IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3743-2018 (O&M)
Date of decision:17.12.2018

Rahil Kumar Gakhar

.....Petitioner

versus

State of Punjab

....Respondent

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Sandeep Kumar Passi, Advocate for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

****

Kuldip Singh, J. (Oral)

Short reply by way of affidavit of Jaspal Singh, PPS, Deputy Superintendent of Police (City), Ferozepur, District Ferozepur on behalf of the respondent State has been filed in Court today is taken on record.

The petitioner has impugned the order dated 30.10.2018, passed by learned Additional Sessions Judge, Ferozepur, vide which his application under Section 167(2) Cr.P.C. (Annexure P-2) was dismissed.

Heard.

The allegations against the petitioner are that a commercial quantity of narcotic drugs was recovered from him. He was arrested on 02.05.2018 and was produced before the trial Court on 03.05.2018. The challan was presented on 30.10.2018 at 10 am. The Accused moved an application under Section 167(2) Cr.P.C. stating that he has completed custody of 180 days on 29.10.2018 and today is 181st day and therefore he is

ANJU RANI
2018.12.19 17:16
I attest to the accuracy and
integrity of this document
HIGH COURT CHANDIGARH

entitled to bail as a matter of right under Section 167(2) Cr.P.C. The trial Court sought the report of Ahlmad who reported that challan was presented on 10.05 am whereas the application for bail was received on 11.55 am. Therefore, the trial Court concluded that the challan was presented before filing of bail application.

The said observations have been disputed by learned counsel for the petitioner before this Court. Learned counsel has produced a copy of the print out from the computer system of the Court which shows that the bail application is registered at Sr.No.4212/2018 and challan has registered at Sr. no.4217/2018. Learned counsel for the petitioner contends that Ahlmad has made a wrong report under the influence of police and when bail application was filed, at that time challan was not presented. The trial Court relied upon the report of Ahlmad which is factually incorrect and contradictory to the computer record.

After going through the computer record, this Court found that the application for bail was registered at Sr.No.4212/2018 and the challan has a subsequent number i.e. 4217/2018. In the intervening space, four more entries were made. This is a contradictory to report of the Ahlmad that the challan was presented earlier in the time than the bail application. Computer record shows that the bail application was filed earlier in time and the challan was presented later on. Most probably, police might have got tip of the filing of the application under Section 167(2) Cr.P.C. Unluckily the time of recording of the application and challan is not mentioned. However, the entry in the computer makes it clear that application was filed earlier in time.

It comes out from the perusal of the FIR that the police received a

ANJU RANI
2018.12.19 17:16
I attest to the accuracy and
integrity of this document
HIGH COURT CHANDIGARH

secret information that the petitioner and his father have stored the drugs in a godown at Malwal Road. It is further stated in the FIR that father of the petitioner is running a medical store in Tokery Bazar outside Gobar Mandi, Ferozepur and having license for the same. It also comes out that father of the petitioner was having license to store the drugs and the drugs are stored at a place other than the place mentioned in the drug license. The petitioner is son of the said Ashwani Kumar Gakhar, who is license holder. Petitioner was found present in the said godown along with said medicine. Therefore, it is alleged that the offence is made out for the violation of Drugs and Cosmetic Act/rules.

It being so, it is held that the bail application was filed on 181st day after counting from 03.05.2018 after including the said day, when the petitioner was produced in the Court. Since the application was filed after lapse of 180 days before filing of the challan, impugned order dated 30.10.2018, passed by learned Additional Sessions Judge, Ferozepur, is hereby set aside. The application of the petitioner under Section 167(2) Cr.P.C. is allowed. Petitioner is ordered to be released on bail on furnishing personal bonds in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the trial Court.

Accordingly, the petition is allowed.

(KULDIP SINGH)
JUDGE

17.12.2018
anju rani

Whether speaking/ reasoned: Yes
Whether Reportable: No

ANJU RANI
2018.12.19 17:16
I attest to the accuracy and
integrity of this document
HIGH COURT CHANDIGARH