

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

CRM No.M- 134 of 2015(O&M)

Date of Decision: January 29, 2015.

Pardeep Kumar

..... PETITIONER (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Deepak Aggarwal, Advocate
for the petitioner.

Mr. S.S.Chaudhary, DAG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Petitioner prays for bail pending trial in FIR No.59 dated 01.04.2014, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act'), registered at police station Talwandi Sabo, District Bathinda claiming benefit under Section 167(2) Cr.P.C. as the challan/report under Section 173 Cr.P.C. was not filed within the stipulated period of 180 days.

Petitioner was arrested on 01.04.2014 in the abovementioned case.

Period of 180 days for the presentation of challan/report under Section 173 Cr.P.C expired on 27.09.2014. Petitioner moved an application under Section 167(2) Cr.P.C. before the learned trial court on 30.09.2014 for being released on bail, the Challan having not been presented within the stipulated period. A similar application had been moved by his co-accused Ravinder Pal @ Lovely on 29.09.2014. An application for extension of time for presentation of the Challan had been moved by the prosecution on 29.09.2014. All the applications were adjourned by the trial court. On 18.10.2014, extension of time for presentation of the Challan was granted to the prosecution. Petitioner's application for bail as well as that of his co-accused were dismissed as having become infructuous on 18.10.2014 itself on account of the extension of time being granted to the prosecution.

Learned counsel for the petitioner contends that in view of an indefeasible right having accrued to the petitioner on non-presentation of the challan/report under Section 173 Cr.P.C. within the stipulated period of 180 days, his application for bail could not have been dismissed in this manner. Similarly situated co-accused of the petitioner has been granted the concession of bail by this Court on 11.12.2014 in CRM No.M-38026 of 2014.

Learned counsel for the State submits that the challan/report under Section 173 Cr.P.C. has been presented on 18.10.2014 before the trial court. Narcotics recovered from the petitioner are of commercial quantity. Therefore, petitioner is not entitled to the concession of bail pending trial. It is, however, confirmed and verified that there is no other case pending against the petitioner under the NDPS Act.

Having heard learned counsel for the parties, it is apparent that the period of 180 days as stipulated under the provisions of law had expired on 27.09.2014. Till that date, no application for extension of time had been moved by the prosecution. An indefeasible right to be released on bail as per the provisions of Section 167(2) Cr.P.C. had indeed accrued to the petitioner. He duly moved an application for release on bail on 30.09.2014 though the same was not decided on the same day by the learned trial court.

Hon'ble Supreme Court in **Union of India through CBI v. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, 2014(3) RCR(Crl.) 534** has held that court is obliged to deal with the application filed by the accused as required under Section 167(2) Cr.P.C. on the day it is moved. Such procrastination frustrates the legislative mandate and a court cannot act to extinguish the right of an accused if the law so confers on him. It has specifically been held that the prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused.

Right of the accused to be released on bail accrued on the default of the prosecution in filing the challan within the stipulated period and furthermore, in not having filed the requisite application for extension of the time before the expiry of the stipulated period. An application for extension of time moved by the prosecution was pending on 30.09.2014 when the petitioner had moved an application for bail under Section 167(2) Cr.P.C. Bail application of the petitioner was adjourned and ultimately dismissed as having become infructuous on 18.10.2014 on account of the extension to present the challan being granted on 18.10.2014 itself (order reproduced in para 4 of the petition).

The argument of learned counsel for the State that there is a very huge recovery of narcotics which is involved, is irrelevant in the facts and circumstances of the case. The court cannot delve upon the issue of the quantity recovered in view of the indefeasible right which has accrued to the petitioner.

In view of the above and the specific observations of Hon'ble Supreme Court in *Nirala Yadav's case* (supra), the petitioner is entitled to be released on bail.

Consequently, without commenting or expressing any opinion on the merits of the case, this petition filed by Pardeep Kumar is allowed. Petitioner shall be released on bail pending trial on his furnishing bail bonds and surety bonds to the satisfaction of the Trial Court.

However, it is made clear that in case any misuse of this concession is detected or petitioner is found involved in any other matter under the NDPS Act, the prosecution shall be at liberty to move for the cancellation of bail of the petitioner.

January 29, 2015.
'om'

(**LISA GILL**)
JUDGE