

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

212

**CRM-M-37675-2020
Decided on : 15.12.2020**

Narinder Kumar @ Bhim

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

PRESENT: Mr. Pankaj Bhardwaj, Advocate
for the petitioner(s).

Mr. Saurav Khurana, DAG, Punjab
assisted by ASI Nazar Singh.

MANJARI NEHRU KAUL, J. (Oral)

The instant petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 248, dated 20.08.2020, under Sections 419, 420, 465, 467, 468, 471, 472, 473, 474, 170, 171, 120-B IPC and Section 25 of the Arms Act, 1959, registered at Police Station Fatehgarh Sahib.

On the last date of hearing, a prayer had been made by the learned State counsel for an adjournment to apprise this Court *qua* the status of the report under Section 173 Cr.P.C., as it had been pleaded by the learned counsel for the petitioner that the petitioner was entitled to bail by default as per the provisions envisaged under Section 167(2) Cr.P.C., as even after the expiry of 90 days, the investigating agency had failed to file the challan.

Learned State counsel submitted that the challan has not yet been filed. Further, he has not not been able to dispute the fact *qua* the date

of arrest of the petitioner i.e. 20.08.2020.

Heard.

In the present case, even though the petitioner has been in custody since 20th August, 2020, the challan has still not been presented even after the expiry of mandatory period of two months from the date of his arrest. It is a settled law that right for default bail is an indefeasible right which cannot be allowed to be frustrated by the prosecution. An accused cannot be detained by the police, if the charge-sheet is not submitted within the prescribed period of 60 days or 90 days, as may be the case, which would be contrary to the provisions and scheme of Section 167 Cr.P.C.

In view of the above discussion, this Court finds that the petitioner is entitled to the benefit of bail under Section 167(2) Cr.P.C.

Without commenting anything on the merits, lest it should prejudice the case of either side, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

(MANJARI NEHRU KAUL)
JUDGE

December 15, 2020

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*