

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

CRM-M-5903 of 2015
Date of Decision: April 21, 2015

Gurcharan Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.K. Gupta, Advocate
for the petitioner.

Mr. J.S. Brar, AAG, Punjab.

FATEH DEEP SINGH, J.

The petitioner-Gurcharan Singh, who is under detention on the allegations of being in conscious possession along with his co-accused having been apprehended on 30.7.2014 while transporting in a truck 30 bags each weighing 40 kgs in all totalling to 1200 kgs of poppy husk.

The accused, present petitioner has now come up under Section 167(2) Cr.P.C. read with Section 36A(4) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') for grant of bail in this case got registered by way of FIR No.96 dated 30.7.2014 at Police Station Moga Sadar, District Moga.

It was during the course of events an application dated 29.1.2015 was moved by the present petitioner for bail under Section 167(2) Cr.P.C, and vide orders dated 29.1.2015, the learned Judge, Special Court, Moga on this application of the accused issued notice to the State and called for report of Ahlmad and the latter by his report of even date reported that 184 days have elapsed and challan has

not been presented. It is subsequent thereto as has been conceded by the State counsel and is also reflected from the records of the lower Court that through the orders in question impugned before this Court dated 31.1.2015 the learned trial Court dismissed the application.

The State counsel has made twofold submissions that the petitioner has been found in conscious possession of commercial quantity of narcotic substance and that upon presentation of challan on 18.3.2015 charges already stands framed against him under Section 15 (c) of the Act on 30.3.2015. The contention raised by the counsel for the petitioner who has placed reliance on **Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau and another 2010(1) RCR (Criminal) 942** to harbour home the point that the guidelines laid down by the Hon'ble Apex Court in such an eventuality have never been followed and, thus, entitles the petitioner to bail.

Appreciating these arguments the Hon'ble Apex Court in the case of **Union of India vs. Nirala Yadav reported in (2014) Vol IX SCC 457** have held that right of the accused in terms of Section 167(2) Cr.P.C. to be released on bail on failure of the prosecution to complete the investigations and present the challan within a period of 180 days and which the Court is empowered to authorise detention up to a period of one year is indefeasible and which right accrues to the accused in such a situation and which cannot be defeated by any such inaction on the part of the Court and which position of law has been readily conceded by the State counsel.

In ***Sanjay Kumar Kedia's case*** *ibid* the Hon'ble Supreme Court has laid down that a report of the Public Prosecutor indicating progress of the investigation was one of the essential requirement in cases covered under Section 36A of the Act. In the present case as is

reflected from the records an application has been moved purported to be by SHO Police Station, Sadar Moga on 21.1.2015 without any report of the Public Prosecutor and as per the orders passed thereon on 23.1.2015 this application is shown to have been moved by ASI, Tara Singh upon which notice to the accused has been issued for 27.1.2015 and, thus, violates the very first condition provided under Section 36A(4) which mandates that it is only on the report of the Public Prosecutor that the same could be accomplished. The bare perusal of the order on this application detailed above reflects that it does not even remotely satisfy the test so laid down as neither presence of accused or his counsel is there much less of having been given the opportunity of being heard on the matter. Thus, from this all, this Court has drawn the conclusion that the order granting extension having failed to fulfil prerequisites are certainly contrary to law as neither there is any indication regarding the progress of the investigations nor there are specific reasons given by the lower Court for the detention of the accused beyond the period of 180 days and, therefore, does not satisfy the requirements of these provisions of the Statute. Moreover on 29.1.2015 when the accused filed his application for bail 184 days had already elapsed without the challan having been presented which as is conceded by the State was presented on 18.3.2015 much thereafter and the alleged extension as stated in the impugned order on 27.1.2015 is not only contrary to law but also at the back of the defence. This right has automatically accrued on 25.1.2015 which is indefeasible qualifies the accused to grant of bail automatically.

Thus, in the light of the same, the instant petition is allowed. The petitioner is ordered to be released on bail to the satisfaction of the trial Court. However, this order does not invalidates or holds back the prosecution to move the Court for cancellation of the

bail in case there is misuse of this concession or the petitioner is found to be involved in further cases of such offences.

Records of the trial Court be sent back immediately.

(FATEH DEEP SINGH)
JUDGE

April 21, 2015
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