

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

**\* \* \* \* \***

**Crl. Misc. No. M-61 of 2015**

Date of decision : January 12, 2015

**\* \* \* \* \***

Ashish Kumar @ Shally

.....Petitioner

Versus

State of Punjab

.....Respondent

**\* \* \* \* \***

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

**\* \* \* \* \***

Present: Mr. Amaninder Preet, Advocate for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

**\* \* \* \* \***

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

**RITU BAHRI, J**

The petitioner is seeking grant of regular bail in case FIR No. 87 dated 24.5.2014 registered under Sections 22/61/85 of NDPS Act at Police Station Fategharh Sahib, District Fatehgrah Sahib during the pendency of the case on the ground that the challan has not been presented within the stipulated period in terms of Section 167(2) Cr.P.C and thus, he has acquired an indefeasible right to be freed on bail.

Prosecution story, in brief, is that a police party headed by ASI Gurmeet Singh on 24.5.2014 was present at defense band near FCI Godown in the area of Sirhind Mandi, then the petitioner came

from the side of Madrasi Colony at about 1:00 p.m on foot and on seeing the police party was to return but was stopped by police on suspicion. The petitioner on inquiry disclosed his name and whereabouts. ASI, Gurmeet Singh as per written consent of the petitioner, conducted search of the petitioner and the same led to recovery of seven pouch each containing 100 of phenotil tablets and eleven vials of injections of Avil of 10 ml from the plastic bag carried by the petitioner in his right hand. The petitioner could not produce permit or licence for retaining the same in possession. Then two samples each of 10 tablets of phenotil from 700 tablets of phenotil were separated. Two samples each of 1 vial of injection of Avil of 10 ml from 11 vials of injections of Avil were separated. The remaining 500 tablets of Phenotil with samples and 9 vials of injections of Avil were sealed in separate parcels by ASI Gurmeet Singh with his seal of letters of 'GS'. The sample of seal was also prepared separately. The sealed case property was taken in possession vide separate memo prepared to the said effect. The seal after its use was handed over to HC Gurbachan Singh. The ruqa was drafted for registration of the FIR under Sections 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and was also sent to police station for the said purpose. The FIR was registered under the said offence against the petitioner. The rough site plan of the place of recovery was prepared with correct marginal notes. The statements of the witnesses were recorded. The petitioner was arrested on 24.5.2014 vide memo prepared to the said effect and since then is in

custody in this case.

Even the sample parcel was deposited after a delay of 5 days in FSL, Mohali on 29.5.2014. The prosecution filed an application for extension of custody of the accused upon non-receipt of chemical report (Annexure P-2). The petitioner filed an application under Section 167(2) Cr.P.C for grant of bail. The application of the petitioner was dismissed vide order dated 26.11.2014 (Annexure P-4) and the application dated 14.11.2014 for extension of the period for further investigation of this case for a period of 90 days more for filing the challan on receipt of report of FSL, Mohali was allowed vide order dated 26.11.2014 (Annexure P-5).

A perusal of the application for extension of time filed by the prosecution (Annexure P-2) shows that extension of time was being sought on the ground that the chemical report from the Forensic Science Laboratory has not been received and in the absence of the report, the challan could not be presented. In the case of **Sanjeev Kumar vs. State of Punjab** in **Crl. Misc. No. M-39703 of 2013** decided on 4.12.2013, the petitioner was seeking release on bail during the pendency of the case on the ground that the challan under Section 167(1) Cr.P.C was not presented within the prescribed period time. In that case, the challan could not be presented within 180 days and an application was made by the Additional Public Prosecutor for extension of time and detention of the accused beyond a period of 180 days. In the application, the only ground for extension of time was that the Chemical Examiner's

report had not been received. The Coordinate Bench of this Court, while relying upon the judgment of the Hon'ble Supreme court in the case of ***Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotice Control Bureau and another 2010 (1) RCR (Criminal) 942***, allowed the bail to the petitioner as extension of time beyond a period of 180 days could not be granted only to await the report of the Chemical Examiner for the purpose of representing the final report under Section 173 Cr.P.C.

In the present case, extension of the custody of the petitioner is being sought only on the ground that the Chemical Examiner's report has not been received. In view of the ***Sanjay Kedia's case (Supra)***, the bail can not be declined to the petitioner as no compelling reasons were indicated for extension of time for presenting the final report under Section 173 CR.P.C. Resultantly, this petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing adequate bail bonds to the satisfaction of Special Judge, Fatehgarh Sahib.

January 12, 2015  
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( RITU BAHRI )  
JUDGE