

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 201

Criminal Miscellaneous No.M-27279 of 2015 (O & M)

Date of Decision: *September 24, 2015*

Mohammad Shakir

..... PETITIONER

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

. . .

PRESENT: - Mr. R.S. Tacoria, Advocate, for the petitioner.

Mr. Sandeep Kumar Bansal, Assistant Advocate
General, Punjab.

. . .

Jaspal Singh, J

1. Petitioner, Mohammad Shakir, has preferred the instant petition under Section 439 Cr.P.C. read with Section 482 Cr.P.C. and 167(2) Cr.P.C. for quashing of order of extension dated July 13, 2015 (Annexure P-8) passed under Section 36-A(4) of the Narcotics Drugs & Psychotropic Substances Act, 1985 (for short, 'Act') as well as seeking bail in case FIR No.131 dated December 14, 2014, registered under

Section 22 of the Act, registered at Police Station Bannur, District Patiala, presently District SAS Nagar (Mohali).

2. Undisputably, petitioner was arrested in this case on December 18, 2014 and was produced before learned Jurisdictional Magistrate on the next day i.e. December 19, 2014. Prescribed period of 180 days for presentation of challan expired on June 16, 2015. An application under Section 167(2) Cr.P.C. was moved by the petitioner before learned trial court on June 13, 2015. However, an application under Section 36-A(4) of the Act was also moved by prosecution on the said day seeking extension of time for presentation of challan. That application was dismissed alongwith an application moved by Hardeep Singh (co-accused of petitioner) under Section 167(2) Cr.P.C. by a consolidated order dated June 15, 2015, whereby prosecution was granted a period of 30 days to conclude the investigation and to submit report under Section 173(2) Cr.P.C. before jurisdictional Magistrate. However, application preferred by Hardeep Singh was dismissed simply on the ground that since application for extension of time has already been allowed, bail application resultantly stands dismissed.

3. Adverting to facts of the case, petitioner is not named in the FIR. Moreover, it would be important to note that notice of application moved by prosecution under Section 36-A(4) of the Act seeking extension of time for presentation of challan was given to the petitioner. No reply has also been sought from him. Even, neither

petitioner nor his counsel was present on the day when application under Section 36-A(4) of the Act was disposed of vide consolidated order dated June 15, 2015. The aforesaid circumstances are suggestive of the fact that present petitioner as not heard while passing order dated June 15, 2015 extending the period for presentation of report under Section 173(2) Cr.P.C. Subsequent extension, if any, is of no value in the eyes of law, especially in the circumstances that an indefeasible right has accrued to the petitioner after expiry of period of 180 days from the date of his arrest. Thus, an indefeasible right which has accrued to the petitioner cannot be extinguished or scuttled down by the trial court just by allowing the application for extension of time that too without affording an opportunity of hearing to the petitioner against whom the said order was passed.

4. Keeping in view the aforesaid circumstances but without expressing any opinion on the merits of the case, this Court is of the considered view that the petition deserves to be allowed. Ordered accordingly.

5. Petitioner is ordered to be released on bail to the satisfaction of trial court/Illaqa Magistrate.

September 24, 2015
avin

(Jaspal Singh)
Judge