

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

CRM-M-309-2015

Date of decision : 11.03.2015

Lakhwinder Singh alias Seeta

.....Petitioner(s)

versus

The State of Punjab

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present : Mr. Rajbir Singh, Advocate
for the petitioner.

Mr. V.P.S. Sidhu, Asst. A.G., Punjab.

ANITA CHAUDHRY, J(ORAL)

Lakhwinder Singh seeks regular bail in case FIR No.92 dated 27.05.2014 registered under Sections 22 of the NDPS Act, 1985 (here-in-after referred to as the Act only) at Police Station Fatehgarh Sahib, District Fatehgarh Sahib.

The application filed by the petitioner under Section 167(2) Cr.P.C. was dismissed by the Special Court.

As the facts emerge, the petitioner was arrested on 27.05.2014. The period of 180 days to file the challan was to lapse on 23.11.2014. On 14.11.2014, an application had been filed by the prosecution seeking extension of time. The

application was not decided. On 26.11.2014, the petitioner moved an application seeking bail under Section 167(2) Cr.P.C. The Special Court allowed the extension on 05.12.2014 and on the same date dismissed the application for bail.

An indefeasible right had accrued to the petitioner after 23.11.2014 i.e. on expiry of statutory period of filing the challan. The prosecution did file an application under Section 36A(4) of the Act but no orders were passed there on. A question would arise whether the right could be denied by deferring the adjudication of the application under Section 167(2) Cr.P.C. as per the ratio laid down by the Hon'ble Apex Court in ***Union of India through CBI Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, 2014(4) Recent Apex Judgment 265***, wherein it has been held that the Magistrate is obliged to deal with the application under Section 167(2) Cr.P.C. on the day when it is filed and that indefeasible right accrued to an accused, is not lost by merely filing an application for extension of time.

The position would have been different if the application for extension of time was decided by the Court prior to lapse of statutory period of 180 days, which has not been done by the Court concerned. The order dated 05.12.2014 granting extension of time to file challan is not sustainable.

The issue whether extension would apply retrospectively, has been referred to a larger Bench by a Co-ordinate Bench in CRR No.2087 of 2014 on 11.09.2014.

The Special Court had failed to decide the application seeking extension before the expiry of 180 days, therefore, without commenting on the merits of the case, the petition is allowed and the petitioner is ordered to be released on bail on furnishing of adequate bonds to the satisfaction of the trial Court/Duty Magistrate, Fatehgarh Sahib. The petitioner would also undertake not to leave the country without prior permission of the trial Court.

(ANITA CHAUDHRY)
JUDGE

11.03.2015
Sunil