

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-2346 of 2015

DATE OF DECISION: 09.02.2015

Kashmir Singh and another

.....Petitioners

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. Sandeep Arora, Advocate
for the petitioners.

Ms. Ritu Punj, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

The present petition under Section 439 read with Section 167 (2) Cr.P.C. has been filed for grant of regular bail to the petitioners in case FIR No. 44 dated 27.5.2014 registered under Section 15 of NDPS Act (hereinafter referred to as 'the Act') at Police Station Sadiq, District Faridkot.

Learned counsel for the petitioners contends that as the investigating agency could not file the challan within a period of 180 days, the petitioners moved an application under Section 167 (2) Cr.P.C. for bail, which was dismissed and the application moved by the investigating agency under Section 36-A (4) of the Act has been allowed on the same

day. Learned counsel further contends that the petitioners were entitled to bail as a matter of right as an indefeasible right has accrued to him on expiry of period of 180 days but still the application moved by the investigating agency was allowed with retrospective effect. Learned counsel has relied upon the judgment of this Court in **Sahib Singh and Officers Vs. State of Punjab** 2014 (4) RCR (Criminal) 914, in support of his contentions.

Learned counsel for the respondent-state has not disputed with regard to non-presentation of challan within a period of 180 days as well as allowing the application for extension of time with retrospective effect.

Admittedly, the petitioners were arrested on 27.5.2014 and challan was not presented within 180 days. An application was moved by the petitioners for bail under Section 167 (2) Cr.P.C., which was declined on 2.12.2014 on the ground that investigating agency has filed application under Section 36-A(4) of the Act, which was allowed and period was extended. It is not disputed that application under Section 167 (2) Cr.P.C. was moved by the petitioners on 25.11.14 and same was dismissed on 2.12.2014. It is also not disputed that the application moved by the investigating agency under Section 36-A(4) of the Act was allowed on that very day and period was extended. An indefeasible right has accrued to the petitioners but the same has been defeated by allowing the application moved by the investigating agency with retrospective effect. The right of accused under Section 167 (2) of the Code has been elaborated in judgment of Apex Court in **Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau and another** 2010 (1) RCR (Criminal) 942 and the controversy in the present case is squarely covered by this judgment.

Accordingly, the present petition is allowed and the petitioners are directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of trial Court.

February 09, 2015
pooja

(DAYA CHAUDHARY)
JUDGE