

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

**CRM No.M-23730 of 2015
Date of decision : 29.07.2015**

Mohd. Affish

..... Petitioner

versus

State of Punjab

... Respondents

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. V.P.S. Sidhu, Asst. AG, Punjab.

ANITA CHAUDHRY, J.

This order shall dispose of the present petition filed under Section 439 read with Section 167(2) of the Code of Criminal Procedure seeking regular bail in case FIR No.6 dated 10.01.2015 registered under Sections 15/25/61/85 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act') at Police Station Dharamgarh, District Sangrur.

The petitioner was arrested on 10.01.2015 and as per prosecution version, the alleged recovery is of 150 Kgs. of poppy husk.

I have heard learned counsel for both the sides.

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.*

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 *pari-materia*

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.

Adverting back to the facts of the present case, the petitioner was un-disputedly confined to judicial custody on 10.01.2015. The prosecution agency failed to present the challan within the stipulated period of 180 days as provided under Section 36-A of the Act. The period of 180 days expired on 09.07.2015. The prosecution moved an application for extension of time for submission of challan on 06.07.2015. The trial Court allowed the application under Section 36-A of the Act on the same very day without granting any opportunity of hearing to the petitioner and without issuing of notice to the petitioner and granted extension of 90 days time to complete the investigation.

An application filed by the petitioner under section 167 (2) Cr.P.C dated 10.07.2015 was dismissed on the same day on account of extension having been granted and challan having already been presented on 06.07.2015 itself.

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 notice of the application to the accused. A perusal of the order dated 06.07.2015 (Annexure P-4), passed by the trial Court clearly shows that the conditions as envisaged under Section 36-A(4) of the Act have not even been adverted to while granting extension for completion of investigation.

The application submitted seeking extension of time for completion of investigation, the order passed thereupon as also the order dealing with the application filed by the petitioner under Section 167(2) of the Code of Criminal Procedure have been dealt with in a casual manner.

The petitioner having filed the bail application on the expiry of the stipulated period as per Section 167(2) of the Code of Criminal Procedure had acquired an indefeasible right for grant of bail notwithstanding the grant of extension of time by the trial Court.

Without expressing any opinion on the merits of the case, the present 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.

(ANITA CHAUDHRY)
JUDGE

29.07.2015
'Sunil Sehgal'