

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. No.M-9242 of 2015

Date of Decision: March 26, 2015

Vicky SinghPetitioner

Versus

State of PunjabRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Kanisth Ganeriwala, Advocate for the petitioner.

Mr.Mikhail Kad, Assistant Advocate General, Punjab.

<><><>

TEJINDER SINGH DHINDSA, J.

This order shall dispose of the present petition filed under Section 439 of the Code of Criminal Procedure read with Section 36-A(4) of Narcotic Drugs and Psychotropic Substances Act (for short 'the Act') for grant of regular bail to the petitioner in case FIR No.49 dated 2.5.2014, registered under Sections 15/29/61/85 of the Act at Police Station Barnala.

2. The petitioner was arrested on 2.5.2014 and as per prosecution version, an alleged recovery of 5 bags of poppyhusk containing 20 kgs. each was effected from him.

3. Learned counsel for the parties have been heard at length.

4. Under Section 167 of the Code of Criminal Procedure and under its various sub-sections, the maximum period beyond

which a person cannot be detained while investigation is under way has been provided and the same varies between 60 to 90 days keeping in view the gravity of offence. If the investigation is not completed within such stipulated period, the accused is entitled to bail under Section 167(2) of the Code of Criminal Procedure if he makes an application for such purpose. However, under the Act, the maximum period of 90 days fixed under Section 167(2) of the Code of Criminal Procedure has been increased to 180 days for several categories of offences under the Act. Under Section 36-A of the Act, the period of detention may go on to a total of one year subject to satisfaction and compliance of the stringent conditions provided therein i.e. (i) upon a report of the Public Prosecutor; (ii) which in turn indicates the progress of the investigation; (iii) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days; and (iv) after notice to the accused.

5. The Hon'ble Supreme Court in **Hitendra Vishnu Thakur v. State of Maharashtra, 1994(3) RCR (Criminal) 156** while dealing with the proviso inserted as clause (bb) in sub-section (4) of Section 20 of TADA which is pari-materia with the proviso to sub- Section (4) of Section 36-A of the Act had categorically held that even though the proviso does not specifically mandate the issuance of a notice to the accused while seeking extension yet the issuance of a notice has to be read into the provision which would be, both, in the interest of the accused, as also the prosecution as well as for doing complete justice between the parties. Such requirement was held to be in consonance with the

principles of natural justice.

6. Adverting back to the facts of the present case, the petitioner was undisputedly confined to judicial custody on 2.5.2014. The prosecution agency failed to present the challan within the stipulated period of 180 days as provided under Section 36-A of the Act. The period of 180 days expired on 29.10.2014. The prosecution on 27.10.2014 moved an application for extension of time for submission of challan. In the light of order dated 5.11.2014, Annexure P3, the trial Court granted extension of two months for completion of investigation. Vide order of even date i.e. 5.11.2014 at Annexure P4, an application submitted by the petitioner seeking statutory bail under Section 167(2) of the Code of Criminal Procedure has been declined holding the same to have been rendered infructuous in the light of extension of two months' time having been granted to the prosecution agency for completing investigation.

7. A perusal of the order dated 5.11.2014 at Annexure P3 would reveal that the Additional Public Prosecutor while seeking extension had stated that the report of Forensic Science Laboratory was not forthcoming inspite of issuance of reminders. It is only in terms of accepting such basis and reasoning that an extension of two months has been granted by the trial Court for the prosecution agency to complete investigation.

8. In the considered view of this Court, there has been a non-compliance of the provisions contained in Section 36-A of the Act. The provision mandates a report of the Public Prosecutor indicating the progress of the investigation as also the specific

and compelling reasons for seeking the detention of the accused beyond a period of 180 days.

9. A perusal of the order dated 5.11.2014 passed by the trial Court clearly shows that the conditions as envisaged under Section 36-A(4) of the Act have not even been adverted to while granting extension for completion of investigation.

10. This Court would have no hesitation in observing that the application submitted seeking extension of time for completion of investigation as also the order passed thereupon by the Special Court, Barnala granting extension of two months have been done in a routine and mechanical fashion.

11. For the reasons recorded above, the petitioner in the present case having filed the bail application on the expiry of the stipulated period as per Section 167(2) of the Code of Criminal Procedure had acquired an indefeasible right for grant of bail notwithstanding the grant of extension of time by the trial Court for completion of investigation and presentation of final report.

12. As such, without expressing any opinion on the merits of the case, the present petition is allowed. Bail to the satisfaction of trial Court.

13. Petition disposed of.

March 26, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: *Whether referred to the Reporter? (Yes/No)*