

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.M-19905 of 2015

Date of decision:- July 20, 2015

Lakhbir Singh @ Beer

.....Petitioner...

Vs.

State of Punjab

....Respondent...

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. HS Batth, Advocate,
for the petitioner.

Mr. J.S. Sekhon, AAG, 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?

JASPAL SINGH, J.

This petition has been preferred under Section 167 (2) read with Section 439 of the Code of Criminal Procedure (for brevity, "Code" only) by Lakhbir Singh @ Beer, seeking bail in FIR No. 157, dated 09.11.2014, under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'Act'), Police Station Sadar Valtoha, District Tarn Taran, during the pendency of trial.

2. Contention of learned counsel for petitioner is that police could not file challan within stipulated period as a result whereof, application under Section 167 (2) of the Code was moved by petitioner and notice of the application was issued. As per report of

Ahalmad, application was submitted under Section 36-A (d) (4) of the Act for extension of time and same stands allowed vide order dated May 05, 2015 and 90 days was extended to present the report under Section 173 (2) of the Code. Thus, bail was dismissed having rendered infructuous. It has further been contended by learned counsel for petitioner that neither any notice of the application whereby time was extended, was given to petitioner nor any opportunity of being heard was afforded to him. Moreover, order dated May 05, 2015, reveals that Mr. J.S. Dhillon, Advocate was present on behalf of petitioner. In fact, Mr. J.S. Dhillon was not engaged by petitioner as his counsel at any point of time. Thus, service of the petitioner for the notice was absolutely incomplete. On this ground only, order dated May 05, 2015 cannot be made applicable qua petitioner. The petitioner is in custody since November 09, 2014 and period of 180 days expired on May 08, 2015 and on the same day application under Section 167 (2) of the Code was moved before Id. trial court, which was dismissed. Since, petitioner was not afforded opportunity of being heard before passing impugned order, order dated May 05, 2015 is not sustainable in the eyes of law and petitioner deserves the concession of bail provided under Section 167 (2) of the Code.

3. On the other hand, learned State counsel has opposed the submission made by learned counsel for petitioner and has submitted that as the period for presentation of report under Section 173 (2) of the Code was already extended by Id. trial court in the

presence of petitioner, application moved by him under Section 167 (2) of the Code has been rightly declined by Id. trial court.

4. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and has perused the record.

5. Undisputably, prescribed period of 180 days for presentation of challan expired on May 08, 2015 but before expiry of prescribed period, application under Section 36 (A) (d) (4) of the Act was filed by prosecution, which was allowed after hearing both parties vide order dated May 05, 2015 and a period of 90 days was extended for presentation of challan. In fact, application under Section 167 (2) of the Code was moved after extension was granted by Id. trial court and as such, application moved by petitioner has rightly been dismissed by Id. trial court.

6. As far as contention of learned counsel for petitioner that no opportunity of hearing was given to petitioner or that Mr. J.S. Dhillon was not his advocate, is concerned, no such plea has been taken by petitioner before Id. trial court while filing an application under Section 167 (2) of the Code on May 08, 2015. So, in the absence of such a plea at initial stage, now, petitioner cannot agitate it before this Court. Moreover, recovery of contraband i.e. heroin alleged to have been effected from petitioner, which falls within the purview of commercial quantity and in such, circumstances Section 37 of the Act is attracted. Thus, petitioner does not deserve the concession of bail on merits.

7. In the light of what has been discussed above but without expressing any opinion on the merits of the case, same is dismissed.

July 20, 2015
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(JASPAL SINGH)
JUDGE