

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. No.M-44198 of 2014

Date of Decision: April 06, 2015

Amarjit SinghPetitioner

Versus

State of PunjabRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.SS Gill, Advocate for the petitioner.

Mr.Nikhil K.Chopra, Deputy Advocate General, Punjab.

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TEJINDER SINGH DHINDSA, 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 the concession of regular bail to the petitioner in case FIR No.39 dated 27.4.2014 registered under Sections 15/61/85 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act') at Police Station Mulepur, District Fatehgarh Sahib.

2. The petitioner was arrested on 1.5.2014 and as per prosecution version, the alleged recovery is of 8 Qtls. and 20 Kgs. of poppyhusk.

3. Learned counsel for the parties have been heard at length.

4. 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.

5. 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.

6. Adverting back to the facts of the present case, the petitioner was undisputedly confined to judicial custody on 1.5.2014. 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 28.10.2014. The prosecution on 27.10.2014 moved an application for extension of time for submission of challan. In the light of order dated 29.10.2014, Annexure P3, the trial Court granted extension of three months' time for completion of investigation. An application that was moved by the petitioner under Section 167(2) of the Code of Criminal Procedure on 31.10.2014 has strangely been dismissed as withdrawn on 3.11.2014.

7. A perusal of the order dated 29.10.2014 at Annexure P3 would reveal that extension for completion of investigation and presentation of challan has been granted by merely stating that the counsel for the parties have submitted 'no objection' in allowing the application filed by the prosecution.

8. In the considered view of this Court, there has been a non-compliance of the provisions contained in Section 36-A of the Act. The provision mandates a report of the Public Prosecutor indicating the progress of the investigation as also the specific and compelling reasons for seeking the detention of the accused beyond a period of 180 days.

9. A perusal of the order dated 29.10.2014 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. Furthermore, it is difficult to fathom that how an indefeasible right for grant of bail that had accrued to the petitioner as per Section 167(2) of the Code of Criminal Procedure could have been defeated by merely disposal of the application as withdrawn.

10. This Court would have no hesitation in observing that 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.

11. 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 for completion of investigation and presentation of the final report.

12. Without expressing any opinion on the merits of the case, the present petition is allowed. Bail to the satisfaction of the trial Court.

13. Petition disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

April 06, 2015
SRM

Note: *Whether referred to the Reporter? (Yes/No)*