

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

Crl. Misc. No.M-4106 of 2015

Date of Decision: 26.02.2015

Simratpal Singh

....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 ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. B.S. Sra, Advocate
for the petitioner.

Mr. T.N. Sarup, Addl. A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

This petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner, in case FIR No.4 dated 14.08.2013 registered under Sections 21, 25 and 29 of the NDPS Act and also under Sections 307, 411, 414, 420, 467, 468 and 471 IPC at Police Station State Special Operation Cell, Amritsar.

Petitioner-Simratpal Singh was arrested in the said FIR on 14.08.2013. Along with petitioner, his co-accused, namely, Hargobind Singh and Surjit Singh were also arrested in case FIR No.42 dated 15.08.2013 registered under Sections 21, 25, 29, 61, 85 of NDPS Act at Police Station Taragarh (Pathankot). The said FIR was registered on the basis of secret information, stating therein that accused Hargobind Singh and Surjit Singh @ Baba are involved in smuggling of *heroin* and they are going to deliver a consignment to their associate, namely, Simratpal Singh

(the present petitioner) and in case, the raid is conducted, a huge quantity of *heroin* could be recovered from them. Accordingly, a raiding party was constituted. However, co-accused of the petitioner fled away from the spot and the petitioner was arrested and from his car, seven packets of *heroin* were recovered. The petitioner has been shown to have been arrested from the spot on 14.08.2013 at about 8.00/8.30 p.m, whereas, his co-accused, namely, Hargobind Singh and Surjit Singh @ Baba has been shown to have been arrested at 7.30 p.m at Pathankot in connection with FIR No.42 dated 15.08.2013. Learned counsel for the petitioner submits that co-accused of the petitioner Hargobind Singh and Surjit Singh @ Baba were granted bail, in case FIR No.4 dated 14.08.2013 by this Court on 14.05.2014 and 30.05.2014, respectively under Section 167(2) of the Cr.P.C. The bail application filed by the petitioner was dismissed only on the ground that no such application was moved by him under Section 167 (2) Cr.P.C and he was not entitled for bail as per aforesaid provisions of Cr.P.C. Learned counsel for the petitioner further submits that the petitioner is also at par with his co-accused, who have already been granted the benefit of Section 167(2) of the Code and is entitled for bail.

Learned counsel for the petitioner has also relied upon the judgment of Full Bench of this Court in case ***Baldev Singh vs State of Punjab 1975 Crl. L.J. 1662*** as well as judgment of Madhya Pradesh High Court in case ***Umashanker and others vs State of M.P. 1982 Crl. L.J 1186***, in support of his contentions, wherein, it has been held that the Court is duty bound to release the petitioner even in case, no bail application has been moved as indefeasible right has accrued to the accused when challan is not presented within the prescribed period.

Learned State counsel submits that since no bail application was moved by the petitioner whereas his co-accused have filed a petition,

accordingly, they were released on bail in view of provisions of Section 167 (2) Cr.P.C.

Heard the arguments of learned counsel for the parties and have also perused the impugned order declining bail.

Admittedly, co-accused of the petitioner, namely, Hargobind Singh and Surjit Singh @ Baba have been released on bail as per provisions of Section 167(2) Cr.P.C. The challan was presented by the prosecution after expiry of period of 180 days. An application for extension of time was also moved under 36-A of the NDPS Act as the Chemical Examiner's Report was still awaited and the same was allowed. Both the co-accused of the petitioner were released on bail. The petitioner earlier also filed **Criminal Misc. No.M-25133 of 2014** for grant of regular bail, which was dismissed on 11.09.2014 as application was moved by him after presentation of challan. On the same subject matter, including other issues, the matter has been referred to larger bench. It was one of the issues as to whether moving of an application under Section 167(2) Cr.P.C is necessary or not, which is still pending. Although, other issues are also there but it has been submitted by learned counsel for the petitioner by relying upon the judgment of Full Bench of this Court in **Baldev Singh's** case (supra), wherein, it has been held that the accused person must be released on bail, in case, he is prepared to furnish the bail bonds irrespective of the fact as to whether he has moved any application or not. It has also been held that the Court is duty bound to release the accused person on bail on furnishing bail bonds provided the requisite condition of detention beyond the prescribed period is satisfied. The relevant portion of the said judgment is reproduced as under :-

“ Indeed, a bare reference to the above-quoted provision would indicate that under this provision there

need be no application for bail by the accused at all. This provision goes to the power and the very jurisdiction of the Magistrate to grant judicial or police custody of the person of the accused irrespective of the moving of an application on his behalf. In no uncertain terms, the statute provides that the accused person must be released on bail if he is prepared to furnish the same in case he has already been in custody for a period of sixty days. The presentation of an application is thus irrelevant to the issue. The Magistrate is himself duty-bound and the accused is entitled as of right to be so released on furnishing bail provided the requisite condition of detention beyond sixty days is satisfied. Therefore, to contend that the date of the bail application would govern the attraction or applicability of S. 167 of the New Code appears to me as patently fallacious."

Similarly, Madhya Pradesh High Court has also considered the same issue in **Umashanker's** case (supra) by relying upon the judgment of Hon'ble the Apex Court in **Hussainara Khatoon vs State of Bihar AIR 1979 SC 1377**, wherein, it has been held that proviso to main section does not say that the accused has to make a formal written application for exercising the right of being released on bail. The only requirement is that the accused person is prepared to furnish bail and same may be ordered by the Court. In case, he does so, and intimate the Court whether orally or in writing, the Court cannot refuse to pass an order directing his release on bail for want of a written application.

In the present case also, the bail to the petitioner has been declined only on the ground that he did not file application for bail under Section 167(2) Cr.P.C.

In view of the judgment of Full Bench in **Baldev Singh's** case (supra) as well as the judgment of Division Bench of Madhya Pradesh High Court in **Umashanker's** case (supra), the petitioner is entitled to be

released on bail as he is also at par with his co-accused even in case, he has not applied by moving an application in this regard.

Accordingly, this petition is allowed and the petitioner is directed to be released on bail on his furnishing adequate surety to the satisfaction of the trial Court and any other condition to be imposed by it.

26.02.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE