

**Sr. No. 220
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM No. M-4543 of 2016 (O&M)

Date of Decision: 02.05.2016

Rajwinder Singh @ Baljinder Singh

...Petitioner

Versus

State of Punjab

... Respondent

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

Present:- Mr. B.S.Sidhu, Advocate,
for the petitioner.

Mr. D.S.Virk, AAG, Punjab.

TEJINDER SINGH DHINDSA. J (ORAL)

CRM No.14167 of 2016

Application is allowed, as prayed for.

Documents at Annexures A-1 to A-3 are taken on record.

Application disposed of.

CRM No.M-4543 of 2016

This order shall dispose of CRM No.M-4543 of 2016 i.e. a petition filed under Section 439 read with Section 167 (2) Cr.P.C. for grant of regular bail to the petitioner in case FIR No.42 dated 08.05.2015 under Section 15/61/85 of Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Bahavwala, District Fazilka.

Suffice it to notice that the petitioner was arrested on 08.05.2015 and as per prosecution version the alleged recovery effected is of 120 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 NDPS Act seeking extension of time. In terms of order dated 03.11.2015 a period of 60 days was granted by the trial Court for filing of report under Section 173 Cr.P.C. The final report having not been furnished, a second application seeking extension was filed and the same was also allowed by the trial Court by granting an extension for further period of 60 days. Even a third application thereafter moved by the prosecution has been allowed on 26.02.2016 granting a third extension of identical period i.e. of 60 days.

On the other hand, two applications filed by the petitioner under Section 167 (2) Cr.P.C. seeking benefit of bail have been dismissed vide orders dated 16.11.2015 at Annexure P-2 and 06.01.2016 at Annexure P-3. The applications filed by the petitioner seeking bail have been declined on the ground that extension in time for filing of the final report already stands granted.

Having heard counsel for the parties at length, this Court is of the considered view that the present petition deserves 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 applications submitted by the Investigating Agency under Section 36-A of the NDPS 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 NDPS 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 the period of 180 days.

In the facts of the present case, counsel appearing for the petitioner has adverted to the orders passed by the trial Court granting repeated extensions for submission of final report and perusal of the same would reveal that apart from mentioning that the Chemical Examiner report was not forthcoming, no other compelling/cogent reason has been cited.

This Court would have no hesitation in observing that the orders passed by the trial Court granting repeated extensions to the Investigating Agency for submission of final report have been passed in a routine and mechanical fashion.

The petitioner under Section 167(2) had an indefeasible right for grant of bail under such circumstances.

State counsel would concede that even till date challan has not been presented and rather a fourth application has been filed seeking further extension of time.

In view of such facts and circumstances, the present petition is allowed. Petitioner be enlarged on bail subject to satisfaction of the trial Court/Duty Magistrate, Fazilka.

Disposed of.

02.05.2016

vandana

(TEJINDER SINGH DHINDSA)
JUDGE