

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

CRM-M-32759-2014 (O&M)

Date of Decision: September 3, 2015

Bira Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.S.S.Sidhu, Advocate
for the petitioner.

Mr.P.S.Ghuman, Addl.A.G.Punjab.

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

Naresh Kumar Sanghi, J.(Oral)

Prayer in this petition, filed under Section 439, Cr.P.C. read with Section 167(2), Cr.P.C. is for grant of bail to the petitioner, Bira Singh, who has been booked for having committed the offence punishable under Section 15 Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity, 'the NDPS Act') in a case arising out of FIR No.145, dated 05.12.2013, registered at Police Station, Dialpura, District Bathinda.

Learned counsel contends that the petitioner was arrested on 07.02.2014 and thereafter produced before the Court on 08.02.2014. On the same day, he was remanded to judicial custody. On 11.08.2014, the petitioner presented an application under Section 167(2), Cr.P.C. read with Section 36-A of the NDPS Act to release him (petitioner) on bail since the statutory period of 180 days had expired. The learned Judge, Special Court, Bathinda, ordered to seek the report from the Ahlmad of the Court but on the same day, charge-sheet (report under Section 173, Cr.P.C.) was presented by the Investigating Agency and, as such, the petitioner was entitled to statutory bail as per Section 36-A of the NDPS Act. In support of his contention learned counsel for the petitioner has placed reliance upon **Union of India through C.B.I. Vs Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav**, 2014 (3) RCR (Criminal) 534 and an unreported judgment of this Court dated 15.01.2013 passed in CRM-M-21243-2012 (**Deepa Singh vs State of Punjab**).

Learned counsel for the State very fairly submits that when the application for grant of bail to the petitioner was presented, statutory period of 180 days has already been expired. However, he submits that the day on which the

application for releasing the petitioner on bail was presented, the same day the Investigating Agency had filed the charge-sheet (report under Section 173, Cr.P.C.), therefore, the petitioner would not be entitled to statutory bail. He further submits that from the material available on record it has nowhere come on record that the charge-sheet was presented after filing of the application. He further submits that the arguments raised before this Court for seeking bail under Section 36-A of the NDPS Act have not been raised before learned Judge, Special Court, Bathinda. The impugned order is absolutely silent in that regard. He further submits that the prosecution is near completion of its case before learned trial Court since most of the prosecution witnesses have been examined.

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

As per the prosecution version, 120 kilograms of poppy husk was allegedly recovered from the petitioner. There is no second view that if the statutory period for filing the charge-sheet (report under Section 173, Cr.P.C.) has expired, then the accused will get statutory right to be released on bail as per

provisions under Section 36-A of the NDPS Act. But the question in the present case is whether the application was filed first or the charge-sheet (report under Section 173, Cr.P.C.). To assert his argument, learned counsel has relied upon the application presented before the learned Court below where the time of presentation is mentioned as 12.00 a.m. and the date is 11.08.2014. He has further relied upon the report of the Ahlmad of the Court, dated 11.08.2014, where the time of presentation of the charge-sheet (report under Section 173, Cr.P.C.) has been mentioned as 3.30 p.m.. The application on which the time 12.00 a.m. is mentioned is presented by the accused. It is not the time of the filing of the application. Learned counsel could not cite or produce any document to substantiate the fact of receiving of the application at 12.00 noon by the Presiding Officer. On the basis of the material available on record, this Court cannot record a finding that the application for releasing the petitioner on bail was filed first and thereafter the charge-sheet (report under Section 173, Cr.P.C.) was presented. Therefore, the petitioner cannot be released on bail under Section 36-A of the NDPS Act. Even otherwise, the prosecution has already produced its material witnesses and trial is near completion.

No ground for grant of bail to the petitioner in a case of such a huge quantity of poppy husk is made out.

Dismissed.

September 3, 2015
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(NARESH KUMAR SANGHI)
JUDGE