

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

(212)

CRM-M-4370-2016

Decided on: February 26, 2016.

Sukhwinder Singh alias Sukha

.... Petitioner

Versus

State of Punjab

..... Respondent

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

Present: Mr. Ashish Aggarwal, Advocate, for the petitioner.

Mr. A.S. Jattana, Addl. A.G., Punjab.

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

The petitioner was arrested in the present case along with five bags of poppy-husk containing total 200 kgs on 01.06.2015. The challan was not presented within 180 days which expired on 28.11.2015. The prosecution agency had filed an application under Section 36-A (4) of the NDPS Act for extension of the period for presentation of challan on 19.11.2015, well in advance before expiry of 180 days. The Special Judge, Tarn Taran did not decide the application within period of 180 days and kept the same pending till 05.12.2015 and allowed the application under Section 36-A (4) of the NDPS Act extending the period for presentation of challan for two months w.e.f 19.11.2015. The right of the bail accrued to the petitioner on expiry of 180 days on 28.11.2015 as there was no order passed by the Court extending the period for presentation of challan. The challan in the present case has now been presented on 13.01.2016.

The Apex Court in **Sayed Mohd. Ahmed Kazmi Vs. State, GNCTD and others 2013 AIR (SC) 10** has made a reference to the provision under Section 43-D of the Unlawful Activities (Prevention) Act, 1967 which enables the investigating agency to seek the extension of detention of an accused beyond the period prescribed under Section 167 (2) Cr.P.C upto 180 days and held that the right of an accused for grant of statutory bail will remain unaffected on expiry of 180 days.

In view of above said circumstances, the petitioner was entitled to the benefit of bail as he had applied for grant of bail under Section 167 (2) Cr.P.C. In the present case, the State had approached the Court well in time but it appears that case had been adjourned by the Court beyond period of 180 days as such a right accrued to the petitioner for the benefit of default bail under Section 167 (2) Cr.P.C.

It may be observed here that the Apex Court in **Union of India through CBI Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, 2014 (4) Recent Apex Judgments, 265** has held that when an application under Section 167 (2) Cr.P.C is filed by an accused in custody on the ground that charge sheet had not been filed within prescribed period, the Magistrate is obliged to deal with the application on that very day. It is pertinent to observe here that the provision of Section 36-A (4) of the NDPS Act is a remedy provided to the prosecution agency to dilute the effect of Section 167 (2) Cr.P.C. This Court is of the opinion that in case any application is filed under Section 36-A (4) of the NDPS Act by the State agency, the concerned Court would be required to decide the said application expeditiously preferably before the expiry of 180 days. In holding the said opinion, I rely upon the following judgments:

1. Rashpal Singh @ Pala Vs. State of Punjab i.e. CRM-M-18084 of 2014 decided on 11.09.2014;
2. Surjit Singh Vs. State of Punjab i.e. CRM-M-17425 of 2014 decided on 07.08.2014;
3. Bhupinder Singh alias Motta Vs. State of Punjab i.e. CRM-M-27594 of 2014 decided on 04.09.2014;
4. Bikram Singh @ Vikram Singh Vs. State of Punjab i.e. CRM-M-27351 of 2014 decided on 27.08.2014; and
5. Gurwinder Singh Vs. State of Punjab i.e. CRM-M-20586 of 2014 decided on 24.06.2014.

The petition is allowed. The petitioner is held entitled to be released on bail under the provisions of Section 167 (2) Cr.P.C, the right which accrued to him on 28.11.2015 when there was no order passed by any Court extending the period of presentation of challan. Petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the trial Court.

(M.M.S. BEDI)
JUDGE

February 26, 2016
harsha