

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

**CRM NO. M-22556 of 2016
DECIDED ON : DECEMBER 03, 2016**

SUKHPAL SINGH @ SUKHA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Ms. Raffi Birla, Advocate
for the petitioner.

Mr. RPS Sidhu, AAG, Punjab.

JASPAL SINGH, J. (ORAL)

Instant petition has been filed under Section 439 read with Section 482 Cr.P.C seeking regular bail in case FIR No. 68, dated 23.06.2015, under Sections 22 of Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'Act') registered at Police Station Bahav Wala, District Fazilka as well as quashing of the impugned order dated 17.02.2016 (Annexure P-1).

2. Undisputed facts of the case are that petitioner was arrested on June 23, 2015 by the Investigating Officer and he was produced before learned Illaqa Magistrate on next day i.e. June 24, 2015. A prescribed period of 180 days for presentation of challan under the Act was expired on December 20, 2015 i.e. prior to allowing the application for extension of period for the presentation of report under Section 173(2) Cr.P.C. Accordingly, an application under Section 167(2)

Cr.P.C was moved by petitioner before learned trial Court. However, the said application was dismissed by learned Special Judge, Fazilka simply on the ground that the prosecution has already moved an application for extension of time on December 11, 2015 and the time was extended upto February 17, 2016. Thereafter, again prosecution moved an application for extension of time to submit report, which was allowed by learned Special Judge, Fazilka vide order dated February 17, 2016 and the time was extended upto April 17, 2016. Petitioner again filed an application for bail under Section 167(2) Cr.P.C but the said application was dismissed by learned Special Judge, Fazilka vide order dated April 19, 2016 on the ground that extension of two months has already been granted to present the challan in this case under Section 36-A of NDPS Act.

3. Here it would be pertinent to mention that after the expiry of period of 180 days on December 20, 2015, an indefeasible right had accrued to the petitioner. There is also nothing on record to suggest that petitioner was afforded an ample opportunity to defend application for extension of time.

4. By now it is pretty settled that 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 which is otherwise not permissible. After the expiry of 180 days period, an indefeasible right stood accrued to the petitioner, which has been sought to be scuttled down by learned trial Court by way of allowing application for extension of time.

5. Moreover, here it would be pertinent to mention that order of extension for presentation of challan passed after the expiry of 180 days or legally extended period, cannot made operative retrospectively. It is always from the date

of the order passed on application moved under Section 36A(4) of the Act and that too, prospectively.

6. Adverting to the facts of the case, 180 days period expired on December 20, 2015. Though, an application under Section 36(A) (4) of the Act was moved by the prosecution on December 22, 2015, meaning thereby, indefeasible right accrued to the petitioner after the expiry of a period of 180 days i.e. on December 20, 2015. There was in fact no order of extension operating on December 21, 2015. Thus right of bail accrued under Section 167(2) Cr.P.C was available to him, which could not be scuttled down by way of extension thereafter.

7. We can have the references of the authoritative pronouncements i.e. Hardeep Singh v. State of Punjab; 2015 (4) RCR (Crl) 557; Gurwinder Singh v. State of Punjab; 2014 (17) RCR (Crl.) 524 and Amrik Singh vs. State of Punjab; 2015(6) RCR (Crl.) 355 as well as in the cases of Balkaran Singh v. State of Punjab; CRM No. M-14351 of 2015 decided on 29.06.2015 and Ranjit Singh @ Rana v. State of Punjab; CRR No. 2087 of 2014, decided on 11.09.2014.

6. Accordingly, instant petition is allowed; order dated February 17, 2016 is set aside and petitioner is ordered to be released on bail to the satisfaction of learned trial Court.

DECEMBER 03, 2016
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No