

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 2062 of 2015

Date of decision: July 17, 2015

Mangat Ram @ Manga

.... Petitioner..

Versus

State of Punjab

.... Respondent..

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Divjot S. Sandhu, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Punjab.

Jaspal Singh, J.

Challenge in this revision petition is to order dated March 18, 2015 passed by the Id. Judge Special Court, Kapurthala whereby an application moved by petitioner-Mangat Ram under Section 167 (2) Cr.P.C. seeking his release, in case FIR No. 199, dated 09.07.2014, under Sections 20/25/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short, 'Act') registered at Police Station City Kapurthala, was declined.

As per the allegations put forth by the prosecution is that petitioner namely Mangat Ram and his co-accused Tilak Raj were apprehended by the police on July 09, 2014 while they were travelling in car No. PB-01-9924 make XYLO and from the search of vehicle one black colour envelope was recovered from the lap of petitioner, which is allegedly containing 2 kgs. of CHARAS and on the adjoining seat

another bag weighing 2 kgs. of CHARAS was recovered.

Petitioner was arrested in this case on July 09, 2014 and since then he is suffering incarceration.

Prosecution has failed to present the challan within the stipulated period of 180 days from the date of arrest of petitioner. Accordingly, an application under Section 36-A of the Act seeking extension of time for presentation of challan was moved, which was allowed vide order dated January 05, 2015 whereby 60 days more time was granted to the prosecution to present the challan. Even during the extended period of 60 days, challan was not presented and the extended period also lapsed on March 07, 2015. In the meantime, an application under Section 167 (2) Cr.P.C. was preferred by petitioner before the Id. trial court on March 07, 2015, which was adjourned to March 09, 2015. Even, thereafter, it was adjourned to March 16, 2015.

Here, it would be pertinent to mention that before expiry of extended period of 60 days i.e. March 07, 2015, no application was moved by the prosecution seeking extension of time under Section 36-A of the Act. But subsequently, prosecution presented the challan on March 10, 2015 that too in the absence of report of chemical examiner, meaning thereby that after the expiry of period of 60 days on March 07, 2015, an indefeasible right to be released on bail under Section 167 (2) Cr.P.C. had arisen to the petitioner.

The challan in this case was presented on March 10, 2015 and application moved under Section 167 (2) Cr.P.C. by the petitioner on March 07, 2015 was dismissed by the Id. Judge Special Court, Kapurthala by making the following order:-

“Report of Ahlmad received. As per report of Ahlmad, challn in this has been presented on 12.03.2015.

Since, challan has already been presented. Hence, the present bail application under Section 167 (2) Cr.P.C. stands dismissed being infructuous. The application filed be tagged with the main challan.”

A glance at the aforesaid order transpires that application under Section 167 (2) Cr.P.C. has been dismissed by the Id. Judge Special Court simply on the ground that challan has already been presented but the Judge Special Court, Kapurthala has failed to appreciate the fact that right accrued to the petitioner on the expiry of extended period of 60 days on March 07, 2015. There is no extension of period after March 07, 2015 till the challan is stated to be presented that too without the report of chemical examiner on March 10, 2015. Application moved by the petitioner under Section 167 (2) Cr.P.C. was also kept pending by the concerned court, which was ultimately dismissed on March 18, 2015. A court cannot act to extinguish or scuttle down the right of an accused, if the law so confers on him. Simply, the prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused. Such an act is not permissible. Since, neither any application was moved after March 07, 2015 for extension of time by the prosecution nor any such order was passed by the Id. trial court, presentation of challan after expiry thereof cannot distinguish the right of the petitioner and petitioner is entitled to bail under Section 167 (2) Cr.P.C. as a matter of right.

In the light of what has been discussed above, impugned order dated March 18, 2015 is not sustainable in the eyes of law and same is set aside by way of acceptance of instant petition. Application moved by petitioner-Mangat Ram under Section 167 (2) Cr.P.C. before the Id. trial court stands allowed. Consequently, petitioner is ordered to be released on bail at the satisfaction of Id. trial court/Duty Magistrate.

July 17, 2015
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(JASPAL SINGH)
JUDGE