

Sr. No. 221

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

**CRM No. M-39985 of 2015 (O&M)
Date of Decision: 11.02.2016**

Gurwinder Singh @ Ginda

...Petitioner

Versus

State of Punjab

... Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Veneet Sharma, Advocate,
for the petitioner.

Mr. D.S.Virk, AAG, Punjab.

TEJINDER SINGH DHINDSA. J (ORAL)

Petitioner has filed the instant petition under Section 439 Cr.P.C. read with Section 167 (2) Cr.P.C. seeking benefit of bail in case FIR No.07 dated 09.10.2013, under Sections 21, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act') registered at Police Station State Special Operation Cell, Amritsar.

This Court would not be required to go into the merits of the case as the petitioner is seeking bail under the provisions of Section 167(2) Cr.P.C.

During the course of arguments today, it has gone uncontroverted that the petitioner was arrested on 16.04.2015. Challan having not been presented within the statutory period of 180 days, an application under Section 167(2) was preferred by the

accused/petitioner on the 182 day i.e. on 15.10.2015 at 2.30 p.m.

On the same very day but subsequent in point of time the challan was presented at 3.20 p.m. by the prosecution.

The trial Court has dismissed the bail application moved by the petitioner on the ground that challan has since been presented.

Having heard learned counsel for the parties, this Court is of the considered view that the petitioner is entitled to the benefit of bail under Section 167(2) Cr.P.C.

Hon'ble Supreme Court in the case of ***Uday Mohanlal Acharya Vs. State of Maharashtra, 2001 (2) R.C.R. (Criminal) 452: AIR 2001 Supreme Court 1910***, has categorically laid down that if charge-sheet is not filed within the period stipulated in Section 167(2) Criminal Procedure Code and the accused files bail application and offers to furnish bail, he is said to have availed the indefeasible right of being released on bail and this right shall not be defeated by subsequent presentation of the charge-sheet during pendency of the bail application.

Afore-noticed judgment was followed by a co-ordinate Bench of this Court while passing order dated 06.02.2013 in ***Satnam Singh Vs. State of Punjab 2013 (2) R.C.R. (Criminal) 356***.

In view of the law laid down by the Hon'ble Apex Court in ***Uday Mohanlal Acharya's case (supra)***, the present petitioner on having filed a bail application on expiry of stipulated period as per Section 167 (2) Cr.P.C. was vested with an indefeasible right to bail, notwithstanding presentation of challan by the police subsequently

and during the pendency of the bail application.

Accordingly, without expressing any opinion on the merits of the case, instant petition is allowed.

Petitioner be enlarged on bail subject to satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Amritsar.

Disposed of.

11.02.2016

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**