

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

**Crl. Misc. No. M-1694 of 2015
Date of Decision:-01.04.2015**

Gurjant Singh @ Sona

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Ms. Satwant Mehta, Advocate
for the petitioner.

Mr. Gurinderjit Singh, Deputy A.G., Punjab.

HARI PAL VERMA J.(Oral)

The petitioner has filed the present petition under Section 167 (2) Cr.P.C. read with Section 439 Cr.P.C. praying for regular bail in FIR No.146 dated 8.5.2014 registered under Section 22-61-85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), registered at Police Station, City, Tarn Taran, District Tarn Taran during the pendency of the trial.

On the basis of the above FIR, the petitioner was arrested in the present case on 8.5.2014 and was produced before the Area Magistrate on 9.5.2014 and since then the petitioner is in judicial custody. Since the prosecution has not filed the challan after expiry of stipulated period of 180 days, which ended on 4.11.2014, an application dated 3.11.2014 was moved by the prosecution seeking extension of time for filing final report as provided under Section 173(2) Cr.P.C. Learned counsel for the petitioner contends that the application was moved by the

prosecution for seeking extension of time for filing the challan on the ground that the report of the chemical analysis of the sample could not be obtained from the chemical examiner. It is the case of the petitioner that the application seeking extension of time was neither accompanied by the report of the public prosecutor, which indicates the progress of the investigation nor the compelling reasons for further detaining the petitioner beyond the period of 180 days were coming forward which are the basic and essential requirements as per law. The application under Section 36-A(4) of the NDPS Act has solely been made to defeat the rights of the petitioner of bail as provided under Section 167(2) Cr.P.C. Learned trial Court on the plea of the prosecution has granted additional period for three months for filing the report under Section 173 Cr.P.C. vide order dated 5.11.2014 and declined the bail application of the petitioner moved under Section 167(2) Cr.P.C. Learned counsel for the petitioner contends that the Court cannot extend the time to conclude the investigation when application moved by the prosecution is not accompanied by the report of the public prosecutor and simply because report of the chemical examiner is awaited, is no ground to decline bail to the petitioner as provided under Section 167(2) Cr.P.C. In support of her contention, learned counsel for the petitioner has relied upon the judgment of this court passed in ***Criminal Misc. No. M-3339 of 2014*** titled 'Nardev Inder Singh vs. State of Punjab', ***Criminal Misc. No. M-309 of 2015*** titled 'Lakhwinder Singh alias Seeta vs. The State of Punjab', ***Criminal Misc. No. M-44389 of 2014*** titled 'Shunti vs. State of Punjab' and ***Criminal Misc. No. M-61 of 2015*** titled 'Ashish Kumar @ Shally vs.

State of Punjab' and ***Criminal M isc. No. M-44160 of 2014*** titled '*Gurjit Singh @ Buntty vs. State of Punjab*'.

On the other hand, learned counsel for the respondent has relied upon the case of ***Union of India through CBI vs. Nirala Yadav @ Raja Ram @ Deepak Yadav 2014(4) Law Hearald (SC) 2942***.

I have heard learned counsel for the parties.

In the case of Nardev Inder Singh (supra) this Court has considered the similar controversy and has observed as under :-

“8. Adverting back to the facts of the present case, the investigation in the matter has not been completed and the maximum period of 180 days already stand lapsed on 17.12.2013. It has not been disputed by the learned State counsel that no notice had been served upon the accused, the present petitioner, as regards the application seeking extension of time. Even otherwise, the application, so submitted, has been produced before the Court during the course of hearing and the same has been perused. The only reason and basis cited in the application seeking extension of time for completion of investigation is that the report of the Chemical Examiner as regards the sample of the intoxicating/narcotic tablets has not been received. Solely on such premise, the Additional Public Prosecutor, Incharge of the case, has recorded a satisfaction that the Investigating Agency has made an effort to obtain the report of the Chemical Examiner and as such, on account of non-receipt of the same, further extension of a period of 180 days for completion of investigation was prayed for.”

Similarly, while considering the case of Nirala Yadav (supra),

this Court in the case of Lakhwinder Singh alias Seeta (supra) has observed as under :-

“An indefeasible right had accrued to the petitioner after 23.11.2014 i.e. on expiry of statutory period of filing the challan. The prosecution did file an application under Section 36A(4) of the Act but no orders were passed there on. A question would arise whether the right could be denied by deferring the adjudication of the application under Section 167(2) Cr.P.C. as per the ratio laid down by the Hon'ble Apex Court in ***Union of India through CBI vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, 2014(4) Recent Apex Judgment 265***, wherein it has been held that the Magistrate is obliged to deal with the application under Section 167(2) Cr.P.C. on the day when it is filed and that indefeasible right accrued to an accused is not lost by merely filing an application for extension of time.

The position would have been differ if the application for extension of time was decided by the Court prior to lapse of statutory period of 180 days, which has not been done by the Court concerned. The order dated 05.12.2014 granting extension of time to file challan is not sustainable.”

In the case of Gurjit Singh @ Bunty (supra) also this court has considered the case of Nirala Yadav (supra) and observed as under :-

'10. In ***Union of India through CBI vs. Nirala Yadav @ Raja Ram @ Deepak Yadav 2014 (4) Law Herald (SC) 2942***, the Hon'ble Supreme Court endorsed the view taken in ***Hitendra Vishnu Thakur's case (supra)*** and ***Udey Mohanlal's case (supra)*** and upheld the verdict given by the High court in accepting the

indefeasible right of the accused on expiry of period of 180 days for the grant of bail under Section 167(2) Cr.P.C. The appeal filed by the State was rejected by the Hon'ble Supreme Court. The Court observed that the application filed under Section 167(2) Cr.P.C. is required to be decided on the same day. The adjournment by the Magistrate on this application was held to be misconceived as the Magistrate was obligated on that day to deal with the application filed by the accused as required under Section 167(2) Cr.P.C. The Court held that such procrastination frustrates the legislative mandate. A Court cannot act to extinguish the right of an accused if law so confers on him. Law has to prevail. Prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused. Such an act is not permissible.

11. In view of aforesaid precedents, the extension of time granted on 21.11.2014 cannot affect the indefeasible right of the petitioner and, therefore, petitioner is entitled to bail under Section 167(2) Cr.P.C.”

Accordingly, the extension of time cannot affect the right of the petitioner for grant of bail under Section 167(2) Cr.P.C. Thus, for the reasons recorded above, the present petition is allowed and petitioner is held entitled for the benefit of regular bail under Section 167(2) Cr.P.C. on furnishing requisite bail bonds and surety bonds to the satisfaction of the trial Court.

April 01, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE