

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

**CRM-M No.2355 of 2015
DATE OF DECISION : 28.01.2015**

Dilbagh Singh @ Bagga **..... Petitioner**

Vs.

State of Punjab **.....Respondent**

CORAM :- HON'BLE MR. JUSTICE M.M.S.BEDI

Present :-Mr.Veneet Sharma, Advocate
for the petitioner.

Mr.J.S.Brar, AAG, Punjab.

M.M.S.BEDI, J.(ORAL)

Petitioner seeks concession of bail under Section 167(2) Cr.P.C. in a case of recovery of 600 grams of intoxicating powder. He was arrested on 25.06.2014. 180 days expired on 22.12.2014. Application for bail under Section 167(2) Cr.P.C. was filed by the petitioner on 24.12.2014 but was declined.

The application has been opposed on the ground that the prosecution agency had filed an application for extension of period to present challan under Section 36-A(4) of NDPS Act on 15.12.2014 on account of report of Forensic Science Laboratory having not been received. Said application was allowed on 22.12.2014.

Learned counsel for the petitioner has inter-alia argued that the right of the petitioner for release under Section 167(2) Cr.P.C. is an indefeasible right and it could not have been defeated only by the prosecution agency adhering to the mandate of Section 36-A(4) of

NDPS Act. In this context reliance has been placed on judgment in "Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Marcotic Control Bureau (SC), 2009(17) SCC 631" holding that application for extension of time under Section 36-A(4) of the NDPS Act made by investigating officer for extension of time could be filed only on the report of the Public Prosecutor indicating the progress of the investigation and specific reason for detention of the accused beyond the statutory period of 180 days in case of commercial quantity of the contraband.

On examination of the police file, it is apparent that the application under Section 36-A(4) of the NDPS Act was signed by the SHO, Police Station Mehta without the report of Public Prosecutor. It was simply forwarded for extension of time. The said application was allowed on 22.12.2014 when 180 days expired. There appears to be prima-facie irregularity in the presentation of application under Section 36-A(4) of NDPS Act.

Till date, the report of Forensic Science Laboratory has not been received pertaining to the contents of 600 gms intoxicating powder allegedly recovered from the petitioner.

Petition is allowed.

Petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the trial Court.

28.01.2015

Pooja Sharma-I

(M.M.S.BEDI)
JUDGE