

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. No.M-15633 of 2015

Date of Decision: May 19, 2015

Sonu KumarPetitioner

Versus

State of PunjabRespondent

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

Present: Mr.Kunal Dawar, 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 439 and Section 167(2) of the Code of Criminal Procedure praying for the grant of regular bail to the petitioner in case FIR No.110 dated 19.9.2014, under Section 22/61/85 of the Narcotic Drugs & Psychotropic Substances Act (for short 'the Act'), registered at Police Station GRP Bhatinda, Punjab.

2. The petitioner was arrested on 19.9.2014 and as per prosecution version, an alleged recovery of 15 bottles of Raxcof of 100 ml. each and 15 strips, 150 tablets of Carisoma was effected from him.

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 was not presented within the statutory period of 180 days, an application dated 16.3.2015 was filed by the investigating agency seeking extension of time for filing of challan. Vide order dated 20.3.2015, the trial Court granted one month's time extension.

6. On account of the challan having not been presented even within the extended period, a second application dated 16.4.2015 was filed seeking extension of 90 days' under Section 36-A of the Act. Even an application for bail under Section 167(2)

of the Code of Criminal Procedure was moved by the petitioner on 20.4.2015. Both the applications i.e. one filed by the investigating agency seeking further extension for presentation of challan and the other filed by the petitioner under Section 167(2) of the Code of Criminal Procedure seeking bail have been disposed of by a common order dated 22.4.20215 at Annexure P4. In terms of such order, extension has been granted for presentation of challan upto 21.5.2015 and the application filed by the petitioner seeking bail under Section 167(2) of the Code of Criminal Procedure has been rejected on the ground that extension stands granted.

7. 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.

8. 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. 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.

9. It may be apposite to take note of the fact that learned State counsel, upon instructions from ASI Jaswinder Singh, Police Station GRP Bathinda, would concede that even till date the challan has not been presented.

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

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

12. Disposed of.

May 19, 2015

SRM

(TEJINDER SINGH DHINDSA)
JUDGE

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