

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

**Criminal Misc. No. M-4841 of 2015
Date of decision: 25.02.2015.**

Sukhjinder Singh alias Kala

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers 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. Arshdeep Singh Brar, Advocate
for the petitioner.

Ms. Ritu Punj, Addl. AG, Punjab
for the respondent – State.

Daya Chaudhary, J.

Petitioner-Sukhjinder Singh alias Kala is accused in case FIR No.65 dated 24.05.2014, registered under Sections 21/61/85 of the Narcotic Drugs and Psychotropic Substances Act at Police Station Sadar Kot Kapura, District Faridkot.

The petitioner was arrested on 24.05.2014. The challan was not presented by the Police inspite of the fact that the alleged recovery was made on 24.05.2014 and period of 180 days had already expired. Petitioner moved an application under Section 167 (2) Cr.P.C. for grant of bail as challan was not presented within a period of 180 days. Said application was dismissed by Judge, Special Court, Faridkot on 26.11.2014 and application moved by the

prosecution under Section 36-A(4) of NDPS Act was allowed and further extension of 120 days was granted from the date of expiry of 180 days.

Learned counsel for the petitioner submits that the challan was not presented within 180 days and the petitioner became entitled for bail as per provisions of Section 167(2) Cr.P.C. after expiry of period of 180 days. Learned counsel further submits that application under Section 36-A of NDPS Act was moved by the prosecution for extension of time on the ground that sanction under Section 25 of the Arms Act has not been received. Both the applications were heard together and prayer of petitioner for grant of bail was declined whereas extension was allowed with retrospective effect.

Learned State counsel has not disputed the submission of learned counsel for the petitioner to the effect that the challan was not presented within a period of 180 days from the date of arrest i.e., 24.05.2014 and also the fact that the application moved by the prosecution was allowed.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned order and FIR on record.

Admittedly, the petitioner was arrested on 24.05.2014 as 50 gms intoxicant powder was recovered from him. Challan was not presented within the stipulated period of 180 days. The petitioner moved an application under Section 167(2) Cr.P.C. for grant of bail on 25.11.2014 i.e., after expiry of period of 180 days. An application was

also moved by the prosecution for extension of time on 17.11.2014. Both the applications were decided on 26.11.2014 and application moved by the petitioner for grant of bail was declined whereas application moved by the prosecution for extension of time was allowed.

As per the provisions of Section 167(2) Cr.P.C., an indefeasible right has accrued to the petitioner on expiry of period of 180 days still the bail application filed by the petitioner has been dismissed. But application moved by the prosecution for extension of time has been allowed and the period was extended with retrospective effect.

It has been held by Hon'ble the Supreme Court in **Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau and another, 2010 (1) RCR (Criminal) 942**, that the Court is empowered to authorize detention which in total can go upto one year indicating the progress of the investigation by mentioning specific and compelling circumstances for seeking detention of the accused beyond the period of 180 days and the same can be after issuing notice to the accused.

The maximum period of 90 days fixed under Section 167 (2) of the Code has been increased to 180 days for several categories of offences under the Act but the proviso authorizes a yet further period of detention which may in total go upto one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:

- (1) a report of the public prosecutor,
- (2) which indicates the progress of the investigation,
and
- (3) specifies the compelling reasons for seeking the
detention of the accused beyond the period of 180
days, and
- (4) after notice to the accused.

In the present case, neither any compelling reasons nor circumstances were mentioned in the application while allowing application for extension of time and dismissing the application moved by the accused-petitioner.

Accordingly, in view of the facts as mentioned above, the present petition is allowed and the petitioner is directed to be released on interim bail on furnishing bail/surety bonds to the satisfaction of trial Court.

Disposed of accordingly.

25.02.2015
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(DAYA CHAUDHARY)
JUDGE