

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

**Criminal Misc. No. M-2004 of 2015
Date of decision: 13.02.2015.**

Vinod Kumar @ Viku

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Deepak Sabharwal, Advocate
for the petitioner.

Ms. Ritu Punj, Addl. AG, Punjab
for the respondent – State.

Daya Chaudhary, J. (Oral)

The present petition has been filed under Section 482 read with Section 167(2) Cr.P.C. for setting aside the order dated 19.12.2014 passed by Judge, Special Court, Kapurthala, whereby, the application moved by the public prosecutor for extension of time for presentation of challan has been allowed and the bail has been declined to the petitioner.

Learned counsel for the petitioner submits that the application moved by the prosecution under Section 36A of the NDPS Act has been allowed without serving any notice upon the petitioner as the challan was not presented within the prescribed period of 180 days. The petitioner, therefore, became entitled for bail as per provisions of Section 167(2) Cr.P.C. Learned counsel further submits

that nothing has been mentioned in the impugned order with regard to service upon the petitioner and simply it has been mentioned that notice was issued but nowhere it has been mentioned that notice was served upon the petitioner. Learned counsel also submits that as the petitioner was in custody, therefore, no notice was served upon him at any point of time. Learned counsel for the petitioner has also relied upon judgment of this Court in **Vinod Kumar vs. State of Punjab, Criminal Misc. No. M-4540 of 2014 decided on 26.02.2014** wherein under similar circumstances, bail was granted by holding that without serving any notice upon the accused, period should not have been extended and the petitioner became entitled for bail.

Learned State counsel on instructions from District Attorney, Kapurthala has not disputed the submission of learned counsel for the petitioner that no notice was served upon the petitioner.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned order and other documents on the file.

Admittedly, the petitioner was arrested on 25.06.2014 and application for releasing the petitioner on bail was filed on 24.12.2014 i.e., after expiry of period of 180 days as challan was not presented within the prescribed period of 180 days. An application was also moved by the public prosecutor for extension of time, which was allowed without serving any notice upon the petitioner.

On perusal of impugned order, it is apparent that the

extension was granted without serving any notice upon the petitioner whereas it is mandatory to issue notice to the accused. The impugned order has been passed without applying the judicial mind and without serving any notice upon the accused and the provisions of Section 167(2) Cr.P.C. has not been followed.

It has been held by Hon'ble the Supreme Court in **Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau and another, 2010 (1) RCR (Criminal) 942**, that the Court is empowered to authorize detention which in total can go upto one year indicating the progress of the investigation by mentioning specific and compelling circumstances for seeking detention of the accused beyond the period of 180 days and the same can be after issuing notice to the accused.

The maximum period of 90 days fixed under Section 167 (2) of the Code has been increased to 180 days for several categories of offences under the Act but the proviso authorizes a yet further period of detention which may in total go upto one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:

- (1) a report of the public prosecutor,
- (2) which indicates the progress of the investigation,
and
- (3) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and

(4) after notice to the accused.

In the present case, neither any compelling reasons nor circumstances were mentioned in the application while allowing application for extension of time and dismissing the application moved by the accused-petitioner.

In view of the facts as mentioned above, it is clear that the application moved by the Public Prosecutor for extension of time was allowed without giving notice to the accused petitioner. Neither the Court has applied its judicial mind nor any reasoning has been given. As such impugned order is not as per law laid down by Hon'ble the Apex Court in **Sanjay Kumar Kedia @ Sanjay Kedia's case (supra)** wherein it has been held that the Court is empowered to authorize detention which in total go upto one year, provided a report of Public Prosecutor, which indicated the progress of the investigation and specific and compelling reasons for seeking the detention of the accused beyond the period of 180 days, and after notice to the accused. No notice was served upon the accused, therefore, the order passed by the learned Special Judge for extension of time was not as per law and is set-aside. The indefeasible right has been accrued to the petitioner on that day and he becomes entitled to bail under Section 167(2) Cr.P.C.

Accordingly, in view of the facts as mentioned above, the petition is allowed and the petitioner is directed to be released on interim bail on furnishing bail/surety bonds to the satisfaction of trial

Court.

Disposed of accordingly.

13.02.2015
neetu

(DAYA CHAUDHARY)
JUDGE