

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

Crl. Misc. No.M-34330 of 2015

Date of Decision: 12.10.2015

Pawan Kumar

....Petitioner

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Ms. G.K. Mann, Advocate
for the petitioner.

Ms. Ritu Punj, Addl. A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J. (ORAL)

This petition has been filed under Section 167(2) read with Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.50 dated 25.03.2015 registered under Section 22 of the NDPS Act at Police Station Ladowal, District Ludhiana City.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case and just to frustrate his statutory right, incomplete challan was presented without receiving the Chemical Examiner's Report to prove the recovery of intoxicant material. The petitioner was alleged to be travelling in ambulance but neither the driver of

the ambulance has been implicated in the case nor it has been mentioned as to whether the driver of the ambulance has run away. Learned counsel also submits that the petitioner is entitled for interim bail as an indefeasible right has accrued to the petitioner on expiry of period of 180 days.

Learned counsel for the petitioner has relied upon the order dated 18.07.2014, where, under similar circumstances, bail has been granted to the petitioner, namely, Sukhchain Singh @ Chaina, by this Court in **Criminal Misc. No.M-15041 of 2014**.

Learned counsel for the petitioner has also relied upon the judgment in case **Ravinder @ Binder vs State of Haryana** passed in **Criminal Misc. No.M-28367 of 2014**, decided on 26.09.2014, wherein, the challan was presented without having any Chemical Examiner's Report and the accused-petitioner was released on anticipatory bail.

Learned counsel for the respondent-State opposes the submissions made by learned counsel for the petitioner on the ground that as per **Ravinder @ Binder's** case (supra), incomplete challan can be filed but charges cannot be framed.

Heard the arguments of learned counsel for the parties and have also perused the record of the case.

Admittedly, the FIR, in question, was registered on 25.03.2015 under Section 22 of the NDPS Act against the petitioner. Challan was presented on 22.09.2015 without receiving the Chemical Examiner's Report and it cannot therefore be said as to whether the alleged recovery is of Narcotic Drugs, which falls under the NDPS Act or not. The indefeasible right has accrued to the petitioner on expiry of period of 180 days. The purpose of filing incomplete challan is just to frustrate the statutory right, which accrues in favour of the petitioner, in case, the challan is not filed within 90/180 days as the case may be. It is not disputed that

the incomplete challan can be presented but the statutory right accrued in favour of the petitioner-accused cannot be frustrated.

The same controversy was raised in **Sukhchain Singh's** case (supra), where, incomplete challan was presented without receiving the Chemical Examiner's Report and application moved under Section 167(2) Cr.P.C., which was dismissed by the lower Court. Thereafter, the petitioner approached this Court, wherein, it was held that the petitioner could have been granted concession of bail under Section 167(2) Cr.P.C but because of filing incomplete challan, bail was not allowed, whereas, it could have been allowed. Subsequently, the petitioner was released on bail by this Court on 18.07.2014.

The same issue requires consideration in the present case as well, as the Chemical Examiner's Report has not been received so far.

Accordingly, this petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court till Chemical Examiner's Report is received.

12.10.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE