

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-44389 of 2014

DATE OF DECISION: 08.01.2015

Shunti

.....Petitioner

Versus

State of Punjab

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. Akshay Jain, Advocate
for the petitioner.

Mr. T.N. Sarup, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 167(2) Cr.P.C. read with Section 36-A (4) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') for grant of bail to the petitioner in case FIR No. 67 dated 21.6.2014 registered under Section 22 of the Act at Police Station Sardulgarh, District Mansa. A prayer has also been made for setting aside of order dated 22.12.2014 passed by Judge, Special Court, Mansa, vide which, the prosecution has been granted extension of five weeks for completing the investigation.

Learned counsel for the petitioner contends that the petitioner filed an application for grant of bail on 20.12.2014 under the provisions of Section 167(2) of the Cr.P.C. as investigation was not completed within the

stipulated period of 180 days as envisaged under Section 36-A (4) of the Act but the same was wrongly rejected without keeping in view the provisions of the Act, whereas, the petitioner was entitled to be released on bail in view of the provisions as provided under Section 167(2) of the Cr.P.C. Learned counsel further contends that the application moved by the prosecution for extension of time for conclusion of trial was allowed from retrospective date. Learned counsel also contends that the petitioner was arrested on 21.6.2014 and period of 180 days expired on 19.12.2014. An application was moved by the prosecution for extension of time on 18.12.2014. The petitioner also moved an application for grant of bail on the expiry of period of 180 days i.e. on 20.12.2014 but the application filed by the prosecution for extension of time was allowed and the bail application moved by the petitioner was declined on the same day i.e. 22.12.2014.

Learned counsel for the respondent-State has not disputed the expiry of period of 180 days and non-presentation of challan within the prescribed period of 180 days but opposes grant of bail to the petitioner.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file including the FIR and the order passed by the Court below, whereby, the application for bail has been declined and period has been extended on the basis of application moved by the prosecution.

Admittedly, an application for grant of bail under Section 167 (2) of the Code was moved by the petitioner on the expiry of 180 days and another application was moved by the prosecution one day prior to the expiry of 180 days for extension of period in conclusion of the trial. The application moved by the petitioner for bail was dismissed, whereas, the application moved by the prosecution for extension of time was allowed

with retrospective date on 22.12.2014. It is also not disputed that in view of provisions of Section 167 (2) of the Code, an indefeasible right has accrued to the petitioner in case the investigation was not completed within a period of 180 days. The application moved by the prosecution for extension of time was allowed from retrospective date and an application moved by the petitioner for bail was dismissed on 22.12.2014, whereas, the trial Court should have decided both the applications on the day of their filing. As per provisions of Section 36-A(4) of the Act, three conditions are required for extending the period of conclusion of investigation in terms of proviso of abovesaid Section, which are reproduced as under:-

- (i) a report of the Public Prosecution indicating the progress of the investigation; and
- (ii) specifies the compelling reasons for seeking the detention of accused beyond the period of 180 days; and
- (iii) after notice to the accused."

A perusal of abovesaid conditions would show that the period was to be extended only on being satisfied by recording reasons by reaching to a definite conclusion. The application moved by the prosecution was vague as on one side it was stated that investigation is complete but final report could not be presented for want of chemical examiner report, whereas, on the other side, it has been stated that the investigation has not been completed. The extension beyond period of 180 days was allowed on 22.12.2014, whereas, the petitioner filed an application for bail on 20.12.2014. The period was deemed to be extended only from the date of order and it could not be extended retrospectively. It is a settled proposition of law that the petitioner is entitled for bail in case the challan is not presented within prescribed period under Section 167 (2)

Cr.P.C..

Accordingly, the present petition is allowed and petitioner-Shunti is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court under the provisions of Section 167 (2) Cr.P.C.

January 08, 2015
pooja

(DAYA CHAUDHARY)
JUDGE