

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

CRR-1452-2022

Decided on:-02.02.2023

Sunil

....Petitioner..

vs.

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vikas Bishnoi, Advocate,
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARKESH MANUJA J. (Oral)

By way of present criminal revision petition filed under Section 401 Cr.P.C., the petitioner has laid challenge to an order dated 18.06.2022 passed by the court of learned Additional District and Sessions Judge, Fatehabad, whereby his prayer for grant of default bail under Section 167(2) Cr.P.C., has been declined.

The facts of the case are that the petitioner was arrayed as an accused in FIR No.81 dated 29.01.2022, under Section 21(b), 27(A) of NDPS Act, at Police Station City Fatehabad, wherein, challan was filed by the investigating agency on 25.03.2022, however, without presenting the report of FSL. On 09.06.2022, the petitioner moved an application for grant of default bail by relying upon Section 167(2) Cr.P.C. read with Section 36(A)(4) of the NDPS Act. The aforesaid prayer made by the petitioner came to be declined by the court of Additional Sessions Judge, Fatehabad vide order dated 18.06.2022, which has now been impugned by way of

present petition.

Learned counsel for the petitioner submits that in the present case, challan was filed by the investigating agency without the report of FSL, therefore, the same was not in accordance with the provisions of Section 36-(A)(4) of the NDPS Act and, thus, the petitioner deserves the concession of default bail as contemplated under Section 167(2) Cr.P.C.

On the other hand, learned State counsel opposes the prayer made in the present petition by submitting that by now the report of FSL has been filed before the trial court on 24.12.2012 and thus, the petitioner has lost his right of grant of default bail.

I have heard learned counsel for the parties and gone through the records.

Admittedly, in the present case, challan was though filed on 25.03.2022, however, the same did not contain the report of FSL and, thus, prima facie cannot be treated to be complete in all respects and in consonance with the provisions of Section 36(A)(4) of the NDPS Act. The report of FSL was, however, submitted before the trial court on 24.12.2022 i.e. almost after 6 months of the petitioner having invoked his right before the court concerned under Section 167(2) Cr.P.C.

More than that, the point of law involved in the present petition is subjudice before Hon'ble Supreme Court in Special Leave to Appeal Nos.8164-8166-2021, titled as ***“Mohd. Arbaz vs. State of NCT of Delhi”***. Reference can also be made to an order dated 11.12.2021 passed by Hon'ble Supreme Court, arising out of SLP(Crl). No.8574-2021, wherein, Hon'ble Supreme Court has upheld an order granting default bail in similar circumstances and the same is reproduced as under for reference:-

“Heard learned counsel for the petitioner and carefully perused the material placed on record.

Although the petitioner-State of Haryana has challenged the impugned order affirming the order passed by the Sessions Court granting default bail to the respondent in terms of Section 167(2) Cr.P.C. due to the failure of the prosecution in filing the FSL report with the challan under Section 173(2) Cr.p.C. yet taking into consideration the fact that the smack found in the possession of the respondent was small quantities of 15 gm 100 mg and more particularly the fact the petitioner has suffered incarceration for a period of three months, we are not inclined to interfere with the impugned order passed by the High Court.

The special leave petition is accordingly, dismissed.

The question of law is left open.”

In addition, it may be pointed out here that in the present case, the petitioner has already suffered incarceration of more than 01 year now and the investigation already stands concluded, challan stands filed.

In view of the discussion made herein-above, present criminal revision petition is allowed, order dated 18.06.2022 passed by the court of learned Additional District and Sessions Judge, Fatehabad is set aside and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate.

02.02.2023
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No