

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

CRR-1593-2018 (O&M)

Date of decision: February 26,2020

Harjit Singh

....Petitioner

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.S. Jaidka, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 5.4.2018 vide which the application filed by the petitioner for grant of default bail under Section 167(2) Cr.P.C. was dismissed.

Counsel for the petitioner has submitted that the petitioner was arrested on 6.10.2017 and he had moved an application on 2.4.2018 under Section 167(2) Cr.P.C. for grant of bail. However, on the same day, the prosecution has moved an application for extension of time on the ground that the report of the FSL is awaited and while allowing the said application, the application filed by the petitioner was dismissed.

Counsel for the petitioner has submitted that as per the allegations in the FIR, 60 kgs. of poppy husk was recovered from the petitioner and after a lapse of 180 days, i.e. on the 181st day, he has moved this application for grant of the default bail, which was declined by the trial Court only on the ground that application of the investigation agency seeking extension of time in completing the investigation stands allowed. Counsel for the petitioner has relied

upon **1994(3) RCR (Criminal) 156** titled as '**Hitendra Vishnu Thakur Vs. State of Maharashtra**', wherein the Hon'ble Supreme Court has held that where the Investigating Agency under Section 36(A) NDPS Act has filed an application for extension of time on the ground that the report of the Chemical Examiner is not received, the accused under Section 167(2) Cr.PC. having a right to get bail.

Counsel for the petitioner has further relied upon the judgment of this Court in **Sandeep Kumar Vs. State of Punjab, 2016(2) Law Herald 1472**, wherein in similar circumstances, while relying upon **Hitendra Vishnu Thakur's** case (*supra*) held that if the sole ground of the prosecution seeking extension of time for completing the investigation is non-availability of the report of the FSL/Chemical Examiner, the accused is entitled to bail under Section 167(2) Cr.P.C.

Learned State counsel has not disputed the factual position and has filed the custody certification. As as per the same, the petitioner is in custody for the last 02 years, 04 months and 19 days and the case is still at the stage of recording of prosecution evidence.

Without commenting anything on the merits of the case; considering the submission made by counsel for the petitioner and keeping in view the judgment of Hon'ble the Supreme Court in '**Hitendra Vishnu Thakur's**' case; the petitioner is in custody for the last more than 02 years and 04 months, the present present petition is allowed and the summoning order dated 5.4.2018 passed by the trial Court is set aside and the petitioner is directed to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.

(ARVIND SINGH SANGWAN)
JUDGE

February 26, 2020
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