

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM NO. M-4108 of 2015
DECIDED ON : May 18, 2015

Pirthi Raj

...Petitioner

versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Munish Kumar Singla, Advocate,
for the petitioner.

Mr. J.S. Sekhon, AAG, Punjab.

JASPAL SINGH, J. (ORAL)

Instant petition has been filed under Section 482 read with Section 439 Cr.P.C read with Section 167 (2) Cr.P.C for quashing of order of extension order dated December 17, 2014 (Annexure P-5) passed under Section 36-A (4) Narcotics Drugs & Psychotropic Substances Act, 1985 (for short 'Act') as well as grant of bail to the petitioner in case FIR No. 106 dated June 14, 2014 under Section 18 of the Act, registered at Police Station Fatehgarh Sahib.

2. The case of the prosecution, in brief, is that on June 14, 2014, a police party headed by ASI Gurbachan Singh intercepted the petitioner on the basis of some suspicion. When he was subjected to search in the presence of DSP Hardevinder Singh, he was found carrying opium, which on weighment came to 5 kgs. After necessary formalities petitioner was

arrested in this case and on the next day, he was produced before learned Illaqa Magistrate.

3. Undisputed facts of the case are that petitioner was arrested on June 14, 2014 by the Investigating Officer and he was produced before learned Illaqa Magistrate on next day i.e. June 15, 2014. A prescribed period of 180 days for presentation of challan expired on December 11, 2014. However, on the basis of an application moved by the prosecution, period for presentation of challan was extended for a period of 90 days vide order dated December 17, 2014. The extended period of 90 days also stood expired on March 11, 2015 but prior thereto, a fresh application for extension of period of presentation of challan was moved by the prosecutrix on March 07, 2015. The notice of which was given to the accused-petitioner for March 18, 2015. This fact is also evident from the copy of an application as well as issuance of notice, from the documents available on file.

4. But to the utter surprise, an application for extension was allowed on March 12, 2015 that too, in the absence of accused-petitioner. An application moved by the petitioner under Section 167(2) Cr.P.C. was also dismissed vide separate order passed on the same day. So, in the given circumstances it can be safely concluded that petitioner was condemned unheard while an application for extension was disposed of learned trial Court on March 12, 2015. In fact, notice of said application was given to the accused/petitioner who was lodged in jail for March 18, 2015.

5. By now it is pretty settled that 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 which is otherwise not permissible. After the expiry of extended period, an indefeasible right stood accrued to the petitioner on March 12, 2015, which has been sought to be scuttled down by learned trial Court by way of allowing application for extension of time, that too, without hearing the accused/petitioner, against whom, the order was passed.

5. Accordingly, instant petition is allowed; order dated December 17, 2014 is set aside and petitioner is ordered to be released on bail to the satisfaction of learned trial Court.

May 18, 2015
sham

(JASPAL SINGH)
JUDGE