747-2021 (O&M)

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

**CRR-1747-2021 (O&M).
Decided on: February 23, 2022.**

Kulveer Singh

.. Petitioner

VERSUS

State of Haryana

.. Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

**PRESENT Mr.B.S.Jatana, Advocate,
for the petitioner.**

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

JASGURPREET SINGH PURI, J. (ORAL)

The present revision petition has been filed impugning order dated 23.11.2021 passed by the learned Additional Sessions Judge, Sirsa, whereby the application filed by the petitioner seeking default bail under Section 167 (2) Cr.P.C. has been dismissed.

Learned counsel for the petitioner has submitted that in the present case the petitioner was arrested on 6.1.2021 and he was produced before the learned Judicial Magistrate on 7.1.2021 and the challan by the police was presented on 10.2.2021 but the challan was an incomplete challan because the same was not accompanied by the FSL report. Since the alleged confiscated contraband was of commercial quantity, the complete challan was required to be presented within a period of 180 days. This

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period of 180 days expired on 5.7.2021 but still the FSL report was not filed and thereafter, it was only on 22.11.2021 that the FSL report was filed by the police before the Court. He submitted that the petitioner was entitled for statutory default bail under Section 167 (2) Cr.P.C. since the police had not filed complete challan. He submitted that law in this regard has been laid down by a Division Bench of this Court in **Ajit Singh @ Jeeta and another Vs. State of Punjab, Crl. Revision No.4659 of 2015.**

On the other hand, learned State counsel has submitted that so far as aforesaid dates are concerned, the same are correct and it is also correct that police had filed the challan without the FSL report on 10.2.2021 and the FSL report was filed on 22.11.2021 which was after expiry of 180 days. He has also referred to the affidavit filed by the State in this regard.

I have heard the learned counsel for the parties.

The factual position with regard to the date is not in dispute. It is also not in dispute that police had presented the incomplete challan without FSL report. The law with regard to the grant of default bail pertaining to the NDPS Act, has been laid down by the Division Bench of this Court in **Ajit Singh @ Jeeta's case (Supra)** and the relevant portion of the judgment of 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.”

In view of aforesaid position and the law laid down by the Division Bench of this Court in **Ajit Singh @ Jeeta's case (Supra)**, the petitioner deserves the concession of default bail under Section 167 (2)

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Cr.P.C.

Consequently, the present petition is allowed. Impugned order dated 23.11.2021 passed by the learned Additional Sessions Judge, Sirsa, whereby the application filed by the petitioner seeking default bail under Section 167 (2) Cr.P.C. was dismissed, is hereby set aside. It is ordered that the petitioner shall be released on bail on furnishing bail bond/surety bond to the satisfaction of the learned trial Court /ASJ/Judge, Special Court, concerned.

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

February 23, 2022.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No