

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

**CRM No. M-35022 of 2015
DECIDED ON: JANUARY 06, 2016**

PARVEEN AND OTHERS

.....PETITIONERS

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether the Reporters of the Local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or?**
- 3. Whether the judgment should be reported in the digest?**

Present: Mr. Ramandeep, Advocate
for the petitioners.

Mr. Arjinder Singh Sidhu, AAG, Punjab.

JASPAL SINGH, J (ORAL)

This order shall dispose of instant petition preferred under Section 482 of the Code of Criminal Procedure (for brevity "code") seeking quashing of order dated September 16, 2015 (Annexure P-4) passed by learned Additional Sessions Judge, Jalandhar whereby, revision against order dated July 27, 2015 passed by learned Judicial Magistrate Ist Class, Jalandhar (Annexure P-3) in connection with FIR No. 74 dated May 15, 2015 registered at Police Station Bawa Khel, Distt. Jalandhar, under Section 306/34 IPC (Annexure P-1) has been dismissed.

2. Undisputedly, after the registration of above-referred FIR, petitioner was arrested by Investigating Officer on May 15, 2015 and he was sent to judicial

custody on the very next day i.e. May 16, 2015. A report under Section 173 (2) of the Code was presented on July 24, 2015 i.e. after the expiry of a period of more than 60 days prescribed under the Code.

3. The contention of learned counsel for the petitioner is that after the expiry of a period of 60 days from the date of arrest of petitioner i.e. on July 14, 2015 an indefeasible right accrued to the petitioner to be released on bail as per provisions contained under Section 167 (2) of the Code. He duly moved an application for his release after having accrued right for bail on default of prosecution in not filing the challan within the stipulated period. However, an application moved by the petitioner was dismissed by learned Magistrate and revision preferred against that order was also dismissed which is absolutely illegal and against the settled canons of law.

4. Per contra learned State counsel has supported both the impugned orders passed by the courts below and has submitted that challan has already been presented by the prosecution on the day i.e. an application under Section 167(2) of the Code was filed by the petitioner and as such he is not entitled to any relief sought for by him.

5. After having bestowed due consideration to the rival submissions made by learned counsel for the parties and scanning the impugned order(s). This Court is of the considered view that the same are not sustainable in the eyes of law. The Hon'ble Apex Court in the case of **Union of India through CBI v. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav; 2014(3) RCR (Crl.) 534**, has categorically held that when an indefeasible right has accrued to the accused on account of default on the part of prosecution in non filing the challan within stipulated period, the prosecution cannot frustrates the legislative mandate.

6. Adverting to the facts of the case in hand petitioner is alleged to have

been arrested on May 15, 2015 and was produced before learned Magistrate on the next day i.e May 16, 2015 after the expiry of a period of 60 days from the date of arrest of the petitioner is calculated which expires on July 14, 2015. However, a report under Section 173(2) of the Code was presented on July 24, 2015 i.e. admittedly after the expiry of stipulated period prescribed for the presentation of challan.

7. Right for delay enshrined under Section 167(2) of the Code being an indefeasible one cannot be said to be extinguished, frustrates or scuttled down by mere presentation of report under Section 173(2) of the Code beyond the period prescribed. Thus, petitioner is entitled to be released on bail.

8. In the light of what has been discussed above, instant petition is allowed both the orders passed by the courts below are set aside and petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/Duty Magistrate, Jalandhar.

9. However, in case of any misuse of this concession by petitioner is detected, prosecution shall be at liberty to move for cancellation of this order.

10. While parting with the order, it would be important to note that delay in submission of report under Section 173(2) of the Code appears to be intentional, which is required to be enquired into and erring officials/officers are to be proceeded with disciplinary proceedings. Thus, Commissioner of Police, Jalandhar is directed to ensure to get the matter in question inquired and to take action against the erring officials/officers, who are found at fault for causing delay in submission of report under Section 173(2) of the Code.

JANUARY 06, 2016
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(JASPAL SINGH)
JUDGE