

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

CRM No.M-6725 of 2015

Date of decision: 31.03.2015

Ashok Kumar and another

...Petitioners

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

Present: Mr. B.S. Jatana, Advocate for the petitioners.

Ms. Harsimrat Rai, DAG, Punjab.

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**Jitendra Chauhan, J. (Oral)**

By filing the present petition under Section 167(2) of the Code of Criminal Procedure read with Section 439 Cr.P.C., the petitioner has sought regular bail in case FIR No.66, dated 10.07.2014, registered under Sections 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Bikhi, District Mansa.

Learned counsel for the petitioners contends that both the petitioners were arrested on 10.07.2014; sent to judicial custody on 11.07.2014 and they have completed 180 days on 06.01.2015. Learned counsel further contends that challan has not been filed within a period of 180 days and the prosecution has moved an

application on 03.01.2015, seeking extension of time for completion of investigation on the ground that FSL report was not received. The learned Special Judge has not decided the bail application under Section 167 (2) Cr.P.C., on the same day. Therefore, great prejudice has been caused to the petitioners.

The learned counsel cites **Sahib Singh** Vs. **State of Punjab**, 2014(4) RCR (Criminal) 914 and CRM-M No. 3387 of 2015, decided on 12.02.2015 titled as **Hardev Singh @ Rebbo** Vs. **State of Punjab** of this Court.

On the other hand, the learned State counsel, submits that the an application for grant of extension of time was moved by the prosecution on 03.01.2015, much prior to completion of 180 days, which was allowed on 12.01.2015. Heavy quantity of 60 kg of poppy husk was recovered from the conscious possession of the petitioners.

I have heard learned counsel for the parties and perused the record.

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.”*

Perusal of the record would reveal that the prosecution had moved an application for extension of time on 03.01.2015, prior to completion of 180 days, which was allowed by trial Court on 12.01.2015. The petitioner moved application under Section 167(2)

Cr.P.C., on 08.01.2015. Moreover, this is second bail application filed by the petitioners. Heavy quantity of 60 kg of poppy husk has been recovered from the conscious possession of the petitioners. The case law cited by the counsel for the petitioner is distinguishable on facts.

Keeping in view the alleged recovery and in view of the law laid down by the Hon'ble Supreme Court in Union of India Vs. Nirala Yadav @ Raj Ram Yadav ( supra), without commenting upon the merits of the case, the Court is not inclined to grant the concession sought at this stage.

Dismissed.

31.03.2015

*sumit.k*

**(JITENDRA CHAUHAN)**  
**JUDGE**