

S.No.215

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

CRM-M-36848 of 2018 (O&M)

Date of Decision:30.08.2018

Rafi @ Yousaf and anotherPetitioners

Vs.

State of PunjabRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Yashpal Thakur, Advocate
for the petitioners.

Mr. K.S. Aulakh, DAG, Punjab.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioners under Section 439 Cr.P.C for grant of bail pending trial in case FIR No.0003 dated 08.06.2018 registered under Sections 20/61/85 of NDPS Act, 1985 at Police Station Kheri Nodh Singh, District Fatehgarh Sahib, Punjab.

Counsel for the petitioners contends that the allegation against the petitioners is under Section 20 of NDPS Act. The alleged recovery from the petitioners is 20 kg. of Ganja; which is a non-commercial quantity. The petitioners were arrested on 08.06.2018 and 09.06.2018 respectively. No challan has been filed by the Police so far. In view of the above situation, besides other arguments, counsel submits that the petitioners are entitled to be released on bail under Section 167(2) Cr.P.C read with Section 36 of NDPS Act. Reliance is placed by the counsel on several judgments of this Court as well as judgment of the Supreme Court. Counsel further submits that there is no case against the petitioners.

On the other hand, learned counsel for the State has submitted that the challan has not been filed because the FSL report has not been received so far. However, counsel for the State has not disputed the fact that there is no case against the petitioners.

The petitioners have got a statutory right to get released on bail on not filing a challan by the Police within a stipulated period. The argument of the learned counsel for the petitioners in this regard is duly supported by the various judgments of this Court, and thus merits acceptance.

The argument raised by learned counsel for the State qua non-receipt of the FSL report is not relevant for the purpose of consideration of the petitioners for bail under Section 167(2) read with Section 36 of NDPS Act. The petitioners are not responsible for any delay in receipt of the FSL report. Therefore, their right cannot be defeated on the ground that FSL report has not been received so far.

In view of the above, but without further commenting on the merits of the case, the present petition is allowed. The petitioners are ordered to be released on bail on his furnishing bail bonds/ sureties to the trial Court/ Illaqa Magistrate.

August 30, 2018
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No