

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

Crl. Misc. No.M-15660 of 2015 (O&M)

Date of Decision: July 30, 2015.

Balwinder Singh

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. P.S. Sekhon, Advocate
for the petitioner (s).

Mr. Amritpal Singh Gill, A.A.G., Punjab.

SURINDER GUPTA, J.(Oral)

By way of this petition filed under Section 167(2) Code of Criminal Procedure (Cr.P.C.-for short), the petitioner seeks benefit of bail in case FIR No.85 dated 24.07.2014 registered for the offence punishable under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Barnala, District Barnala.

Learned counsel for the petitioner submits that the petitioner was arrested on 24.07.2014 by the police of Police Station Barnala on the allegations that 23 vials of Rexcof were recovered from his possession. Initially the police did not present the challan within 180 days and moved

application under Section 36 of NDPS Act on 04.02.2015, which was allowed and time of two months from the date of order i.e. 04.02.2015 was granted for submission of the challan. The prosecution failed to present the challan within the stipulated period. On the expiry of period of two months, the petitioner again moved application on 04.04.2015 seeking bail under Section 167(2) Cr.P.C, which was declined by Judge, Special Court, Barnala as by that time, challan was presented along with the report of the Chemical Examiner and the application under Section 167(2) Cr.P.C. was held as 'not maintainable'. Learned counsel for the petitioner has further argued that after the expiry of period of two months from the date of order i.e. 04.02.2015 indefeasible right had accrued to the petitioner to seek bail in this case, subsequent presentation of challan on 06.04.2015 in no manner defeats the right of the petitioner.

This plea that non-presentation of challan within the period as stipulated under Section 167(2) Cr.P.C. is an indefeasible right of the accused to get bail, was discarded by the Hon'ble Apex Court in case of ***Sadhwi Pragyna Singh Thakur vs State of Maharastra, 2012(1) RCR (Criminal), 302***, wherein it was observed as follows:

“54. There is yet another aspect of the matter. The right under Section 167(2) of Cr.P.C. to be released on bail on default if charge sheet is not filed within 90 days from the date of first remand is not an absolute or indefeasible right. The said right would be lost if charge sheet is filed and would not survive after the filing of the charge sheet. In other words, even if an application for bail is filed on

the ground that charge sheet was not filed within 90 days, but before the consideration of the same and before being released on bail, if charge sheet is filed, the said right to be released on bail would be lost. After the filing of the charge sheet, if the accused is to be released on bail, it can be only on merits. This is quite evident from Constitution Bench decision of this Court in ***Sanjay Dutt vs. State, 1994(3) R.C.R.(Criminal) 684: (1994) 5 SCC 410*** [Paras 48 and 53(2)(b)]. The reasoning is to be found in paras 33 to 49.

55. This principle has been reiterated in the following decisions of this Court :

(1) ***State of M.P. vs. Rustam and Others***
1995 Supp. (3) SCC 221, para 4,

(2) ***Dr. Bipin Shantilal Panchal vs. State of Gujarat, 1996(1) R.C.R. (Criminal) 505: (1996) 1 SCC 718 para 4.*** It may be mentioned that this judgment was delivered by a Three Judge Bench of this Court.

(3) ***Dinesh Dalmia vs. CBI, 2007(4) R.C.R. (Criminal) 238: 2007(5)R.A.J. 182: (2007) 8 SCC 770 para 39, and***

(4) ***Mustaq Ahmed Mohammed Isak and others vs. State of Maharashtra, 2010(5) R.C.R. (Criminal) 122 : (2009) 7 SCC 480 para 12.***”

In case of ***Kanshi Ram Vs. State of Punjab CRM-M No.7927 of 2014 (decided on 11.03.2014)***, the challan was presented after the filing of application under Section 167(2) Cr.P.C. by the police.

Relying on the case of ***Sadhwi Pragyna Singh Thakur (supra)***, a

Co-ordinate Bench of this Court has observed that the petitioner is not entitled to statutory bail even if the charge sheet has been filed by the prosecution subsequent to filing of the application.

A similar view was also taken by this Bench in ***Baljit Singh @ Billu Vs. State of Punjab Criminal Revision No.1041 of 2014*** (decided on 15.07.2014).

In view of my above discussion, this petition has no merits and is dismissed.

July 30, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE

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SURINDER GUPTA, J.(Oral)

Reserved on 06.07.2015.

**(SURINDER GUPTA)
JUDGE**

July , 2015.
Sachin M.