

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRM-M- 30020 of 2015 (O&M)

Date of Order: 29.09.2015

Sagar Soni

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. B.S. Sra, Advocate for the petitioner.
Mrs. Amarjit Kaur, Addl.A.G, 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?

AJAY TEWARI, J (ORAL)

Prayer is for grant of regular bail in case FIR No.51 dated 04.07.2014 under Sections 21,22,61,85 of the NDPS Act, P.S Fatehgarh Churian, Police District Batala, District Gurdaspur.

Learned counsel for the petitioner contends that the petitioner has undergone more than 180 days of imprisonment. It is stated that the petitioner was initially arrested on 04.07.2014 and put into police custody vide order dated 05.07.2014. On 16.10.2014, he was released on interim bail and thereafter surrendered on 16.5.2015. It is stated that after deducting the period of bail, his period of custody amounted to more than 180 days. Thereafter, the petitioner moved an application under Section 167(2) Cr.P.C on 04.08.2015 but before the same was decided, challan was filed. Said application was denied on the ground that the learned Single Judge of Madhya Pradesh High Court in a case reported as **Devendra Kumar Vs. State of M.P 1992 CrI.L.J 1730** has observed that the detention had to be for a continuous period before Section 167 (2) Cr.P.C

could be invoked.

It would be apposite to reproduce Section 167 (2) Cr.P.C which reads as under:

167 (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that,—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

A perusal of Section itself reveals that the word “continuous” is neither mentioned in the Section nor can it be read into it. In the present case admittedly the petitioner had been in for actual period of more than 180 days when the final report was filed, therefore he has absolute right to be released on bail.

In the circumstances, without commenting upon the merit of the case and taking into account the fact that the trial shall take long time to conclude, no useful purpose would be served by keeping the petitioner behind the bars. Accordingly, present petition is allowed and the petitioner is released on bail to the satisfaction of the Duty Magistrate/CJM, Gurdaspur.

September 29, 2015
manoj

(AJAY TEWARI)
JUDGE