

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

**Crl. Misc. No. M-15204 of 2015 (O&M)
Date of decision : 15.05.2015**

**Balbir Singh @ Kalu & other Petitioner
versus**

State of Punjab ... Respondents

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. Amit Dhawan, Advocate
for the petitioner.

Mr. V.P.S. Sidhu, AAG, Punjab.

ANITA CHAUDHRY, J.

CRM-15420-2015

For the reasons set out in the application, same is
allowed as prayed for.

CRM-M-15204-2015

Petitioners seek regular bail in case FIR No.382 dated
06.09.2014, registered under Section 15 of the NDPS Act at Police
Station Nakodar, District Jalandhar.

The petitioners were arrested on 06.09.2014. The period
of 180 days to file the challan lapsed on 04.03.2015. Before expiry
of 180 days, the prosecution filed an application on 23.02.2015
under Section 36-A of the NDPS Act, seeking extension of time and
the same was allowed by the trial Court on 04.03.2015 and 30 days
more were granted to complete the investigation. Meanwhile, the
petitioners moved application under Section 167(2) Cr.P.C. seeking

bail which was dismissed by the trial Court on 16.03.2015. Subsequently, prosecution again filed an application under Section 36(A) of NDPS Act on 04.04.2015 for extension of time to complete the investigation. The petitioners also moved second application under Section 167(2) Cr.P.C. on 06.04.2015 seeking bail. The second application under Section 36-A of the Act and the second application under Section 167(2) Cr.P.C. were disposed of on 15.04.2015. Application for extension of time was allowed and 20 days' more time was granted with retrospective effect to complete the investigation while the second bail application of petitioners was dismissed.

The petitioners seek concession of bail by filing second application under Section 167(2) Cr.P.C. on the ground that extension to file challan was granted to the investigating agency on 04.03.2015 for a period of 30 days. The second application for extension of time to file the challan was filed on 04.04.2015 i.e. after the expiry of 30 days and the same was allowed on 15.04.2015. In this manner, indefeasible right had accrued to them on expiry of extended period of 30 days to file the challan, which came to an end on 02.04.2015 which could not be defeated by pendency of second application for extension of time.

It was also contended that the second extension granted on 15.04.2015 could not operate retrospectively as per the ratio of the Hon'ble Apex Court. It was urged that the Magistrate was obliged to deal with the second application under Section 167(2) Cr.P.C. on the day when it was filed and that right was not lost

because second application for extension of time was pending.

On the other hand, the submission made on behalf of State was that the delay in disposal of the second application had occurred on account of the fact that notice of the application was issued to the accused and it was disposed of after filing reply of the accused persons and there were compelling reasons as to why the challan could not be filed.

I have considered the submissions of the petitioners and the State counsel.

The prosecution agency had sought extension of time under the statute by moving first application under Section 36A of the NDPS Act prior to expiry of statutory period of 180 days and the extension was granted before the expiry of 180 days. The period was extended by 30 days but the State again filed an application under Section 36-A of the Act on 04.04.2015 for extension of time to file the challan and the same was filed after the expiry of period of first extension.

It has been observed on numerous occasions that Courts dealing with the cases under the NDPS Act should expeditiously decide the application prior to the expiry of period of 180 days, in case the same is filed before the expiry of above said period. At the same time, it was also directed that the law laid down by Hon'ble the Apex Court in *Union of India through CBI Vs. Nirala Y adav @ Raja Ram Yadav @ Deepak Yadav , 2014 (4) RAJ 265*, directing that the application under Section 36 A (4) of the NDPS Act should be disposed of by the concerned Magistrate on the same day should be complied with.

A co-ordinate Bench in ***Ranjit Singh @ Rana Vs. State of Punjab in Crl. Revision No.2087 of 2014*** has referred the following issues before the larger Bench for adjudication vide order dated 11.09.2014:-

(i) Whether the petitioner has indefeasible right to be released on bail on the expiry of period of 60 or 90 or 180 days as the case may be;

(ii) Whether the right to bail of the petitioner gets effected in case the application is moved after the expiry of that period;

(iii) Whether the petitioner has a right to be released on bail even without moving any application on expiry of said period;

(iv) Whether the application moved by the prosecution can be extended as a matter of right or after seeing the reasons and circumstances of each case.

(v) Whether after dismissal of the bail application before the trial Court, the remedy is of filing revision or petition under Section 439 Cr.P.C .or 482 CrPC;

(vi) Whether while deciding the application under Section 167(2) CrPC, the merits of the case or nature of the offence is to be seen or not;

(vii) Whether the application for extension of time moved by the prosecution and application seeking grant of bail moved by the accused should be decided together on the same date and in the presence of both the parties;

In context of the aforesaid decisions, it is observed that the right to be released on bail under Section 167(2) Cr.P.C., accrued to the petitioners on 02.04.2015 on expiry of period first extension and the same could not have been defeated by filing the second application for extension of time. The second application under Section 167 (2) Cr.P.C. had been filed by the petitioners on

06.04.2015 and no decision was taken by the Court concerned on second application under Section 36 A (4) of the NDPS Act, till 15.04.2015. An indefeasible right to be released on bail which accrued to the petitioners after 02.04.2015 and could not have been defeated by keeping the second application under Section 167(2) Cr.P.C. and application under Section 36 A of the NDPS Act, pending till 15.04.2015.

In view of the discussion above, the petition is allowed. Petitioners are ordered to be released on bail on their furnishing bail bonds/ surety bonds to the satisfaction of the trial Court.

(ANITA CHAUDHRY)
JUDGE

15.05.2015
'Sunil Sehgal'