

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

CRM-M-36651 of 2016

Date of decision: October 25, 2016

Ashwani Kumar alias Shaffy

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ashish Aggarwal, Advocate
for the petitioner.

JASPAL SINGH, J.(ORAL)

Through instant petition preferred under Section 439 of Code of Criminal Procedure, petitioner has sought regular bail during the pendency of trial in case bearing FIR No.155 dated 13.05.2014, under Sections 307, 324, 326, 323, 34 of IPC and Section 25 of Arms Act, registered at Police Station City Tarn Taran, District Tarn Taran, Punjab as a statutory bail under the provisions of Section 167(2) of the Cr.P.C.

Undoubtedly, petitioner was arrested in this case on 28th November, 2014. The final report was not presented within a period of 90 days from the date of his arrest. On the basis of an application moved under Section 167(2) Cr.P.C. by co-accused, namely, Bikramjeet Singh @ Vicky, he has been allowed bail due to the non-presentation of challan within a stipulated period, however, at that time of petitioner could not move an application. Subsequently, he moved an application but that was declined simply on the ground that the challan has already been presented and the trial Court is seized of the matter. It is well settled proposition of law that there is no necessity on the part of the accused to move an application for bail under Section 167(2) Cr.P.C. and the order is

to be passed by the concerned Magistrate/trial Court. It is upto the accused to furnish the requisite bonds or not but in the case in hand learned Additional Sessions Judge, Tarn Taran though discussed each and every aspect with regard to the right of the petitioner for bail under Section 167(2) but subsequent thereto he dismissed the application moved by the petitioner without any cogent or convincing reason. It is also well settled that once a right has been accrued to the petitioner due to the default on the part of the prosecution agency in non-furnishing the challan within a period prescribed, the same cannot be scuttle down due to the presentation of challan at the subsequent stage/time. Co-accused has already been granted the similar concession.

Taking into consideration the aforesaid aspects of the case but without expressing any opinion on merits, petition is allowed and petitioner is ordered to be released on bail on his furnishing requisite bonds at the satisfaction of the concerned Chief Judicial Magistrate/Duty Magistrate

October 25, 2016
m. sharma

(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No