

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

**CRR-457 of 2023
Date of Decision:- 27.02.2023**

Kapil Goel alias Babloo

....Petitioner

Vs.

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. G.C. Shahpuri, Advocate
for the petitioner.

Ms. Harpreet Kaur, DAG, Haryana.

KARAMJIT SINGH, J.(Oral)

The present criminal revision petition has been filed by the petitioner against the order dated 06.02.2023 passed by the Additional Sessions Judge-cum-Special Court, Yamuna Nagar at Jagadhari, whereby bail application of the petitioner filed under Section 167(2) CrPC was dismissed.

The counsel for the petitioner contends that as per the prosecution version, the petitioner was arrested by the police on 6.8.2022 along with commercial quantity of contraband and the petitioner was produced in the Court concerned on 7.8.2022 and the

challan was presented against the petitioner on 21.12.2022 without the report of FSL.

The counsel for the petitioner contends that the statutory period of 180 days provided for filing of complete challan expired on 3.2.2022, however, by that date incomplete challan was presented without the report of FSL. The counsel for the petitioner further contends that no application was filed by the public prosecutor, as per the provisions of Section 36A(4) NDPS Act seeking extension of time to complete the investigation in the present case. In the present case, no report was ever furnished by the public prosecutor in terms of the aforesaid statutory provision. The counsel for the petitioner further contends that petitioner's right to default bail accrued on 4.2.2022 and even on that date no FSL report was filed. The petitioner filed an application under Section 167(2) Cr.P.C on that very day i.e. 4.2.2022. The counsel for the petitioner further contends that as the challan which was filed by the police on 21.12.2022 was without any FSL report and the prosecution also failed to file report of FSL within the statutory period of 180 days as per the provisions of Section 36 NDPS Act read with Section 167(2) Cr.P.C., the same is to be considered by incomplete challan. In support of his contentions, the counsel for the petitioner referred to judgment of Division Bench in *Ajit Singh @ Jita and another Vs. State of Punjab*, CRR No.4659 of 2015, decided on 30.11.2018. The counsel for the petitioner has also placed reliance upon order dated 09.08.2021 passed by the

Coordinate Bench of this Court in *CRR No.361 of 2021, Jagvinder Singh Vs. State of Haryana*, wherein it was held that the report of FSL with regard to nature of recovered substance would go to the root of the matter and a challan filed without the FSL report with regard to the same would be an incomplete challan and would not satisfy the requirement envisaged under Section 167(2) Cr.P.C. and the accused in such circumstances would be entitled to be released on default bail. The counsel further relied upon the decision of this Court in *CRR-933-2022 Rohtash @ Raju Vs. State of Haryana, decided on 01.06.2022*.

The counsel for the State on the other hand contends that there is no illegality in the impugned order. The State counsel further submits that the challan was filed on 21.12.2022 but the prosecution failed to file the report of FSL till the completion of statutory period of 180 days which expired on 3.2.2023 and resultantly, the petitioner filed bail application under Section 167(2) Cr.P.C. but the same was rightly dismissed by the trial Court. The State counsel further submits that admittedly, the challan was filed without the report of FSL but it cannot be termed as an incomplete challan. In support of his contentions, the State counsel referred to *CRR No.1731 of 2019, Akash Kumar @ Sunny Vs. State of Haryana, decided on 16.10.2019* by the coordinate Bench of this Court.

However, the State counsel has not disputed the fact the trial Court while dismissing the bail application of the petitioner vide

order dated 6.2.2023 has clearly observed that no request in writing was made by the public prosecutor seeking extension of time for the purpose of investigation of the case as per the provisions of Section 36A(4) NDPS Act.

I have considered the submissions made by the counsel for the parties.

As per prosecution, the present case is with regard to recovery of commercial quantity of contraband and the petitioner was sent to custody on 7.8.2022. The police presented challan against the petitioner on 21.12.2022, without report of FSL. The statutory period of 180 days wherein complete challan was to be filed, expired on 3.2.2023. Admittedly, even by that date the report of FSL was still awaited and on 4.2.2023 the petitioner filed an application for grant of default bail. It is not disputed by the State counsel that by 3.2.2023 no application was filed by the public prosecutor seeking extension of time for the purpose of investigation of the case. Even no report of public prosecutor was filed as per the requirements of Section 36A(4) of NDPS Act.

The report of the FSL goes to the root of the case and is a material document and as such, filing of challan without the same is not to be treated as complete challan, as has been held by the Division Bench of this Court in *Ajit Singh @ Jita case (supra)* and coordinate Bench of this Court in *Jagvinder Singh case (supra)*. The similar view has been taken by this Court in *Rohtash @ Raju's case*

(supra). Thus, the order dated 06.02.2023 passed by the trial Court is not sustainable in the eyes of law.

In the light of the above, the impugned order dated 06.02.2023 rejecting default bail to the petitioner is hereby set aside and the petitioner is ordered to be released on default bail on furnishing requisite bail bonds to the satisfaction of concerned trial Court/Special Judge (Duty).

The present petition stands disposed of accordingly, so also the pending miscellaneous application(s), if any.

27.02.2023
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No