

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

CRM No.M-3245 of 2015

Date of decision: 05.02.2015

Suleman @ Mannu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sandeep Arora, Advocate for the petitioner.

Ms. Harsimrat Rai, DAG, Punjab
assisted by ASI Tarlok Singh.

Jitendra Chauhan, J. (Oral)

By filing the present petition under Section 439 r/w Section 167 (2) of the Code of Criminal Procedure, the petitioner has sought regular bail in case FIR No.125, dated 12.06.2014, registered under Sections 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Maqsudan, District Jalandhar.

Learned counsel for the petitioner contends that the petitioner was arrested on 12.06.2014, whereas, the bail application was preferred on 10.12.2014. The challan was not presented within

the requisite period of 180 days.

On the other hand, the learned State counsel, submits that the prosecution has filed application under Section 36(A) of the Act on 05.12.2014 which stand allowed and a further period of three months was extended from the date of application.

I have heard learned counsel for the parties and perused the record.

The Hon'ble Apex Court in Union of India Vs. Nirala Yadav @ Raj Ram Yadav, 2014 (4) Recent Apex Judgments (RAJ) 365, observed as under:-

*“Coming to the facts of the instant case, we find that prior to the date of expiry of 90 days which is the initial period for filing the charge-sheet, the prosecution neither had filed the charge-sheet nor had it filed an application for extension. Had an application for extension been filed, then the matter would have been totally different. After the accused respondent filed the application, the prosecution submitted an application seeking extension of time for filing of the charge-sheet. Mr. P.K. Dey, learned counsel for the appellant would submit that the same is permissible in view of the decision in **Bipin Shantilal Panchal** (supra) but on a studied scrutiny of the same we find the said decision only dealt with whether extension could be sought from time to time till the completion of period as provided in the Statute i.e., 180 days. It did not address the issue what could be the effect of not filing an application for extension prior to expiry of the period because in the factual matrix it was not necessary to do so. In the instant case, the day the accused filed the application for benefit of the default provision as engrafted under proviso to sub-Section (2) of*

Section 167 CrPC the Court required the accused to file a rejoinder affidavit by the time the initial period provided under the statute had expired. There was no question of any contest as if the application for extension had been filed prior to the expiry of time. The adjournment by the learned Magistrate was misconceived. He was obliged on that day to deal with the application filed by the accused as required under Section 167 (2) CrPC. We have no hesitation in saying that such procrastination frustrates the legislative mandate. A Court cannot act to extinguish the right of an accused if the law so confers on him. Law has to prevail. The prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused. Such an act is not permissible. If we permit ourselves to say so, the prosecution exhibited sheer negligence in not filing the application within the time which it was entitled to do so in law but made all adroit attempts to redeem the cause by its conduct.”

Admittedly, the application under Section 36(A) was filed much prior to the expiry of 180 days and the bail application was filed subsequently. In view of the law laid down by the Hon'ble Supreme Court in Union of India Vs. Nirala Yadav @ Raj Ram Yadav (supra), no case for releasing the petitioner under Section 167(2) Cr.P.C., is made out.

Dismissed.

05.02.2015

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(JITENDRA CHAUHAN)
JUDGE