

213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14192-2022

DECIDED ON: 14st FEBRUARY, 2023

BALJEET SINGH

...PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Garima Sharma, Advocate
for the petitioner.

Mr. Ashok Kumar Sehrawat, DAG, Haryana.

SANDEEP MOUDGIL, J. (ORAL)

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No. 80, dated 19.05.2021, under Section 21-C and 29 of NDPS Act, registered at Police Station Sector-9, District Ambala City.

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.

Custody certificate filed by the counsel for State is taken on record. According to which the petitioner is behind the bars for the last 1 year 5 months and 20 days. 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. He prays for dismissal of the present petition stating that the petitioner is also involved in other cases of similar nature as well of IPC. However, it is evident from the custody certificate that the petitioner is on bail in all other cases.

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.”

Considering the afore-said facts and circumstances added with the fact that Sunny on whose disclosure statement the petitioner has been nominated as an accused has already been granted a default bail by this Court and on the ground of equity of justice, this court is of the view that no fruitful purpose would be served by keeping the petitioner behind the bars.

In view of above, the present petition is allowed and he 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.

(SANDEEP MOUDGIL)
JUDGE

14th FEBRUARY, 2023

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