

**205/205-2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(1) CRM-M-27961-2014
Date of Decision : 04.08.2016

Harvinder Singh @ RimplePetitioner
versus

State of PunjabRespondent

(2) CRM-M-15016-2015
Date of Decision : 04.08.2016

Harvinder Singh @ RimplePetitioner
versus

State of PunjabRespondent

CORAM : HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Vijay K. Jindal, Advocate
for the petitioner.

Mr. K.S. Nalwa, DAG, Punjab.

M.M.S. BEDI, JUDGE (ORAL)

This order will dispose of the aforesaid two petitions filed by Harvinder Singh @ Rimple one under Section 439 Cr.P.C seeking concession of regular bail and the other challenging order dated 10.07.2014 whereby the extension was granted for three months under Section 36-A (4) of the NDPS Act to the prosecution agency to present challan.

FIR No. 3 dated 03.01.2014 under Section 21 of the NDPS Act was registered at Police Station City Tarn Taran, District Tarn Taran, on the basis of secret information that petitioner along with 4-5 other persons had formed a gang and indulged in smuggling of narcotic substances and also had contacts with smugglers from Pakistan. On

laying a picket, 4 kg of heroin was recovered from the co-accused of the petitioner, Pramod Kumar and others.

At the time of said recovery, the petitioner was confined in Jail, in another case. Petitioner was named by Pramod Kumar and Kashmir Singh while they were in custody of the police. The petitioner was arrested after seeking production warrants while he was in custody and subsequently, on the basis of statement made by him in custody, recovery of 600 grams of heroin was effected from a place pointed out by him.

Release of the petitioner on bail has been sought for on the following grounds:-

- (i) Recovery having been effected from the petitioner after registration of FIR on the basis of secret information.
- (ii) Release under Section 167 (2) Cr.P.C on the basis that arrest was effected on 06.01.2014; 180 days expired on 04.07.2014 and application for extension of time under Section 36-A (4) of the NDPS Act filed by the prosecution agency on 01.07.2014 was allowed on 10.07.2014 when 180 days had expired without there being any permission of the Court for extension.

It is not out of place to observe here that the application filed by the petitioner for release under Section 167 (2) Cr.P.C. on 05.07.2014 was also dismissed on 10.07.2014.

The petitioner had been granted interim bail on 17.07.2015 by a Coordinate Bench of this Court. After considering the facts and circumstances of the case, this Court is of the opinion that the petitioner is entitled to grant of bail under Section 167 (2) Cr.P.C. in view of the judgments of this Court in **Sukhwinder Singh @ Sukha versus State of**

Punjab, CRM-M No. 4370 of 2016 decided on 26.02.2016 and **Bunty versus State of Punjab, CRM-M No. 2342 of 2014** decided on 04.09.2014, in which taking into consideration the scope of Section 167 (2) Cr.P.C. and 36-A (4) of the NDPS Act, it was held that when there was no order regarding extension of time to file challan beyond 180 days, an accused is entitled to bail under Section 167 (2) Cr.P.C. It has been held in **Surjit Singh versus State of Punjab, CRM-M-17425 of 2014** decided on 07.08.2014 that it is mandatory for the Court in the light of the judgment of Apex Court in **Union of India through CBI versus Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, 2014 (4) RAJ 265** that the application under Section 167 (2) Cr.P.C should be decided expeditiously i.e. on the same day and that Courts should make an earnest endeavour to decide the application of the State under Section 36-A (4) of the NDPS Act prior to the expiry of 180 days. It has been held in the said judgments that on expiry of 180 days, in cases of recovery of commercial quantity, an indefeasible right accrues to an accused to be released on bail as per provisions of Section 167 (2) Cr.P.C. In case, the Court does not decide an application under Section 36-A (4) of the NDPS Act filed by the investigating agency prior to 180 days, the said indefeasible right cannot be defeated for default of the Court.

In view of the above said circumstances, this Court has got no option except to set aside the order dated 10.07.2014, dismissing the application of the petitioner under Section 167 (2) Cr.P.C. granting

retrospective extension by legally keeping an application under Section 36-A (4) of the NDPS Act subjudice despite the fact that it had opportunity to decide the same.

Even otherwise, recovery having been effected, in the present case, after the registration of FIR, and receipt of secret information, under Section 27 of Indian Evidence Act, to determine the culpability of the petitioner would be a debatable issue, during the course of trial. In view of above both the petitions are allowed. It is ordered that the petitioner will remain on bail against the bail bonds already furnished by him, during the pendency of the trial subject to the condition that he will not indulge in similar activity during the pendency of the trial.

(M.M.S. BEDI)
JUDGE

04.08.2016
Neha

Whether Speaking/Reasoned:	Yes/No
Whether Reportable:	Yes/No