

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

211

CRM-M-37852-2015

Date of Decision: January 18, 2016

BALJIT SINGH @ TIMMA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

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

Present: Mr.Achin Gupta, Advocate for the petitioner

Ms.Harpreet K.Athwal,DAG, Punjab

M.M.S.BEDI, J.(Oral)

Having found in possession of 11 vials of Corex and 11 strips of Carisoma containing 10 tablets each, the petitioner has been in custody w.e.f. 28.4.2015. 180 days of arrest of petitioner without filing the challan expired on 25.10.2015 and an application under Section 36 A(4) of the NDPS Act was filed on 19.10.2015. On expiry of 180 days the petitioner filed an application under Section 167(2) of the Code of Criminal Procedure on 26.10.2015. The application under Section 167(2) of the Code of Criminal Procedure was decided on 26.10.2015. Simultaneously the application under Section 36 A(4) of the NDPS Act was allowed on 26.10.2015. It is apparent that when the application under Section 167(2) of the Code of Criminal Procedure was filed, by that time the application under Section 36 A(4) of the NDPS Act has been pending and not decided. The provisions of Section 167(2) of the Code of Criminal Procedure are meant for benefit of the accused whereas Section 36 A(4) of the NDPS Act has been enacted to defeat the rights of the accused. The Apex Court in Union of India through CBI vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav 2014 (4) RAJ 265 held that the application under Section 167(2) of the Code of Criminal Procedure should be decided on the same day by the trial Court. Following the said judgment it was incumbent upon the Court concerned to decide the application under Section 36 A(4) of the NDPS Act expeditiously on the same day and if for any reason it can not be decided on the same day for any reason, an

earnest endeavor should be made by the Court concerned to decide the application at least prior to expiry of 180 days depending upon the circumstances of the case.

The facts and circumstances of each case are to be looked into by the Court.

In the present case, counsel for the petitioner has placed reliance on Jagseer Singh vs. State of Punjab 2014(3) Law Herald 2685 and Amrik Singh vs. State of Punjab 2015(2) Law Herald 1519 in support of his contention that the application for extension of period beyond 180 days has been allowed on expiry of said period to defeat the indefeasible right, having accrued on expiry of 180 days, for which the accused can get the benefit of Section 167(2) of the Code of Criminal Procedure. In the present case, when the petitioner filed an application on expiry of 180 days on 25.10.2015, by that time the application under Section 36 A(4) of the NDPS Act had not been decided. Mere pendency of the application under Section 36 A(4) of the NDPS Act on the date when 180 days expired can not be taken as a circumstance to defeat the rights of the accused under Section 167(2) of the Code of Criminal Procedure.

It has been informed that the report of Forensic Science Laboratory has not been received till date.

The petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bond and surety bond to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Faridkot.

January 18, 2016
TSG

(M.M.S.BEDI)
JUDGE