

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.M-14715 of 2015
Date of decision : May 25, 2015

Mukesh Kumar

...Petitioner...

versus

State of Punjab

...Respondent...

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Parminder Singh Sekhon, Advocate,
for the petitioner.

Mr. J.S. Sekhon, AAG, Punjab.

JASPAL SINGH, J.

Instant petition has been preferred by Mukesh Kumar (now confined in District Jail, Mansa) under Section 167 (2) of the Code of Criminal Procedure (for brevity 'Code') seeking regular bail in case FIR No. 33, dated 26.05.2014, under Sections 22, 25, 61 and 85 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'Act'), registered at Police Station Joga, District Mansa.

2. Concededly, petitioner was arrested on 26.05.2014 for allegedly keeping in his possession 100 small bottles Rexcof and 1500 tablets of Carrisoma without any permit or license and he was sent to judicial custody on 27.05.2014. As per Section 36-A (4) of the Act read with Section 167 (2) of the Code, investigation period

prescribed under law for submission of report under Section 173(2) of the Code is 180 days, which elapsed on 22.11.2014. However, prosecution moved an application for extension of time for presentation of report under Section 173(2) of the Code on 17.11.2014, which was disposed of vide impugned order dated 27.11.2014 whereby, a period of four weeks was extended for presentation of report under Section 173(2) of the Code from the date of order i.e. 27.11.2014.

3. Here, it would not be out of place to mention that if period is calculated from the date of arrest of petitioner till the date of order of extension of period for presentation of report under Section 173(2) of the Code, the same exceeds more than 180 days. Had it been extended from the date of application moved by investigating agency for extension of period, the position would have been altogether different.

4. Undoubtedly, right for bail enshrined under Section 167(2) of the Code is an indefeasible one and it cannot be said to be extinguished or scuttled down by mere presentation of report under Section 173(2) of the Code, beyond the period prescribed.

5. Adverting to the facts of the case in hand, petitioner is alleged to have been arrested on 26.05.2014 and was sent to judicial custody on the next day i.e 27.05.2014. If the period of 180 days from the date of arrest of petitioner is calculated it expires on 22.11.2014. Four weeks time was extended by learned trial Court on 27.11.2014, meaning thereby, that there was no extension order on 22.11.2014. Extension of period subsequent thereto, cannot scuttle

down the indefeasible right accrued to the petitioner on 23.11.2014. Thus, the petitioner is entitled to bail under Section 167(2) of the Code.

6. In the light of what has been discussed above, instant petition is allowed. Petitioner is ordered to be released on bail to the satisfaction of learned trial Court/Duty Magistrate, Mansa.

May 25, 2015
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(JASPAL SINGH)
JUDGE