

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

**CRM No.M-4785 of 2015 (O&M)
Date of Decision: 18.02.2015**

Avtar Singh @ Rinku and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. S.S.Deol, Advocate for the petitioners.

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

JITENDRA CHAUHAN, J. (Oral)

The instant petition under Section 167 (2) of Cr.P.C. for granting bail to the petitioners in case FIR No.273 dated 19.07.2014, under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station, City Tarn Taran, District Tarn Taran.

Learned counsel for the petitioners contends that the petitioners are in custody since 19.07.2014. The only contention raised by the learned counsel for the petitioners is that the extension in presenting the challan granted by the trial Court does not meet the test laid down by the Hon'ble Supreme Court in **Hitendra Vishnu Thakur Vs. State of Maharashtra, 1994(3) RCR (Crl.) 156(SC).**

On 05.01.2015 an application was moved by the Public Prosecutor that the chemical examination report was still awaited and

application was made for seeking extension of the time in presenting the challan. An application under Section 36(A) of the Act was moved on 5.01.2015, much prior to the expiry of 180 days on the ground that the chemical report is still awaited, whereas the statutory period of 180 days for presentation of the challan was to expire on 15.01.2015. Learned counsel for the petitioners while placing reliance upon **Hitendra Vishnu Thakur (supra)** contends that the report prepared by the Investigating Officer was prepared in mechanical manner and the Public Prosecutor have submitted the same without application of mind.

On the other hand, the learned counsel for the State contends that the report of the chemical examiner was still awaited and in the application dated 5.01.2015, the reason has been cited that the chemical examination report had not been received, although in spite of repeated letters and reminders reflected in the order dated 7.01.2015 the report did not receive.

This court has considered the rival contentions of the learned counsel for the parties.

Considering the fact that there is no allegations of *mala fide* against the prosecution, non-receipt of the chemical examiner report is a sufficient reason for seeking extension of time. The prosecution has repeatedly written to the concerned authority for sending the report of the chemical examiner. No undue delay can be attributed on the part of the prosecution.

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."

In the instant case, the application under Section 36-A of the Act was filed much prior to the filing of the bail application. The reasons noticed in the application dated 5.01.2015 are sufficient for extension of time in presenting the challan under Section 36-A of the Act, though it may not be happily worded but sufficiently meet the parameters laid down in **Hitendra Vishnu Thakur (supra)**. Admittedly, the application under Section 36(A) of the Act 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 petitioners on bail under Section 167(2) Cr.P.C., is made out.

Dismissed.

February 18, 2015

Manoj Bhutani

(JITENDRA CHAUHAN)

JUDGE

Whether referred to reporter = Yes