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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1700-2017

Date of Decision : August 23,2017

Bholi

... Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. R.P.Dhir, Advocate,
for the petitioner.

Mr. R.B.S. Chahal, Addl. A. G. Punjab,
for the respondent.

SHEKHER DHAWAN, J.

Present revision petition under Section 401 Cr. P.C. against order dated 27.4.2017 passed by learned Additional Sessions Judge, Hoshiarpur, whereby application filed by the petitioner for grant of bail under Section 167(2) Cr.P.C., was declined in case bearing FIR No. 209 dated 18.10.2016 registered at Police Station – Tanda, District Hoshiarpur, under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Facts relevant for decision of the present revision petition; that the petitioner had filed an application for bail under Section 167(2) Cr.P.C., on the ground that she was arrested in the above mentioned case on 18.10.2016 and period of 180 days expired on 16.4.2017 and as such, she was entitled to be released on bail as per provisions of Section 167(2) Cr.P.C. As per the petitioner, the report of Ahlmad from the concerned

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Court made on 17.4.2017 indicated that the challan was not presented in the Court on 17.4.2017 by 9.49 AM and the learned trial Judge after considering the reply of the State, passed the impugned order declining the bail on the ground that the challan had been filed on 17.4.2017 itself and there was no question of release of the petitioner on bail as per the provisions of Section 167(2) Cr.P.C.

3. Learned counsel for the petitioner placed reliance upon the judgment from Hon`ble Apex Court in **Union of India through C.B.I. Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, 2014(3) R.C.R. (Criminal) 534**, wherein some concession of bail was made in favour of the accused applying the provisions of Section 167(2) Cr.P.C. On the same point, reliance was placed upon the judgment from Hon`ble Supreme Court in **Uday Mohanlal Acharya Vs. State of Maharashtra, 2001(2) R.C.R. (Criminal) 452**. Learned counsel for the petitioner also placed reliance on the judgment from co-ordinate Bench of this Court in **Sarabjit Singh alias Sabi Vs. State of Punjab, 2014(1) R.C.R. (Criminal) 341**.

4. Learned State counsel submitted that the petitioner is not entitled to be released on bail and the impugned order has rightly been passed because the application for bail was filed on 17.4.2017 and the challan was presented on the same day and on that ground, the application was rightly declined. The present revision petition is liable to be dismissed.

5. Having considered the submissions made by learned counsel for the parties and appraisal of the file, this Court is of the considered

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view that the facts are not disputed that the application for bail was filed by the petitioner on the ground of her entitlement as per provisions of Section 167(2) Cr.P.C., as the challan was not presented within 180 days and the petitioner was in custody. It is also not disputed that the challan was also presented on 17.4.2017 as per record of the case.

6. As per view taken by Hon`ble Apex Court in **Nirala Yadav's case (supra)**, extension of time for filing of charge sheet cannot be granted and on that ground bail can be granted under default clause. Similarly, facts of the case in hand are distinguishable from the facts of **Uday Mohanlal Acharya's case (supra)**, because in the present case, challan was presented on the same day when application for bail was filed and the same was pending for consideration before the Court below.

7. Similar matter was before Hon`ble Supreme Court in **Pragya Singh Thakur Vs. State of Maharashtra, 2012(1) R.C.R. (Criminal) 303** wherein, it has been observed as under :-

“54. There is yet another aspect of the matter. The right under Section 167(2) Cr.P.C. to be released on bail on default if charge sheet is not filed within 90 days from the date of first remand, is not an absolute or indefeasible right. The said right would be lost if charge sheet is filed and would not survive after the filing of the charge sheet. In other words, even if an application for bail is filed within 90 days, but before the consideration of the same and before being released on bail, if charge sheet is filed, the said right to be released on bail would be lost.”

(emphasis supplied)

8. Hon`ble Constitution Bench of Hon`ble Supreme Court in **Sanjay Dutt Vs. State 1994(3) R.C.R. (Criminal) 684**, observed that

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after the filing of charge sheet, if the accused is to be released on bail, it can be only on merits. Similarly, in the case in hand, the challan had been presented on 17.4.2017 and the application for bail as per the provisions of Section 167(2) Cr.P.C., was filed on 17.4.2017 and that was pending for consideration before the Court below and the impugned order rejecting the same was passed after considering all these facts.

9. In **Dr. Bipin Shantilal Panchal Vs. State of Gujarat, 1996(1) R.C.R. (Criminal) 505**, Hon`ble Apex Court was seized of the identical matter while dealing with the scope and purview of Section 167(2) Cr.P.C. and it was held that such a default clause is not available if the charge sheet is filed in the meantime because right under Section 167(2) Cr.P.C. is not an indefeasible right to be exercised.

10. In view of the above, there is no ground warranting interference in the well reasoned order dated 27.4.2017 passed by learned Additional Sessions Judge, Hoshiarpur rejecting the bail application of the petitioner. There is no merit in the present revision petition and the same stands dismissed.

August 23, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes
Yes