

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

CRM-M NO.21550 OF 2015

Decided on: 30.07.2015

Harpal Singh . . . Petitioner

Versus

State of Punjab . . . Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. Nikhil K. Chopra, D.A.G., Punjab.

TEJINDER SINGH DHINDSA, J. (Oral)

This order shall dispose of the instant petition filed under Section 439 Cr.P.C praying for grant of regular bail to the petitioner in case FIR No.190 dated 29.5.2014, under Section 21/22/61/85 of the Narcotic Drugs & Psychotropic Substances Act (for short 'the Act'), registered at Police Station City Tarn Taran, District Tarn Taran.

2. The petitioner was arrested on 29.5.2014 and as per prosecution version, an alleged recovery of 500 grams of heroin and 1 kg. of intoxicant powder 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 had not been presented within a period of 180 days from the date of arrest, the petitioner filed an application under Section 167(2) of the Code of Criminal Procedure for bail on 03.12.2014. On the other hand, the investigating agency moved an application dated 21.11.2014 under Section 36-A of the Act seeking extension of time for presentation of the challan. Vide

order dated 25.11.2014, the trial Court granted extension of 60 days for completion of investigation and to file the challan. On the very next date i.e. 28.11.2014, the application filed by the petitioner seeking bail was dismissed on the basis that extension in time for completion of investigation already stood granted.

6. 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.

7. 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 even if subsequent thereto the challan has been furnished. A reference in this regard may be made to the decision of the Hon'ble Supreme Court of India in **“Sayed Mohd. Ahmed Kazmi Sayed Mohd. Ahmed Kazmi v. State, v. State, GNCTD and others”, 2012 (4) RCR (Criminal) 875.**

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

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

10. Disposed of.

**[TEJINDER SINGH DHINDSA]
JUDGE**

30.07.2015
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