

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

Crl. Revision No. 1066 of 2014.

Date of Decision: 12.01.2015.

Jagtar Singh and another PETITIONER (s)

Versus

State of Punjab

..... RESPONDENT

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present:Mr. K.S.Dhaliwal, Advocate,
for the petitioners.
Mr. P.S. Grewal, DAG, Punjab.

LISA GILL, J.(Oral)

This revision petition has been preferred impugning the order dated 02.01.2014 passed by Learned Judge, Special Court, Sangrur whereby the petitioners' application under Section 167(2) Cr.P.C., was dismissed.

Learned counsel for the petitioners submits that the petitioners were arrested on 26.06.2013 for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Recovery of 120 kg. of poppy husk is alleged to have been made from the petitioners. Period of 180 days for presentation of challan/ report under Section 173, Cr.P.C. expired on 26.12.2013. The petitioners moved an

application under Section 167(2) Cr.P.C. on 30.10.2013 claiming their entitlement to be released on bail as report under Section 173 Cr.P.C. had not been presented till then.

Thereafter it came to the light that the prosecution had moved for extension of time for presentation of the report under Section 173, Cr.P.C. on 18.12.2013. On 18.12.2013 itself the trial court allowed the application for extension of the period for presentation of challan till 29.01.2014. No notice, whatsoever, was issued to the accused and the extension is stated to be illegally permitted.

Learned counsel for the petitioners relies upon a judgment passed by the Hon'ble Supreme Court in **Sanjay Kumar Kedia @ Sanjay Kedia Versus Intelligence Officer., Narcotic Control Bureau and another**, 2010 (1) RCR (Criminal) 942.

Learned counsel for the State has confirmed and verified the above mentioned factual position. It is admitted that the extension of period for presentation of challan was indeed granted on 18.12.2013 by the learned trial court without issuing any notice to the accused persons. Report under Section 173 Cr.P.C. was submitted within the extended period.

It has been held by the Hon'ble Supreme Court in **Sanjay Kumar Kedia @ Sanjay Kedia(Supra)**, that the indefeasible right which accrues to the accused under Section 167(2) Cr.P.C. cannot be curtailed in this manner. The court undoubtedly has jurisdiction to extend the stipulated period of 90 days for presentation of challan/ report under Section 173, Cr.P.C. but it is essential that notice should be issued to the accused. It has

been specifically observed that:

“The maximum period of 90 days fixed under Section 167(2) of the Code has been increased to 180 days for several categories of offences under the Act but the proviso authorizes a yet further period of detention which may in total go upto one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:

- (1) a report of the public prosecutor,*
- (2) which indicates the progress of the investigation, and*
- (3) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and*
- (4) after notice to the accused.”*

Keeping in view the facts and circumstances of the case and the ratio laid down in Sanjay Kumar Kedia @ Sanjay Kedia(Supra), the petitioners are entitled to concession of bail pending trial, under Section 167(2) Cr.P.C.

Resultantly, this petition is allowed and impugned order dated 02.01.2014 is set aside . The petitioners shall be released on bail pending trial subject to their furnishing bail bonds and surety bonds to the satisfaction of the trial court.

It is, however, clarified that in case the petitioners are found to be involved in any other case, the prosecution shall be at liberty to move an appropriate application for cancellation of bail of the petitioners in the present case.

12.01.2015.

Anoop

(LISA GILL)

JUDGE