

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. No.M-10720 of 2015

Date of Decision: May 26, 2015

Narain son of ShankerPetitioner

Versus

State of PunjabRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.HS Rakhra, Advocate for the petitioner.

Mr.Mikhail Kad, Assistant Advocate General, Punjab.

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TEJINDER SINGH DHINDSA, J.

This order shall dispose of the instant petition filed under Section 167(2) and 439 of the Code of Criminal Procedure praying for the grant of regular bail to the petitioner in case FIR No.193 dated 28.8.2014, under Section 15/21/61/85 of the Narcotic Drugs & Psychotropic Substances Act (for short 'the Act'), registered at Police Station Kotkapura, District Faridkot.

2. The petitioner was arrested on 28.8.2014 and as per prosecution version, 10 kgs. of poppyhusk and 5 kgs. of intoxicating powder was recovered from the present petitioner as also other co-accused.

3. Learned counsel for the parties have been heard at length.

4. Under Section 167 of the Code of Criminal Procedure

and under its various sub-sections, the maximum period beyond which a person cannot be detained while investigation is under way has been provided and the same varies between 60 to 90 days keeping in view the gravity of offence. If the investigation is not completed within such stipulated period, the accused is entitled to bail under Section 167(2) of the Code of Criminal Procedure if he makes an application for such purpose. However, under the Act, the maximum period of 90 days fixed under Section 167(2) of the Code of Criminal Procedure has been increased to 180 days for several categories of offences under the Act. Under Section 36-A of the Act, the period of detention may go on to a total of one year subject to satisfaction and compliance of the stringent conditions provided therein i.e. (i) upon a report of the Public Prosecutor; (ii) which in turn indicates the progress of the investigation; (iii) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days; and (iv) after notice to the accused.

5. Adverting back to the facts of the present case, since the challan had not been presented within a period of 180 days from the date of arrest, the petitioner filed an application under Section 167(2) of the Code of Criminal Procedure for bail on 26.2.2015. On the other hand, the investigating agency moved an application under Section 36-A of the Act seeking extension of time for presentation of the challan. Vide order dated 26.2.2015, the trial Court granted extension of 120 days for completion of investigation and to file the challan and vide order carrying even date i.e. 26.2.2015, the bail application filed by the

petitioner was dismissed on the basis that extension in time for completion of investigation has been granted.

6. In the considered view of this Court, there has been non-compliance of the provisions contained in Section 36-A of the Act. The provision mandates a report of the Public Prosecutor indicating the progress of the investigation as also the specific and compelling reasons for seeking the detention of the accused beyond a period of 180 days. In the present case, the trial Court has granted extension of time by merely noticing that report of the Forensic Science Laboratory is yet awaited. Such order has been passed in a routine and mechanical fashion.

7. Under such circumstances, the statutory right that had accrued to the petitioner on the expiry of 180 days under Section 167(2) of the Code of Criminal Procedure from the date he had been taken into custody could not have been defeated even if subsequent thereto the challan has been furnished. A reference in this regard may be made to the decision of the Hon'ble Supreme Court of India in "**Sayed Mohd. Ahmed Kazmi v. State, GNCTD and others**", 2012 (4) RCR (Criminal) 875.

8. It may also be apposite to take note that learned State counsel, who is being instructed by Head Constable Chamkaur Singh, Police Station City Kotkapura, District Faridkot, has conceded that till date the report of the Chemical Examiner has not been furnished and, accordingly, challan has not been presented.

9. For the reasons recorded above, the petitioner is held entitled to the benefit of regular bail. Petition is allowed.

10. The petitioner be enlarged on bail subject to the satisfaction of the trial Court.

11. Disposed of.

May 26, 2015

SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether to be referred to Reporter? (Yes/No)