

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

237

CRA-D-566-2023 (O&M)

Date of decision : 01.05.2024

Sukhmeetpal Singh @ Sukh

... Appellant

Versus

State of Punjab

.. Respondent

**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE KIRTI SINGH**

Present:- Mr. Amit Agnihotri, Advocate for the appellant.

Mr. Sartaj Singh Gill, Senior DAG, Punjab.

Anupinder Singh Grewal, J. (Oral)

The appellant has challenged the order dated 28.02.2023 passed by the Additional Sessions Judge, Patiala whereby the application preferred by him for grant of default bail under Section 167(2) Cr.P.C. has been declined.

2. Learned counsel for the appellant submits that in the instant case, the challan has been filed without the requisite sanction from the competent authority and therefore, it was an incomplete challan. He has relied upon the judgment of the Supreme Court in the case of **Fakhrey Alam versus State of Uttar Pradesh, 2021 SCC (Online) 532**. He also submits that although there is a latest judgment of the Supreme Court in the case of **Judgebir Singh @ Jasbir Singh Samra @ Jasbir and others versus National Investigation Agency, 2023(2) Apex Court Judgments (SC) 40** but the law laid down by the Supreme Court in **Fakhrey Alam's** case has not been considered and therefore, the judgment in the **Judgebir Singh's case(supra)** is *per incurium* and should be relied upon by this Court.

3. Heard.

4. The appellant is an accused in FIR No.142 dated 27.11.2016, under Sections 307, 392, 323, 120-B, 148, 149, 201, 419, 179, 171, 353, 186, 212, 216, 489, 465, 467, 468, 471, 473 IPC read with Sections 35 & 27 of the Arms Act and Sections 11, 13, 16, 17, 18 of the Unlawful Activities Prevention Act, registered at Police Station Kotwali Nabha, District Patiala. It is manifest that the appellant was arrested on 16.04.2022. Challan qua other accused had been filed earlier and supplementary challan qua the appellant was filed on 14.07.2022 without obtaining sanction from the competent authority. The sanction was obtained on 04.08.2023 and supplementary challan qua the appellant was also filed on 21.09.2023 along with the order according sanction to prosecute him.

5. The Supreme Court in the case of **Judgebir Singh's case(supra)** has held that the completion of investigation is a job of the investigating agency while grant of sanction is that of the competent authority and merely because challan has been filed without the sanction would not entitle the accused to the benefit of default bail under Section 167(2) Cr.P.C. The relevant extract thereof is reproduced hereunder:-

“44. Once a final report has been filed with all the documents on which the prosecution proposes to rely, the investigation shall be deemed to have been completed. After completing investigation and submitting a final report to the Court, the investigating officer can send a copy of the final report along with the evidence collected and other materials to the sanctioning authority to enable the sanctioning authority to apply his mind to accord sanction. According sanction is the duty of the sanctioning authority who is not connected with the investigation at all. In case the sanctioning authority takes some time to accord sanction, that does not vitiate the final report filed by the investigating agency before the Court. [Section 173](#) of the CrPC does not speak about the sanction order at all. [Section 167](#) of the CrPC also

speaks only about investigation and not about cognizance by the Magistrate. Therefore, once a final report has been filed, that is the proof of completion of investigation and if final report is filed within the period of 180 days or 90 days or 60 days from the initial date of remand of accused concerned, he cannot claim that a right has accrued to him to be released on bail for want of filing of sanction order.”

6. We do not accept the contention of the counsel for the appellant that the judgment of the Supreme Court in the case of **Judgebir Singh’s case(supra)** is *per incurium*. A careful examination of the judgment indicates that the **Fakhrey Alam’s case (supra)** has been considered in para No.16 wherein 06 judgments relied upon by the counsel for the appellants therein have been noticed and the judgment in **Fakhrey Alam’s case (supra)** is at item No.1(i).

7. In view of the above, the appeal stands dismissed. Pending application, if any, shall stand disposed of accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

(KIRTI SINGH)
JUDGE

May 01, 2024
sonia gugnani

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