

**In the Court of Rajnish Garg,
Judge, Special Court, Jalandhar.**
(UID No.PB-00088)

BA No. : 158-2024
CNR No. : PBJL01000442-2024
Decided on : 10.01.2024

Sajan age about 28 years son of Kuldeep Kumar resident of House No.692/16, Link Road, Near Sat Kartar Dera, Police Station Division No.6, Jalandhar.

...Applicant/accused.

Versus

State of Punjab

...Respondent.

...
FIR No.208 dated 10.10.2023
Under Sections 21 of NDPS Act.
Police Station Division No.6, Jalandhar.
...

(Bail application under Section 167(2) Cr.P.C)

...

Present: Sh.Jatinder Sharma Adv,counsel for applicant/accused
Ms.Zeba Khalid, Addl.PP for the State.

ORDER:

1. Present bail application has been moved under Section 167(2) of Code of Criminal Procedure by applicant/accused Sajan for his release on bail in aforesaid FIR stating that alleged recovery of 6 grams of Heroin had already been effected from applicant/accused. Applicant/accused is in custody since 10.10.2023. Challan has not been presented so far though statutory period of 60 days has already elapsed. Therefore, applicant/accused has become entitled to be released on bail

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under Section 167(2) Cr.P.C and he is ready to furnish bail bonds.

2. Notice of this application was given to learned Addl.P.P for State. In pursuance to notice, learned APP for the State stated that challan in this case was presented on 09.01.2024 itself before passing of order on application filed on behalf of applicant/accused under Section 167(2) of Cr.P.C. On presentation of challan, the right of petitioner to default bail got defeated and thus, applicant/accused is not entitled to bail under Section 167(2) Cr.P.C.

Report of the Ahlmad was also called, who reported that challan in this case was presented on 09.01.2024 at 03:00 pm.

3. I have heard and considered the submissions made by learned counsel for applicant/accused, learned Addl.PP for the State and have carefully perused the record with their able assistance.

4. Brief facts of the prosecution case are that on 10.10.2023, applicant/accused was found in possession of 6 grams of Heroin without any license or permit. As per Section 36-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (**in short “the Act”**), the period for presentation of challan for offences involving non commercial quantity of contraband is 60 days. In the present case, recovery of 6 grams of Heroin was effected from the accused person, which falls under non commercial quantity. The accused was arrested on 10.10.2023 and as such challan in this case was required to be presented before this court up till 09.12.2023, whereas the challan in this case was presented on 09.01.2024 at 03:00 pm.

Perusal of the bail application filed on behalf of applicant/accused reveals that present bail application under Section 167(2) of Cr.P.C. was filed on behalf of applicant/accused on 09.01.2024 at 12:00 pm (noon). It means when the present application under Section 167(2) of Cr.P.C. was filed, challan was not presented in this court and the challan in this case was filed after presentation of the present bail application. As the challan has not been presented within 60 days of registration of present case and the same has been filed after filing the present bail application, applicant/accused is entitled to default bail under Section 167(2) Cr.P.C. Reliance in this regard has been made to the law laid down by Hon'ble Apex Court in case titled as **M.Ravindran versus The Intelligence Officer, Directorate of Revenue Intelligence, Criminal Appeal No.699 of 2020, decided on 26.10.2020**, wherein it has been held by Hon'ble Apex Court that in view of the settled law, once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have availed of or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation and the subsequent filing of the challan does not affect the aforesaid right of the accused. It is further held that the right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the charge sheet or a report seeking extension of time by the prosecution before the Court; or

filing of the charge sheet during the interregnum when challenge to rejection of bail application is pending before a higher court.

5. Keeping in view my above observations, provisions under Section 167(2) of Cr.P.C. and law laid down by Hon'ble Apex Court, present bail application is hereby allowed. Accordingly, applicant/accused is ordered to be released on bail on furnishing his personal bonds with one surety in the like amount to the satisfaction of learned Illaqa/Duty Magistrate subject to the conditions that applicant/accused will appear in Court on each and every date of hearing and will not leave the country without prior permission of the Court. Bail application stands allowed accordingly. Copy of this order be sent to the learned Illaqa/Duty Magistrate. Bail/surety bonds after attestation be sent to this Court within 10 days. Bail application file be attached with the Trial File.

Pronounced in open Court.

Dt: 10.01.2024.

Munish, JW

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