



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

**CRR No.756 of 2025 (O&M)**  
Date of decision: 19<sup>th</sup> May, 2025

Vikas Kumar

... Appellant

Versus

State of Haryana

... Respondent

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

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

Mr. Yuvraj Shandilya, Asst. Advocate General, Haryana  
for the respondent/State.

**MANJARI NEHRU KAUL, J.**

CRM No.11577 of 2025

The instant application has been filed for condonation of delay of 76 days in filing the revision.

In the light of averments made in the application and in the interest of justice, the same is allowed and delay in filing the revision petition is condoned.

CRR No.756 of 2025

1. The present revision petition has been filed under Section 167(2) of Cr.P.C./ 187(2) of BNSS read with Section 528 of BNSS and Section 36(A)4 of the NDPS Act challenging the order dated 23.10.2024 passed by learned trial Court, vide which the application of the petitioner for releasing him on default bail in case FIR No.108 dated

21.04.2024 under Sections 15/25/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Ding, District Sirsa, has been dismissed. The petitioner is seeking the concession of default bail on the ground that the charge sheet (Challan) was not filed before the competent Court within the stipulated period of 180 days, as contemplated under the Proviso to Section 167(2) Cr.P.C.

2. Learned counsel for the petitioner submits that the petitioner has been in custody since 21.04.2024 in connection with offences under the NDPS Act. It is vehemently argued that in terms of the statutory mandate under Section 167(2) Cr.P.C., the Investigating Agency was required to file the charge sheet on or before 17.10.2024, being the 180<sup>th</sup> day from the date of remand of the petitioner.

3. It has been further submitted that although the Challan was indeed presented on 17.10.2024, the same was not filed before the competent Court, i.e., the Special Court designated under the NDPS Act. Instead, it was presented before the learned Duty Magistrate, despite the fact that the said Magistrate lacked the jurisdiction to either accept the challan or take cognizance of offences under the NDPS Act. It has been emphasized that 17.10.2024 being a Court holiday (on account of Balmiki Jayanti), did not justify the presentation of the challan before an incompetent Forum.

4. Learned counsel has further contended that the petitioner moved an application seeking default bail on 18.10.2024, i.e. immediately after the lapse of the 180-day period. However, the same

was erroneously dismissed by the trial Court on 23.10.2024 vide impugned order.

5. Learned counsel has placed reliance upon the judgements in '*Bikramjit Singh vs. The State of Punjab*', 2020 (10) SCC 616, '*Janta Singh vs. State of Punjab*' 1996 (1) RCR (Criminal) 1 and '*Nishan Singh vs. State of Punjab*' 1998 (1) RCR (Criminal) 767 to emphasize that a charge sheet filed before a Court lacking jurisdiction is non-est in the eyes of law, and does not defeat the indefeasible right of the accused to be released on bail under Section 167(2) Cr.P.C.

6. Learned counsel has also drawn attention to a discrepancy between the contents of the final report, which records that the FSL report had been received, and the zimni order dated 28.11.2024 (Annexure P-5) which notes that the FSL report was still awaited. It is submitted that such inconsistency further points to the lack of procedural propriety in the conduct of the prosecution.

7. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions, has submitted that no right under Section 167(2) Cr.P.C. accrued to the petitioner in the present case, as the charge sheet was filed within the prescribed 180-day period, i.e. on 17.10.2024.

8. It is further submitted that since 17<sup>th</sup> of October, 2024 was a Court holiday due to Balmiki Jayanti, the challan was duly presented before the Duty Magistrate as per prevailing practice and administrative protocol. The presentation of the challan before the Duty Magistrate on

a Court holiday, as per the learned State counsel, is legally valid and in substantial compliance with the statutory requirements. Learned State counsel has also relied upon the affidavit dated 30.04.2025 filed by Vikas Krishan, HPS, DSP, Sirsa (Haryana), to affirm that the challan was presented within the statutory period.

9. I have heard learned counsel for the parties and perused the relevant material on record.

10. The core issue that arises for determination in the present petition is whether the petitioner became entitled to default bail under the proviso to Section 167(2) Cr.P.C. due to the presentation of the challan before the Duty Magistrate, who allegedly lacked jurisdiction under the NDPS Act.

11. It is an admitted fact that the challan was presented on 17.10.2024, i.e. the 180<sup>th</sup> day. It is also undisputed that the said date was a holiday on account of Balmiki Jayanti, and consequently, the charge sheet was filed before the learned Duty Magistrate on that day.

