

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

***CRM No.M-28935 of 2015 (O&M)
Date of Decision: 01.02.2016***

Dharminder Singh

... Petitioner

Versus

State of Punjab

... Respondent

2.CRM No.M-33948 of 2015 (O&M)

Shinderpal Singh

... Petitioner

Versus

State of Punjab

... Respondent

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

Present:- Mr. L.S. Sidhu, Advocate and
Mr. L.S. Sidhu, Advocate for the petitioner(s).

Ms. Manpreet Dhaliwal, AAG, Punjab.

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TEJINDER SINGH DHINDSA.J.

This order shall dispose of CRM No.M-28935 of 2015 titled as Dharminder Singh vs. State of Punjab and CRM No.M-33948 of 2015 titled as Shinderpal Singh 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 benefit of regular bail to the petitioners herein in case FIR No.108 dated 18.10.2014, under Sections 15/25/60/61/85 of the NDPS Act, registered at Police Station Boha, District Mansa.

Suffice it to notice that the petitioners were arrested on 18.10.2014 and as per prosecution version, an alleged recovery effected is 100 kgs and 300 grams 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 (hereinafter to be referred to as 'the Act') seeking extension of time. In terms of order dated 13.04.2015, 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 of time was filed on 07.07.2015. On the other hand, the petitioners in both these connected petitions moved separate applications under Section 167(2) Cr.P.C. dated 13.07.2015 seeking benefit of bail. However, the applications moved by the petitioners herein as also the application moved by the prosecution seeking extension of time have been disposed of vide composite order dated 14.07.2015 by observing that two days extension for presentation of challan is being allowed and as such there would be no ground for grant of benefit under Section 167(2) Cr.P.C.

Having heard counsel for the parties at length, this Court is of the considered view that the present petitions deserve to be accepted.

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.

01.02.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**