

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

**CRR-252-2022
DECIDED ON: 14st FEBRUARY, 2023**

GAURAV SETH @ BITTU

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

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

Mr. Ashok Kumar Sehrawat, DAG, Haryana.

SANDEEP MOUDGIL, J. (ORAL)

The present is a revision petition challenging the orders passed by learned Judge Special Court, Ambala dated 24.12.2021 vide which the application for default bail under Section 167(2) Cr.P.C., was declined.

Learned counsel for the petitioner submitted that in the present case, the petitioner was arrested on 04.06.2021 and thereafter, challan was presented on 13.08.2021 and since the present case pertains to the commercial quantity under the NDPS Act, the period of 180 days expired. The aforesaid challan dated 13.08.2021 was presented without FSL report and on 22.12.2021, the petitioner moved an application for grant of default bail under Section 167(2) of the Cr. P.C., which was dismissed on 24.12.2021.

The quantity of contraband alleged to have been recovered from the petitioner and the other co-accused is though of commercial in nature but

learned counsel for the petitioner has laid strength on the order passed by this court in CRR-779-2022 titled as **“Sunny vs. State of Haryana”** whereby, the co-accused of the petitioner namely Sunny on whose disclosure statement the petitioner was arrayed in the list of accused, has been granted the default bail.

Learned State counsel has not controverted the fact that in the present case challan stands presented on 13.08.2021 and the same was filed without FSL report.

Learned counsel for the petitioner has also placed reliance upon the order of a Division Bench of this Court rendered in the case of ***Ajit Singh @ Jeeta and Another vs. State of Punjab (CRR 4659 of 2015)***. He submits that and in view of the ratio of the aforesaid judgments, the petitioner was entitled for the grant of default bail under Section 167(2) of the Cr.P.C. He submitted that the impugned order was therefore erroneous and perverse and not in accordance with law laid down by this court in ***Ajit Singh (Supra)***.

I have heard the learned counsel for the parties.

In the present case the period of 180 days expired on 01.12.2021 and challan was presented on 13.08.2021 without FSL report and therefore the said challan was an incomplete challan. It is almost 1 ½ year has been elapsed , no further steps with regard to FSL report has been taken.

This court in ***Ajit Singh (Supra)*** had observed that in such like situation in the NDPS cases where challan had been filed without FSL report and a period of 180 days had expired in case of commercial quantities then it will be deemed to be an incomplete challan and the accused is entitled for the grant of default bail under Section 167(2) of the Cr.P.C. 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.”

In view of the aforesaid position this court is of the view that the petitioner was entitled for the grant of default bail under Section 167(2) of Cr.P.C., in view of the law laid down by this court in ***Ajit Singh (Supra)*** as well as in ***Sunny's case (supra)***.

Consequently, the present petition is allowed. The impugned order passed by learned Judge Special Court, Ambala dated 24.12.2021 is hereby set aside. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

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.

14th FEBRUARY, 2023

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**(SANDEEP MOUDGIL)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>