

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No.M-4515 of 2015 (O&M)
Date of decision: 20th February, 2015

Balwinder Singh alias Biru

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Sapan Dhir, Advocate, for the petitioner.

INDERJIT SINGH, J.

Petitioner has preferred this petition under Section 439 Cr.P.C., seeking regular bail in case FIR No.85 dated 24.07.2014, registered at Police Station Barnala, District Barnala, under Section 22 of the Narcotic Drugs & Psychotropic Substances Act (in short 'the Act').

It is stated in this petition that petitioner filed bail application under Section 167(2) Cr.P.C. before the learned trial Court. The prosecution also moved application under Section 36-A Cr.P.C. for extension of time to file the challan by alleging that the Forensic Science Laboratory report has not been received. It is also stated in the present petition that the learned trial Court allowed the application filed by the prosecution for extension of time and granted two months more time to present the challan and illegally rejected the bail application of the petitioner.

Notice of motion.

On the asking of the Court, Mr. Gurdinderjit Singh, DAG, Punjab, has accepted notice on behalf of respondent(s)-State.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that the present FIR has been registered under Section 22 of the Act. The recovery from the petitioner is of commercial nature and Section 37 of the Act bars to grant the bail to the person in case of commercial quantity.

As regarding the application under Section 167 (2) Cr.P.C., filed by the petitioner, it is alleged that before the filing of the said application by the petitioner after a lapse of 180 days, the Additional Public Prosecutor already filed application for extension of time on the ground that Forensic Science Laboratory report has not been received and it is still awaited in the case. The Court issued notice of this application to petitioner-accused and after taking reply on behalf of petitioner-accused, the period was extended to two months for submitting the report under Section 173 Cr.P.C. Learned counsel for the petitioner contended that the indefeasible rights accrued to the petitioner when he filed the application and challan was not presented on that day, therefore, he should have been granted bail under Section 167(2) Cr.P.C. on that very day. At the time of arguments, learned counsel for the petitioner also admitted that before filing the application under Section 167 (2) Cr.P.C. after a lapse of 180 days, the application, filed by the public prosecutor for

extension of time, was pending before the Court. He further admits that notice of the said application was given to petitioner-accused and he had filed the reply. The ground given by the public prosecutor in the said application is that Forensic Science Laboratory report had not been received which means that challan could not be filed due to awaiting the report of Forensic Science Laboratory. It is also in the application that three reminders have already been given, therefore, this is the compelling circumstance for extension of time to submit the challan. Learned counsel for the petitioner has cited **2014 (3) RCR (Criminal) 534 Union of India through CBI versus Nirala Yadav alias Raja Ram Yadav alias Deepak Yadav and 2010 (1) R.C.R. (Criminal) 942 Sanjay Kumar Kedia alias Sanjay Kedia versus Intelligence Officer, Narcotic Control Bureau and another.**

I have gone through the aforesaid citations. In none of these citations, it has not been held that when application has already been filed by the Public Prosecutor for extension of time within 180 days and the application under Section 167 Cr.P.C. has been filed by the accused lateron, then indefeasible right accrues to the petitioner.

Therefore, from the above discussion, I do not find any merit in the present petition and the same is dismissed.

20th February, 2015
mamta

(INDERJIT SINGH)
JUDGE