

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

**Criminal Misc. No. M-42625 of 2015 (O&M)
Date of decision: 06.01.2016.**

Kuldip Singh and others

..Petitioners

Versus

The State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. B.S. Kathuria, Advocate
for the petitioners.

Mr. Rupam Aggarwal, DAG, Punjab
for the respondent – State.

Daya Chaudhary, J.

The present petition has been filed under Section 167(2) of the Code of Criminal Procedure (for short 'Cr.P.C.') for grant of bail to the petitioners in case FIR No.25 dated 13.04.2015 registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station Khemkaran, District Tarn Taran.

Learned counsel for the petitioners submits that the prosecution has failed to file the challan within a period of 180 days as

prescribed under law and the indefeasible right of the petitioners has also been defeated by moving an application for extension of time to present challan, which is not sustainable. In case, the challan is not presented within a period of 180 days, the detention of the accused is unwarranted. Learned counsel also submits that the application moved by the petitioners under Section 167(2) Cr.P.C. has been dismissed and the application for extension of time to present the challan has been allowed with retrospective effect, therefore, the order passed by the trial Court is contrary to law. Learned counsel also submits that the petitioners have become entitled to be released on bail in spite of recovery of huge quantity of heroin even when an application is moved for extension of time. Learned counsel for the petitioner has relied upon judgments of this Court in **Jagseer Singh vs. State of Punjab, 2014(3) Law Herald 2685, Balwinder Singh and another vs. State of Punjab, 2015(5) RCR (Criminal) 683 and Paramjit Kaur @ Rani vs. State of Punjab, Criminal Misc. No. M-34161 of 2015 decided on 30.11.2015** in support of his contentions.

Learned State counsel opposes the submissions made by learned counsel for the petitioners and submits that huge recovery of 5 kg of heroin was effected from the petitioners and accused, namely, Suraj Singh is yet to be arrested. The petitioners are not entitled to be released on bail considering the recovery of huge quantity of heroin.

Heard arguments of learned counsel for the petitioners as well as learned State counsel and have also perused the impugned

order as well as other documents available on the file.

Admittedly, the prosecution has not filed the challan within the period of 180 days and when challan was not presented, the petitioners moved an application for grant of bail under Section 167(2) Cr.P.C. by relying upon certain judgments of Hon'ble the Apex Court but the application was dismissed vide order dated 16.10.2015 and the application moved by the prosecution on 07.10.2015 for extension of time to file challan, was allowed on 13.10.2015 and time was extended with retrospective effect. The challan was to be presented on or before 09.10.2015 and the period was extended by the trial Court after expiry of period of 180 days.

The same issue was there before this Court in **Sanjeev Rai vs. State of Punjab, Criminal Misc. No. M-29723 of 2015** wherein it has been held that irrespective of recovery of narcotic substance, the accused becomes entitled to be released on bail as it is an indefeasible right, which has been granted as per provisions of Section 167(2) Cr.P.C.

Hon'ble the Apex Court in **Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau and another, 2010 (1) RCR (Criminal) 942**, has observed in para 14 that a bare perusal of the application shows that it was filed by the Investigating Officer and it does not indicate even remotely any application of mind on the part of the public prosecutor as it does not indicate the progress of the investigation, or any compelling reasons

which required an extension of custody beyond 180 days. Once the application for bail has been filed, filing of application for presentation of challan during disposal of application cannot defeat the right of the accused.

This principle has also been laid down by Hon'ble the Apex Court in **Union of India through C.B.I. vs. Nirala Yadav @ Raje Ram Yadav @ Deepak Yadav, (2014) 9 SCC 457.**

Accordingly, in view of the settled position of law and the judgments as discussed above, the present petition is allowed and the petitioners are directed to be released on bail in view of the provisions of Section 167(2) Cr.P.C. to the satisfaction of the trial Court.

06.01.2016
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(DAYA CHAUDHARY)
JUDGE