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**(2021) 11 P&H CK 0072**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Revision No.1426 Of 2021 (O&M)**

Gopi Jindal

APPELLANT

Vs

State Of Punjab

RESPONDENT

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**Date of Decision : 17-11-2021**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 167(2)  
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 19, 22, 22(b), 24, 27A  
Indian Penal Code, 1860 — Section 420  
Punjab Gambling Act, 1867 — Section 13

**Citation : (2021) 11 P&H CK 0072**

**Hon'ble Judges : Jasgurpreet Singh Puri**

**Bench : Single Bench**

**Advocate : Preetinder S. Ahluwalia, Randhir Singh Thind**

**Final Decision : Allowed**

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## **Judgement**

Jasgurpreet Singh Puri, J

The present revision petition has been filed impugning order dated 9.11.2021 passed by the learned Additional Sessions Judge, S.A.S. Nagar, Mohali, whereby the application filed by the petitioner seeking default bail under Section 167 (2) Cr.P.C. has been dismissed.

Learned counsel for the petitioner has submitted that the learned Additional Sessions Judge, Mohali, while dismissing the application filed by the petitioner for default bail has erred on the facts of the case and default bail being statutory right, the petitioner was entitled to be released on bail after completion of 60 days from the date of his arrest. He has submitted that FIR in the present case was registered against the petitioner under Section 22 of the NDPS Act; Section 420 of the Indian Penal Code and Section 13 of the Punjab Gambling Act, 1867. He submitted that so far as provisions of Section 420 IPC and Section 13 of the Punjab Gambling Act, 1867, are concerned, the maximum sentence provided is

less than 10 years and so far as these provisions are concerned, in case the challan is not presented within a period of 60 days, the petitioner is entitled to statutory bail. So far as provisions of Section 22 of the NDPS Act are concerned, in the present case the alleged confiscated contraband was of non-commercial quantity and the sentence provided under Section 22 (b) of the NDPS Act, extends to 10 years and therefore, qua the aforesaid offence also, the police was under an obligation to submit the challan within 60 days and in case challan was not presented within 60 days, the petitioner was entitled for the grant of statutory bail. He submitted that the learned Additional Sessions Judge, Mohali, did not appreciate the facts of the case in true perspective and bail application of the petitioner has been dismissed on the ground that quantity of alleged seized contraband was commercial in nature and had also relied upon the statement of the investigating officer in this regard and on that basis application of the petitioner for default bail has been dismissed. The learned counsel further submitted that the petitioner was arrested on 28.8.2021 and 60 days expired on 27.10.2021 and therefore, the petitioner was entitled for default bail immediately on the next day. He submitted that challan in the present case has still not been presented and thereafter FSL report has also been obtained in which it is stated that salt of confiscated contraband was lomofil i.e. diphenoxylate hydrochloride and atropine sulphate and as per the FSL report the average weight of 1 tablet was 63 mg/tablet and that confiscated quantity of tablets was 560 tablets and the total weight comes to 35.28 grams whereas commercial quantity as per the schedule under NDPS Act, is 50 grams and therefore, it was not a case of commercial quantity. He submitted that in view of the aforesaid factual position, the petitioner is entitled for the grant of default bail and the impugned order dated 9.11.2021 passed by the learned Additional Sessions Judge, Mohali, is liable to be set aside.

Mr. Randhir Singh Thind, learned Deputy Advocate General, Punjab, has submitted that in pursuance of the order passed by this Court on 15.11.2021, he had sought information regarding the investigating officer who had informed the learned Additional Sessions Judge, that the quantity recovered was commercial in nature and he has instructions to state that said investigating officer SI Sukhmander Singh has since been dismissed from service in some other case on 9.11.2021 and therefore, another investigating officer namely ASI Dharampal has come present in the Court and he has received instructions from him. As per the instructions and from the perusal of the FSL report, it is clear that confiscated quantity was 35.28 grams which does not fall in the category of commercial quantity.

I have heard the learned counsel for the parties.

The factual position which is emerging now on the basis of the plea of the parties as well as the FSL report which has been relied upon by learned counsel for both the parties, is that weight of the quantity which was allegedly confiscated from the petitioner was 35.28 grams which is non-commercial quantity and admittedly

the petitioner has been arrested on 28.8.2021 and 60 days have already expired on 27.10.2021 and challan has not been presented even till date. A perusal of the provisions of Section 36A (4) of the NDPS Act, would show that for the offences which are pertaining to Sections 19 or Section 24 or Section 27-A or for offence involving commercial quantity, the time limit for filing of the challan has been extended for 180 days. However, in the present case, the offence does not involve the aforesaid Sections and the maximum sentence provided under Section 22 sub clause (b) of the NDPS Act, extends to 10 years and therefore, by virtue of Section 167 (2) Cr.P.C. the challan ought to have been presented within a period of 60 days and in case of non-presentation of challan, the petitioner is entitled to grant of default bail which is a statutory right.

In view of above, the present petition is allowed. Impugned order dated 9.11.2021 passed by the learned Additional Sessions Judge, S.A.S. Nagar, Mohali, is hereby set aside. It is ordered that the petitioner shall be released on bail on furnishing bail bond/surety bond to the satisfaction of the learned trial Court /ASJ/Judge, Special Court, S.A.S. Nagar, Mohali.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.