

PUNJAB AND HARYANA HIGH COURT

Bench: Mr. Ashok Kumar Verma, J.

D.D.: 23 March 2023

CRR-138 of 2023.

Mohammad Asif - Petitioner

Versus

State of Haryana - Respondent

Subject: Default Bail – Section 167(2) Cr.P.C and Section 36-A of the NDPS Act - Challan presented without accompanying FSL report - FSL report for a complete challan - granted default bail.

Headnotes:

Default Bail – Section 167(2) Cr.P.C and Section 36-A of the NDPS Act – Petitioner’s application for default bail dismissed by Additional Sessions Judge, Faridabad – Revision petition filed challenging the order. [Para 1]

Factual Background – Petitioner arrested under Section 22(c) of the NDPS Act – Challan presented on 05.05.2022 without accompanying FSL report, submitted later on 16.12.2022 – Petitioner claims an indefeasible right to default bail upon the expiry of 180 days as per Section 167(2) Cr.P.C. [Para 3, 4]

Legal Precedent – Reference to Ajit Singh @ Jeeta v. State of Punjab, CRR No.4659 of 2015 – Emphasis on the necessity of FSL report for a complete challan and its implications for default bail. [Para 6]

Decision – Impugned order dated 15.10.2022 set aside – Petitioner granted default bail subject to furnishing requisite bonds – Indefeasible right to default bail acknowledged, in line with legal precedent. [Para 7-8]

Referred Cases:

Ajit Singh @ Jeeta v. State of Punjab, decided on 30.11.2018, CRR No.4659 of 2015

Representing Advocates:

Mr. Ritesh Tomar, Advocate for the Petitioner.

Mr. Gaurav Bansal, Asstt. A.G., Haryana for the Respondent-State

JUDGMENT

Mr. Ashok Kumar Verma, J. (Oral) - The petitioner has filed the present revision petition for setting aside the impugned order dated 15.10.2022 passed by learned Additional Sessions Judge, Faridabad whereby the application filed by the petitioner under Section 167(2) Code of Criminal Procedure, 1973 for grant of default bail in case FIR No.80 dated 03.03.2022, registered under Section 22(c) of the NDPS Act at Police Station Dhauj, District Faridabad, was dismissed.

2. Reply by way of an affidavit dated 20.03.2023 of Sh.Surender Sheoran, Assistant Commissioner of Police, Mujesar, Faridabad has been filed in the Court today which is taken on cord.

3. Learned counsel for the petitioner, inter alia, contends that the petitioner has been falsely implicated in the above-said FIR and was arrested on 03.03.2022. 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 420 injections of Buprenorphine IP legesic (2ml each) 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 further submitted that the challan in the present case was presented on 05.05.2022 but the challan was incomplete challan because it was not accompanied by the FSL report. The FSL report was submitted before the trial Court on 16.12.2022. He further submitted that after the expiry of 180 days an application for default bail was moved by the petitioner which was wrongly dismissed by learned Additional Sessions Judge, Faridabad.

4.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.

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

6.The prayer in the instant revision is for grant of default bail under Section 167(2) Cr.P.C. of the NDPS Act by impugning the order dated 15.10.2022. The aforementioned dates are not disputed by the learned State counsel. Therefore, it is clear that the challan which was filed on 05.05.2022 was an incomplete challan because it was admittedly not accompanied by the FSL

report and the FSL report was presented before the Court on 16.12.2022 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 CRR No.4659 of 2015 titled as "Ajit Singh @ Jeeta and another v. State of Punjab", decided on 30.11.2018 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."

7. Therefore, in view of the aforesaid facts and circumstances and the law laid down by the Division Bench of this Court in Ajit Singh's case (supra), this Court deems it fit and proper to allow the present revision petition.

8. Consequently, the impugned order dated 15.10.2022 passed by the learned Additional Sessions Judge, Faridabad is hereby set aside and quashed. The petitioner is ordered to be released on default bail on his furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

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