

Sr. No.230

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM No.M-13442 of 2016 (O&M)

Date of Decision: 25.05.2016

Raobarinder Singh

... Petitioner

Versus

State of Punjab

... Respondent

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

Present:- Mr. Veneet Sharma, Advocate,
for the petitioner.

Ms. Manpreet Dhaliwal, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.(ORAL)

This order shall dispose of the present petition filed under Section 439 Cr.P.C.read with Section 167(2) Cr.P.C. seeking benefit of bail to the petitioner in case FIR No.278 dated 14.09.2015, under Section 21 of Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act'), registered at Police Station Patti, District Tarn Taran, Amritsar.

Suffice it to notice that the petitioner was arrested on 14.09.2015 and as per prosecution version the alleged recovery effected was of 260 grams of heroin.

Since the statutory period of 180 days for presentation of challan was on the verge of expiry, the investigating agency preferred an application dated 10.03.2016 under Section 36-A of the Narcotic Drugs and Psychotropic Substances Act seeking extension of time. In terms of order dated 11.03.2016, a period of 90 days extension was granted by the Trial Court for filing of the final report under Section 173 Cr.P.C. On the other

hand, petitioner moved an application under Section 167(2) Cr.P.C. seeking benefit of bail on 17.03.2016. However, such application has been dismissed by the Trial Court only on the ground that the same has been rendered infructuous as extension in time for filing of the final report already stands granted.

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

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.

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.

Adverting back to the facts of the present case, the application submitted by the investigating agency under Section 36-A of the NDPS Act seeking extension of time had cited only one ground i.e. report of the Chemical Examiner having not been furnished.

There has been a non-compliance of the provisions contained in Section 36-A of the NDPS Act. Such provision mandates a report of the Public Prosecutor indicating the progress of the investigation as also the specific and compelling reasons in seeking detention of the accused beyond a period of 180 days.

Perusal of the order dated 11.03.2016 at Annexure P-4 granting extension for a period of 90 days would reveal that no such compelling reasons had been cited apart from mentioning that report of the Chemical Examiner has not been forthcoming.

This Court would have no hesitation in observing that the orders granting extension as also declining bail to the petitioner have been passed in a routine and mechanical fashion.

The petitioner under Section 167 (2) Cr.P.C. had an indefeasible right notwithstanding the presentation of the challan thereafter.

In the present case, State counsel would concede that the

challan till date has not been filed.

That apart even the alleged recovery from the petitioner i.e. 260 grams of heroin would be construed as marginally over and above the commercial quantity.

In view of reasons recorded above, present petition is allowed. Petitioner be enlarged on bail subject to satisfaction of the Trial Court/Duty Magistrate, Tarn Taran.

Petition disposed of.

25.05.2016

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**