

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

CRM No. M-30082 of 2016

Date of decision:- October 07, 2016

SHIV KUMAR

.....PETITIONER..

VS.

STATE OF PUNJAB

....RESPONDENT..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Prashant Vashisth, Advocate,
for the petitioner.

Mr. RPS Sidhu, AAG, Punjab

JASPAL SINGH, J. (Oral)

Through instant petition preferred under Section 439 of the Code of Criminal Procedure (for brevity, "Code" only), petitioner-Shiv Kumar has sought bail during the pendency of trial, pertaining to FIR No.14, dated 24.01.2016, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "Act"), Police Station Division No.8, Jalandhar City.

2. As per the contention of learned counsel for the petitioner, the petitioner has applied for bail under Section 167(2) of the Code as the prosecution could not present the report under Section 173 (2) of the Code within prescribed period of 180 days. No extension was also sought under Section 36(A) (4) of the Act. The request for bail of the petitioner has been

declined by the ld. trial court simply on the ground that challan has already been presented on the date, the application was pending.

3. But ld. State counsel has fairly conceded that if the period is calculated from the date of the arrest of the petitioner, it works out to 183 days, on the date, the challan was presented.

4. Thus, due to the non-presentation of report under Section 173(2) of the Code within a prescribed period of 180 days, an indefeasible right has accrued to the petitioner, which cannot be scuttled down even after the presentation of report after the expiry of the prescribed period.

5. Accordingly, this Court is of the considered view that the petitioner deserves the concession of bail. As such, petition is allowed and petitioner is ordered to be released on bail, during pendency of trial, at the satisfaction of trial Court/Duty Magistrate.

October 07, 2016

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**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned: Yes

Whether reasonable: No