

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM No. M-40089 of 2015 (O&M)
Date of Decision: 11.01.2016

Baljinder Singh @ Kala & another

--Petitioners

Versus

State of Punjab

--Respondents

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

Present:- Mr. S.S. Rana, Advocate for the petitioners.

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

TEJINDER SINGH DHINDSA.J

The present petition has 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.33 dated 4.5.2015 under sections 15 and 25 of N.D.P.S Act, registered at Police Station, Kotfatta, District Bathinda.

Suffice it to notice that the petitioners were arrested on 4.5.2015 and as per prosecution version the alleged recovery effected is of 4 quintals 80 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. On the other hand, the petitioners moved application under section 167 (2) Cr.P.C on 2.11.2015 seeking benefit of bail.

Vide order dated 7.11.2015 the application moved by the prosecution seeking extension of time was allowed and 30 days time was granted for submission of final report. Vide the same /composite order prayer of the petitioners seeking bail was declined on the basis that

extension for presentation of challan already stood 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 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 petition is allowed. Petitioners be enlarged on bail subject to satisfaction of Trial Court/Duty Magistrate, Bathinda.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

11.01.2016

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