

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH  
**243**

CRR-2136-2022 (O&M)

Date of Decision: 18.04.2023

Shamsher Singh @ Shera

.... Petitioner

Versus

State of Haryana

.... Respondent

**CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: - Mr. Aditya Sanghi, Advocate for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

**ASHOK KUMAR VERMA, J. (ORAL)**

The petitioner has filed the present revision petition for setting aside the impugned order dated 13.09.2022 passed by learned Additional Sessions Judge, Sirsa, whereby the application filed by the petitioner under Section 167(2) Cr.P.C. for grant of default bail in case FIR No. 85 dated 14.03.2022 registered under Sections 17 and 29 of the NDPS Act at Police Station Ellenabad, District Sirsa

Learned counsel for the petitioner, *inter alia*, contends that the petitioner along with his co-accused was arrested on 14.03.2022. He further submitted that the subject matter of the alleged confiscated quantity in the present case was falling within the category of “commercial quantity” under the NDPS Act which was 8.400 grams of heroin and, therefore, the challan was required to be presented within a

period of 180 days, in view of Section 167(2) of the Cr.P.C. read with Section 36-A of the NDPS Act. He also submitted that the period of 180 days expired on 11.09.2022. He further submitted the challan in the present case was presented on 08.09.2022 but the challan was incomplete challan because it was not accompanied by the FSL report. Therefore, an indefeasible right had been vested to the petitioner immediately on the expiry of 180 days in view of the law laid down by the Division Bench of this Court in ***CRR No.4659 of 2015*** titled as “***Ajit Singh @ Jeeta and another vs. State of Punjab***”, decided on 30.11.2018. He further submitted that after the expiry of 180 days an application for default bail was moved by the petitioner on 12.09.2022 and the FSL report was submitted to the Court on 06.10.2022 which was after the expiry of period of 180 days.

Learned counsel for the State submits that so far as the aforesaid dates as stated by learned counsel for the petitioner is concerned, the same are correct. He, however, opposed the present petition on the ground that the challan filed without even FSL report would be a complete challan.

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

The prayer in the instant revision is for grant of default bail under Section 167(2) Cr.P.C. read with Section 36-A of the NDPS Act by impugning the order dated 13.09.2022. The aforementioned dates are not disputed by the learned State counsel. Therefore, it is clear that the period of 180 days had expired on 11.09.2022 but before that the challan

which was filed was an incomplete challan because it was admittedly not accompanied by the FSL report and the FSL report was presented before the Court on 06.10.2022 which was after the expiry of 180 days, therefore, an indefeasible right had vested to the petitioner immediately on the expiry of 180 days. The law in this regard has been discussed and laid down by the Division Bench of this Court in ***Ajit Singh's case (supra)*** and 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.”*

The coordinate Benches of this court in the cases of **Rahul Vs. State of Punjab, CRR No.1016-2020**, decided on 21.12.2020, **Azuka Vs. State of UT, Chandigarh, CRR-765-2020**, decided on 13.03.2020, **Shankar Vs. State of Haryana, CRM-M-44412-2019**, decided on 20.12.2019 and **Akash Kumar @ Sunny Vs. State of Haryana, CRR No.1731-2019** decided on 16.10.2019, had held that the challan under Section 173(2) Cr.P.C. having been filed even without the FSL report would not entitle the accused to be released on default bail under Section 167(2) Cr.P.C. However, different view had been taken by

the coordinate benches and the coordinate Bench of this court in the case titled **Julfkar Vs. State of Haryana, CRR-1125-2020** had referred the matter to the Division Bench in view of the conflict in judgments. It was also observed by a coordinate Bench in **CRR-1135- 2020, Suresh Vs. State of Haryana**, decided on 18.11.2020, while granting default bail to petitioner therein as challan was filed without FSL report, that in the event of the Division Bench opining that the challan filed without FSL report would be a complete challan, the State would be at liberty to prefer an application for cancellation of bail.

Another coordinate Bench of this court in **CRR-1150- 020, titled Rinku Vs. State of Haryana** vide order dated 03.11.2020, had also opined that as the matter had been referred to the larger bench, in the meantime, the accused would be entitled to be released on default bail.

This court, in the case of State of **Haryana Vs. Dildar Ram @ Dari, CRM-M-25600-2021**, decided on 15.07.2021, has held that challan filed without FSL report would not be regarded as a complete challan and the accused would be entitled to default bail in terms of Section 167(2) Cr.P.C.

Therefore, as the challan had been filed without the FSL report in the instant case, the petitioner would be entitled to be released on default bail in terms of Section 167(2) Cr.P.C.

In view of the above, without expressing any opinion on the merits of the case, the instant petition is allowed and the impugned order dated 13.09.2022 passed by the learned Additional Sessions Judge, Sirsa, is set aside. The petitioner is ordered to be released on default bail on his

furnishing requisite bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

In the event of the Division Bench opining that the challan filed without FSL report would be a complete challan, the State would be at liberty to prefer an application for cancellation of bail

18.04.2023  
rishu

(ASHOK KUMAR VERMA)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |