

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-22573 of 2015

DATE OF DECISION: 01.09.2015

Darshan Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. Vikas Arora, Advocate
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 167 (2) read with Section 482 Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 172 dated 16.11.2014 registered under Section 22,61,85 of NDPS Act at Police Station Nurpur Bedi, District Rupnagar.

Learned counsel for the petitioner contends that the petitioner was arrested on 16.11.2014 and the prosecution agency has failed to complete the investigation within the stipulated period i.e. 180 days and as such an indefeasible right of bail has accrued to the petitioner in view of provisions of Section 167 (2) of Cr.P.C. Learned counsel further contends that an application was moved by the prosecution for extension of time on 11.5.2015, which was allowed on 14.5.2015 and the application for bail

filed by the petitioner has been rejected, whereas, he is entitled to bail in view of provisions of Section 167 (2) Cr.P.C.

Learned counsel for the respondent-State has not disputed the date of arrest of the petitioner and non-presentation of challan.

Heard the arguments advanced by learned counsel for the parties and have also gone through the contents of the FIR as well as other documents available on record.

Admittedly, the petitioner was arrested on 16.11.2014 and the challan was not presented within the stipulated period of 180 days before the Court of competent jurisdiction. As per provisions of Section 167 (2) Cr.P.C., the petitioner is having statutory right to be released on bail in case the challan has not been presented. It is also not disputed that an application moved by the prosecution for extension of time was allowed on 14.5.2015, whereas, the application filed by the petitioner for bail was dismissed.

Hon'ble the Apex Court in the case of **Sanjay Kumar Kedia Vs. Intelligence Officer, narcotic Control Bureau and another** 2010 (1) RCR (Crl.) 942 has observed as under:-

“The maximum period of 90 days fixed under Section 167 (2) of the Code has been increased to 180 days for several categories of offences under the Act but the proviso authorizes a yet further period of detention which may in total go upto one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:

- (1) a report of the public prosecutor,
- (2) which indicates the progress of the investigation, and
- (3) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and

(4)after notice to the accused.”

Hon'ble the Apex Court has further observed that report of the Public Prosecutor must indicate application of mind in respect of progress of the investigation and only when compelling reasons are there for extension of time, the period be extended. Moreover, even the extension of time granted to the prosecution cannot effect the indefeasible right of the petitioner and as per provisions of Section 167 (2) Cr.P.C., the petitioner is entitled to bail.

Accordingly, the present petition is allowed and petitioner-Darshan Singh is directed to be released on bail subject to his furnishing bail/surety bond to the satisfaction of trial Court.

September 01, 2015
pooja

(DAYA CHAUDHARY)
JUDGE