

Sr. No. 219

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

**CRM No. M- 5497 of 2016
Date of Decision: 19.02.2016**

Gurmel Singh @ Geli

...Petitioner

Versus

State of Punjab

... Respondent

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

Present:- Mr. Bikramjeet Singh Jatana, Advocate,
for the petitioner.

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

TEJINDER SINGH DHINDSA. J (ORAL)

Present petition has been filed under Section 167(2) read with Section 439 Cr.P.C. seeking benefit of regular bail to the petitioner in case FIR No.53 dated 28.07.2015, under Sections 15/61/85 of Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act'), registered at Police Station Bhikhi, District Mansa.

Suffice it to notice that the petitioner was arrested on 28.07.2015 and the alleged recovery effected is of 60 Kg and 200 grams of poppy husk.

Since the statutory period of 180 days for presentation of challan was on the verge of expiry, Investigating Agency preferred an application under Section 36-A of the NDPS Act seeking extension of time on 22.01.2016. Such application was adjourned in the first instance to 25.01.2016 and thereafter to 27.01.2016. Petitioner

moved an application under Section 167(2) Cr.P.C. seeking bail on 27.01.2016. Vide order dated 30.01.2016 passed by the learned Judge, Special Court, Mansa (Annexure P-4) extension for a period of 30 days for submission of challan was granted. Vide order carrying even date i.e. 30.01.2016 itself, an application moved by the petitioner under Section 167(2) Cr.P.C. has been declined on the ground that the same has been rendered infructuous as extension in time for presentation of challan has already been granted.

Having heard counsel for the parties at length, this Court is of the considered opinion that the present petition deserves to succeed.

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.

Perusal of the order dated 30.01.2016 passed by learned Judge, Special Court, Mansa at Annexure P-4 granting extension of 30 days would show that the only factor has weighed with the Court i.e. the report of the Forensic Science Laboratory is not forthcoming.

This Court would have no hesitation in observing that the order granting extension of time as also the order declining bail to the petitioner have been passed in a routine and mechanical fashion.

The petitioner under Section 167(2) Cr.P.C. was vested with an indefeasible right for grant of bail notwithstanding the presentation of challan thereafter. There would be no dispute as regards the fact that the application filed under Section 167 (2) Cr.P.C. was pending as on the date extension of time for a period of 30 days for presentation of challan was granted i.e. on 30.01.2016.

For the reasons referred above, petition is allowed. Petitioner be enlarged on bail subject to satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Mansa.

Disposed of.

19.02.2016

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**