

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM No. M-32170 of 2015 (O&M)
Date of Decision: 11.01.2016

Gurpreet Singh @ Gopi

--Petitioner

Versus

State of Punjab

--Respondents

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

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

Mr. K.D. Sachdeva, Addl. A.G., Punjab.

TEJINDER SINGH DHINDSA.J

The present petition has been filed under Section 482 Cr.P.C read with Section 167 (2) Cr.P.C as also section 439 Cr.P.C praying for setting aside of the order dated 25.8.2015 (Annexure P-5) passed under section 36-A(d)(4) of the N.D.P.S Act granting extension of six months time for filing of challan. Further prayer is for grant of bail in case F.I.R No.29 dated 23.2.2015 under Section 21 of N.D.P.S Act, registered at Police Station Sarhali, District Tarn Taran.

Suffice it to notice that the petitioner was arrested on 23.2.2015 and as per prosecution version the alleged recovery effected is of 500 gms. of heroin.

Since the statutory period of 180 days for presentation of challan was to expire on 22.8.2015, 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. On the other hand, the petitioner moved application under section 167 (2) Cr.P.C seeking benefit of bail.

Vide order dated 25.8.2015, a period of 180 days extension was granted by the Trial Court for filing of report under section 173 Cr.P.C. Vide order carrying even date i.e. 25.8.2015 itself, the application moved by the petitioner under section 167(2) Cr.P.C has been dismissed taking a view that the same is not maintainable as extension for submission of challan has already been granted.

Having heard learned counsel for the parties at length, this Court is of the considered view that the present petition 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 application 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 case, 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 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.

Accordingly, the present petition is allowed. Petitioner be enlarged on bail subject to satisfaction of Trial Court/Duty Magistrate, Tarn Taran.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

11.01.2016
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