

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. No.M-16647 of 2015

Date of Decision: May 29, 2015

Tarsem Singh @ Sheru

.....Petitioner

Versus

State of Punjab

.....Respondent

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

Present: Mr.Vipul Jindal, Advocate for the petitioner.

Mr.Nikhil K.Chopra, Deputy Advocate General, Punjab.

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TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 482 read with Section 167(2) of the Code of Criminal Procedure seeking the benefit of regular bail to the petitioner in case FIR No.202 dated 31.10.2014, under Section 22 of Narcotic Drugs and Psychotropic Substances Act (for short 'the Act'), registered at Police Station Jhabal, District Tarn Taran.

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

3. Brief facts that would require notice are that the petitioner was arrested on 31.10.2014 and an alleged recovery of 700 grams of intoxicating powder was effected from him.

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. The Hon'ble Supreme Court in **Hitendra Vishnu Thakur v. State of Maharashtra, 1994(3) RCR (Criminal) 156** while dealing with the proviso inserted as clause (bb) in sub-section (4) of Section 20 of TADA which is parimateria with the proviso to sub-Section (4) of Section 36-A of the Act had categorically held that even though the proviso does not specifically mandate the issuance of a notice to the accused while seeking extension yet the issuance of a notice has to be read into the provision which would be, both, in the interest of the accused, as also the prosecution as well as for doing complete justice between the

parties. Such requirement was held to be in consonance with the principles of natural justice.

6. 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 moved an application under Section 167(2) of the Code of Criminal Procedure for bail on 30.4.2015. On the other hand, the investigating agency moved an application dated 28.4.2015 under Section 36-A of the Act seeking extension of time for presentation of the challan. In terms of order dated 28.4.2015, extension for a period of three months had been granted by the trial Court for submission of challan. Thereafter, vide order dated 30.4.2015, the application preferred by the petitioner under Section 167(2) of the Code of Criminal Procedure has been dismissed on the premise that extension of time for presentation of challan has already been 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 Chemical Examiner has just been received and as such, the investigating agency would need some time to prepare and present the challan. The impugned order has been passed in a routine and mechanical fashion.

8. In the circumstances of the case, the right that had accrued to the petitioner under Section 167(2) of the Code of Criminal Procedure 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 would be apposite to take notice that learned State counsel, upon instructions from Sub Inspector Manjit Singh, has stated that till date, the report of the Chemical Examiner has not been received and as such, challan has not been presented.

10. Accordingly, the present petition is allowed. The petitioner is held entitled to the benefit of regular bail under Section 167(2) of the Code of Criminal Procedure.

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

12. Disposed of.

May 29, 2015
SRM

(**TEJINDER SINGH DHINDSA**)
JUDGE

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