

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

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Crl. Misc. No. M 5595 of 2015

Date of decision: 25.02.2015

Ashwani Kumar alias Raju

..... Petitioner

Versus

State of Punjab

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. K BS Mann, Advocate
for the petitioner

Mr. Gazi Mohammad, DAG, Punjab
for the State of Punjab

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The petitioner prays for grant of bail under Section 439 read with Section 167 (2) of the Code of Criminal Procedure (in short, 'Cr.P.C') in case FIR No. 118 dated 08.07.2014 for offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, the Act) registered in Police Station Fatehgarh Sahib, District Fatehgarh Sahib.

Counsel for the petitioner contends that the petitioner filed the application under Section 167(2) Cr.P.C on 05.01.2015, but the same has been wrongly dismissed by the Special Judge, Fatehgarh Sahib vide order

dated 06.01.2015. The period of 180 days from the date of arrest of the petitioner expired on 03.10.2015, but prior thereto on 02.01.2015, the application was filed by the prosecution for extension of time under Section 36 (A) (4) of the Act. It is vehemently argued that extension in favour of the prosecution was allowed on 06.01.2015 pending disposal of the application filed by the petitioner when otherwise, the application of the petitioner was required to be disposed of on the very same day, on which it was filed. For this purpose, he has referred to the judgment of Hon'ble the Supreme Court of India ***Union of India through C.B.I. v. Nirala Yadav alias Raja Ram Yadav alias Deepak Yadav, 2014(3) R.C.R. (Criminal) 534.***

Counsel has made submissions on merits by contending that the alleged recovery was effected from the Truck in which the petitioner was purportedly sitting by the side of the driver. It is argued that it is a moot point to be decided during trial if the petitioner could be said to be in conscious possession of the alleged recovery of poppy husk without licence.

I have heard counsel for the petitioner and find no merit in the petition.

Concededly, the prosecution filed application for extension of time well before expiry of period of 180 days and notice of the application was given to the accused and for that reason, the application could not be disposed of on 02.01.2015, itself. Before application for extension could be disposed of, the present petitioner cleverly filed an application for bail in default by invoking the provisions of Section 167 (2) Cr.P.C. The application for extension of time filed by the prosecution and prayer of the petitioner for grant of bail in default under Section 167(2) Cr.P.C. was

disposed of on 06.01.2015 whereby the application of the prosecution for extension of period was allowed and the application for the petitioner for grant of bail has been dismissed. Once the application of the prosecution for grant of extension filed before expiry of period of 180 days has been allowed by the Court, it would relate back to the date of the application. In this context, reference can be made to the judgment of this Court ***CRM M 22419 of 2013 titled Pawan Kumar v. State of Punjab***, decided on 18.12.2013.

The petitioner has relied upon the judgment of the Apex Court in Nirala Yadav's case (supra) without clearly and thoughtfully appreciating the facts of the said case. In the case of the referred authority, the prosecution neither presented challan within the stipulated period of 90 days nor filed an application for extension, on the other hand, the accused filed the application for benefit of default provisions as engrafted in provisions of sub Section (2) of Section 167 Cr.P.C which was adjourned by the Court and in those circumstances, Hon'ble the Supreme Court held that there was no question of any contest as if the application for extension had been filed prior to expiry of time. The adjournment by the learned Magistrate was misconceived. He was was obliged on that day to deal with the application filed by the accused as required under Section 167(2) Cr.P.C. 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. However, in the case in hand, as the prosecution filed the application for extension of time well before expiry of period of 180 days as well as before the

application was filed by the accused, invoking benefit of default provisions, the petitioner cannot gain any advantage to his contention from the referred authority.

The plea of the petitioner in regard to his being not in conscious possession of the contraband is not worthy of entertainment much less acceptance in view of the presumptions available against the accused under Section 35 and 54 of the Act when examined in the light of judgment of the Apex Court in *State of Punjab v. Hari Singh and others, 2009(2) R.C.R. (Criminal) 143*.

For the reasons aforesaid, the petition stand dismissed.

(Rekha Mittal)
Judge

25.02.2015
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