

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM No. M-24542 of 2015 (O&M)
Date of Decision: 05.01.2016

Ravi Singh @ Gaggi

--Petitioner

Versus

State of Punjab

--Respondents

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

Present:- Mr. Anurag Arora & Mr. P.S. Ahluwalia,
Advocate for the petitioners.

Ms. Anmol Grewal, A.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

This order shall dispose of CRM No. M-24542 of 2015 (Ravi Singh @ Gaggi Vs. State of Punjab) and CRM No. M-26326 of 2015 (Sandeep Singh @ Boda Vs. State of Punjab) as both these petitions have been filed under Section 439 Cr.P.C read with Section 167 (2) Cr.P.C seeking the benefit of regular bail to the petitioners herein in case F.I.R. No.112 dated 30.10.2014 under sections 15/25/60/61/85 of N.D.P.S Act, registered at Police Station, Boha, District Mansa.

Suffice it to notice that the petitioners were arrested on 30.10.2014 and as per prosecution version the alleged recovery effected is of 151 kgs. of poppy husk.

Since the statutory period of 180 days for presentation of challan was on the verge of expiry, the investigating agency preferred an application under Section 36-A of the Narcotic Drugs & Psychotropic Substances Act, 1995 (for short the Act) seeking extension of time. In terms of order dated 23.4.2015 a period of 90 days extension was granted by the Trial Court for filing of report under section 173 Cr.P.C. The final report having not been filed, a second application seeking extension was

filed and the same was also allowed by the Trial Court in terms of order dated 24.7.2015 granting an extension of a further period of 40 days. On the other hand, the petitioners in these two connected petitions moved separate applications under section 167 (2) Cr.P.C seeking benefit of bail. However, the applications moved by the petitioners herein have been dismissed by the Trial Court only on the ground that the same have been rendered infructuous as extension in time for filing of the final report already stands granted.

Having heard learned counsel for the parties at length, this Court is of the considered view that the present petitions deserve 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 applications submitted by the investigating agency under section 36-A of the 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 Act. The 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.

In the facts of the present cases, no such compelling reasons had been cited by the investigating agency apart from mentioning that the Chemical Examiner report had not been forthcoming. This Court would have no hesitation in observing that the impugned orders granting extension as also declining bail to the petitioners have been passed in a routine and mechanical fashion. The petitioners under section 167(2) Cr.P.C had an

indefeasible right notwithstanding the presentation of the challan thereafter.

Accordingly, the present petitions are allowed. Petitioners be enlarged on bail subject to satisfaction of Trial Court/Duty Magistrate, Mansa.

Petitions are disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

05.01.2016
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