12. The contention raised by the petitioner, that the presentation of the challan before an incompetent forum, namely the Duty Magistrate, renders the entire filing non-est, is meritless. This Court in ***'Arshdeep Kumar @ Arshdeep vs. State of Punjab'*** CRR-1126-2023, after analyzing the relevant statutory provisions and judicial precedents, held that the presentation of a challan before the Duty Magistrate on a Court holiday does not vitiate the filing, provided it is done within the prescribed statutory period and subsequently placed before the

competent Special Court in the normal course of judicial business. The relevant findings recorded by this Court in *Arshdeep Kumar's case (supra)* read as follows:

“6. A comprehensive examination of the provisions outlined in Section 167(2) Cr.P.C., and Section 36(4) of the NDPS Act underscores the paramount concern of the legislature for concluding investigations. The term “investigation” inherently encompasses all proceedings conducted by the Investigating Agency after the registration of the FIR, with an aim to gather all relevant evidence to enable the Court to ascertain as to whether there has been any commission of an offence. It is also imperative to note the historical context behind the enactment of 167(2) Cr.P.C., which can be traced back to the widespread abuse of Section 344 of the 1898 Code. The latter provision, permitting the remand of accused during investigations, was frequently exploited by investigating agencies, resulting in prolonged custodial detention as investigations often exceeded the prescribed period of 15 days. Consequently, the accused kept languishing in custody and the investigation proceeded at a sluggish pace. To rectify this injustice and ensure fair trial and expeditious investigation, 167(2) Cr.P.C. was incorporated. This provision thus, aimed at establishing a systematic procedure for investigation, safeguarding the interest of society, especially those economically disadvantaged, by setting guidelines for the duration of detention during investigation, thereby preventing indefinite detention without progress in the case.

7. Hence, the statutory scheme of Section 167(2) Cr.P.C. hinges on periodic progress in the case and

*completion of investigation. A fine reading of these provisions would also reveal that the right of the accused to default bail would not persist merely because the Court has not taken cognizance, even if the investigation concludes and challan is presented before the expiry of the statutory period. In this regard, it would be relevant to refer to the observations made by Hon'ble the Supreme Court in **Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and another, 2006 (1) SCC 283**, which are as follows:*

*'18. None of the said cases detract from the position that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as Section 167Cr.P.C. is concerned. The right which may have accrued to the Petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 Cr.P.C., it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167 Cr.P.C.'*

8. *Adverting to the instant case, the argument of the learned counsel for the petitioners that they are entitled to the concession of default bail because the learned Duty Magistrate did not have the power to take cognizance of the police report under Section 173(2) Cr.PC/Challan is devoid of merit in the light of the settled law in Suresh Kumar*

*Bhikamchand Jain's case(supra). It has not been disputed by the learned counsel for the petitioners that, as per the report of the Court Ahlmad, the challan in the instant case had indeed been represented before the expiry of 180 days period.”*

13. It is settled principle that the requirement under Section 167(2) Cr.P.C. is to present the charge sheet within the stipulated period; it does not mandate that the cognizance must be taken within the same period. The filing of the challan, albeit before the Duty Magistrate due to Court holiday, constitutes substantial compliance with the statutory mandate. The reliance placed by the petitioner on **Bikramjit Singh's case (supra)** is misplaced in the facts of the present case. While the Hon'ble Supreme Court, in the said judgment emphasized the exclusive jurisdiction of the Special Court under the NDPS Act to take cognizance, it did not hold that mere presentation of the challan before a non-designated Court, due to administrative necessity, would nullify the filing for the purpose of Section 167(2) Cr.P.C.

14. Moreover, the subsequent marking of the challan to the competent Special Court further affirms procedural compliance. The contention that the right of the petitioner to default bail had crystallized merely due to filing before a Duty Magistrate on a holiday is, therefore, untenable.

15. As regards the alleged inconsistency pertaining to the FSL report, the same does not bear relevance to the adjudication of the

present petition, which is confined to the question of statutory bail under Section 167(2) Cr.P.C.

16. In view of the above discussion, this Court finds that the charge sheet was presented within the statutory period of 180 days and in substantial compliance with the procedural requirements. The presentation of the challan before the Duty Magistrate on a Court holiday does not invalidate the filing or confer a right to default bail under Section 167(2) Cr.P.C. upon the petitioner.

17. Accordingly, the petition being devoid of merit is hereby dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

**(MANJARI NEHRU KAUL)**  
**JUDGE**

**May 19, 2025**

*rps*

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