

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Criminal Revision No.2256 of 2015

Date of Decision: July 14, 2015

Vikramjeet Singh @ Vickey s/o Balwinder Singh .....Petitioner

Versus

State of Punjab .....Respondent

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

**Present:** Mr.Ashish Aggarwal, Advocate for the petitioner.

Mr.Mikhail Kad, Assistant Advocate General, Punjab.

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***TEJINDER SINGH DHINDSA, J.***

The instant revision petition is directed against the order dated 11.5.2015 passed by the trial Court whereby an application filed by the investigating agency seeking extension of time for submission of final report pertaining to FIR No.245 dated 15.11.2014, under Sections 399, 402 of the Indian Penal Code, 25 Arms Act and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered at Police Station Sadar Tarn Taran has been allowed. Further challenge is to the order dated 16.5.2015 in terms of which an application preferred by the petitioner under Section 167(2) of the Code of Criminal Procedure seeking benefit of bail has been declined.

2. Suffice it to notice that the petitioner was arrested on 15.11.2014 and as per prosecution version, an alleged recovery of 260 grams of contraband and 315 bore pistol along with six live cartridges was effected from him. Since the statutory period of

180 days for presentation of challan was expiring on 14.5.2015, the investigating agency preferred an application dated 7.5.2015 under Section 36-A of the Act seeking extension of time. In terms of order dated 11.5.2015, a period of three months' extension was granted by the trial Court for filing of the report under Section 173 of the Code of Criminal Procedure. On the other hand, petitioner moved an application dated 16.5.2015 under Section 167(2) of the Code of Criminal Procedure seeking benefit of bail, but the same has been dismissed vide impugned order dated 16.5.2015 holding the same to be not maintainable in view of the fact that extension for submission of challan had already been granted.

3. Having heard learned counsel for the parties at length, this Court is of the considered view that the present petition deserves to be allowed.

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 application submitted by the investigating agency under Section 36-A of the Act seeking extension of time had cited only one ground i.e. the report of the Chemical Examiner having not been furnished.

7. 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. In the facts of the present case, no such compelling reasons had been cited by the investigating agency apart from mentioning that the chemical examiner report had not been forthcoming. Still further, in the light of impugned order dated 16.5.2015, the application submitted by the petitioner for grant of statutory bail after expiry of 180 days of his arrest under Section 167(2) of the Code of Criminal Procedure has been dismissed by holding the same to be not maintainable.

8. This Court would have no hesitation in observing that the impugned orders have been passed in a routine and mechanical fashion.

9. Accordingly, the present revision petition is allowed. Impugned orders dated 11.5.2015 and 16.5.2015 passed by the trial Court are set aside. Consequently, the petitioner is held entitled to the benefit of regular bail during pendency of trial in FIR No.245 dated 15.11.2014, under Sections 399, 402 of the Indian Penal Code, 25 Arms Act and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered at Police Station Sadar Tarn Taran.

10. The petitioner is enlarged on bail subject to the satisfaction of trial Court.

11. Petition disposed of.

( TEJINDER SINGH DHINDSA )  
JUDGE

July 14, 2015  
SRM

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