

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-8467 of 2015(O&M)
Date of decision : 21.04.2015

Rakesh Kumar @ Kesha

..... Petitioner

versus

State of Punjab

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: Mr. Vipul Jindal, Advocate
for the petitioner**

Mr. K.S. Aulakh, AAG Punjab

ANITA CHAUDHRY, J. (ORAL)

Crl. Misc. No. 12459 of 2015

Application is allowed and the accompanied documents
Annexures P-8 to P-12 are taken on record.

Crl. Misc. No. M-8467 of 2015

The petitioner is seeking regular bail in FIR No. 122 dated
10.06.2014, registered at Police Station Maqsudan, Jalandhar under
Sections 22/61/85 of NDPS Act.

Learned counsel for the petitioner refers to Annexure P-9
and urges that the main accused Surinder Kumar and Kuldeep Singh
were allowed bail on their application filed under Section 167(2)
Cr.P.C. he seeks parity. He further urges that the Madhya Pradesh
High Court in ***Umashanker and others vs. State of M.P., 1982 Crl.
L.J. 1186*** and Full Bench of this Court in case ***Baldev Singh vs.
State of Punjab, 1975 Crl. L.J. 1662*** have held that the Court is duty
bound to release the petitioner even in case, no bail application has

been moved as indefeasible right accrues to the accused when challan is not presented within the prescribed period. He further urges that the petitioner was arrested on 12.06.2014 and 180 days had expired on 09.12.2014 but the police had sought an extension for filing the challan but that extension was granted on 30.01.2015 and since the main accused had been allowed bail, same concession should be extended to the petitioner. Reference has been made to ***Simratpal Singh vs. state of Punjab (Crl. Misc. No. M-4106 of 2015) decided on 26.02.2015.***

Learned State counsel submits that no bail application had been moved by the petitioner and, therefore, the concession can not be granted to the petitioner. Admittedly, co-accused had been released on bail as per the provisions contained in Section 167(2) Cr.P.C. An application seeking extension was moved as the report of the chemical examiner had not been received.

The Madhya Pradesh High Court has also considered the same issue in ***Umashanker's*** case (supra) by relying upon the judgment of Hon'ble Apex Court in ***Hussainara Khatoon vs State of Bihar AIR 1979 SC 1377***, wherein, it has been held that proviso to the 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 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 for bail and had failed to move an application in this regard.

Since the co-accused had been released on bail and in view of the judgment passed by Full Bench of this Court in **Baldev Singh's** case (supra), 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 on any other condition that may be imposed by it.

April 21, 2015

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**(ANITA CHAUDHRY)
JUDGE**