

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30676-2015

Date of Decision: September 15, 2015

Gurlal Singh @ Lali	Versus	...Petitioner
State of Punjab		...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Vikas Gupta, Advocate,
for the petitioner.

Mr. P.S. Ghuman, Addl. AG, Punjab,
for the respondent.

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| 1. | <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the Reporters or not?</i> | YES |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | YES |

NARESH KUMAR SANGHI, J (Oral)

Prayer in this petition, filed under Section 439, Cr.P.C.,
is for grant of regular bail to the petitioner, Gurlal Singh @ Lali,
son of Talwinder Singh, resident of Village Nathu Chak, Patti,
Tehsil Patti, District Tarn Taran, who has been booked for having
committed the offence punishable under Section 22 of the
Narcotic Drugs and Psychotropic Substances Act, 1985 (for
brevity, 'the NDPS Act'), in a case arising out of FIR No. 248, dated
20.12.2013, registered at Police Station, Patti, District Tarn Taran.

Learned counsel contends that the petitioner was
arrested on 20.12.2013 while he was allegedly in possession of

295 grams of Alprazolam; since the investigating agency failed to file the charge-sheet (report under Section 173, Cr.P.C.), therefore, learned Trial Court had granted bail to the petitioner on 19.5.2014; the petitioner continued to appear before learned Trial Court on each date of hearing even though the charge-sheet (report under Section 173, Cr.P.C.) was not presented; on 21.4.2015, the petitioner could not appear before learned Trial Court/Special Judge and non-bailable warrants for securing the appearance of the petitioner were issued despite noticing the fact that before presentation of the charge-sheet (report under Section 173, Cr.P.C.), the presence of the accused was not required; and that the petitioner surrendered before learned Trial Court/Special Judge on 21.5.2015 and since then he is behind the bars. He further submits that still the charge-sheet (report under Section 173, Cr.P.C.) has not been presented. Learned counsel has placed reliance on the judgment of Hon'ble the Supreme Court delivered in the matter of **Free Legal Aid Committee, Jamshedpur v. State of Bihar**, AIR 1982 SC 1463, to contend that before filing of the charge-sheet (report under Section 173, Cr.P.C.), the presence of the accused is not required.

Learned counsel for the State has not controverted the

factual aspects raised by learned counsel for the petitioner. Learned counsel for the State is very specific in his submissions that still the charge-sheet (report under Section 173, Cr.P.C.) has not been presented.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

In the matter of **Free Legal Aid Committee (supra)**, Hon'ble the Supreme Court held as under:-

“2. The first interim direction sought by Mr. Sibal is that when an accused is released on bail, he should not be required to appear in court until the charge-sheet is filed and process issued by the Court. Mr. Sibal states that today what happens in many of the Magistrates' Courts in Bihar is that the accused is required to appear before the Court every fourteen days even though he is on bail and this causes considerable harassment to the accused. He submits and in our opinion rightly that this is not required by law, and Mr. K.G. Bhagat, learned advocate appearing on behalf of the State of Bihar, fairly concedes that law does not require that an accused on bail need appear before the Court before the charge-sheet is filed and process issued by the Court. We, therefore, direct that whenever an accused is released

on bail he need not be required to appear before the Court until the charge-sheet is filed and the process is issued by the Court. There is also another difficulty pointed out by Mr. Sibal and it is that in cases triable by the Court of Session, the practice followed is that when an accused is released on bail by the Magistrate, the bail is granted to him only during the pendency of the inquiry before the Magistrate, with the result that when the case is committed to the Court of Session, he is rearrested and brought before the Court of Session where he has to apply once again for fresh bail. This causes considerable inconvenience to the accused without any corresponding advantage so far as the administration of criminal justice is concerned. This situation can however easily be avoided because there is a provision in Section 441 Sub-section (3) of the Cr.P.C. under which bail can be granted to an accused so as to bind him to appear before the Court of Session, in which event, on committal, he would not have to be re-arrested and brought before the Court of Session. It is also clear from Section 209, Clause (b) of the Cr.P.C. that the Magistrate has discretion to release the accused on bail "during and until completion of trial" even in cases where the offence is triable by the Court of Session. We, therefore, feel that it would avoid hardship to an accused if the Magistrate, while releasing the accused on bail, requires execution of a bond with or without surety, as the case may be, binding

the accused not only to appear as and when required before him but also to appear when called upon in the Court of Session. Mr. K.G. Bhagat on behalf of the State of Bihar also agrees that this is a procedure which can be legitimately followed by the Magistrates. We hope and trust that hereafter this procedure will be followed by the Magistrates unless there are any particular reasons for not doing so.

In view of totality of the facts and circumstances of the case and further taking into consideration the ratio of the judgment in the case of **Free Legal Aid Committee (supra)**, the present petition is allowed. The petitioner, Gurlal Singh @ Lali, son of Talwinder Singh, resident of Village Nathu Chak, Patti, Tehsil Patti, District Tarn Taran, is directed to be released on bail during pendency of the trial of the present case subject to his furnishing bonds in the sum of ₹25,000/- (Rupees twenty-five thousand only) with one surety of the like amount, to the satisfaction of learned Trial Court/Special Judge, Tarn Taran.

(NARESH KUMAR SANGHI)
JUDGE

September 15, 2015
Pkapoor