

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

CRM No. M-6878 of 2016 (O&M)

Date of Decision: 30.03.2016

Shinder Pal Singh @ Shinda

..Petitioner

Versus

State of Punjab

...Respondent

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

Present:- Ms. Riffi Bala Birla, Advocate,
for the petitioner.

Ms. Manpreet Dhaliwal, AAG, Punjab.

TEJINDER SINGH DHINDSA. J (ORAL)

This order shall dispose of the present petition filed under Section 439 read with Section 167 (2) Cr.P.C. seeking benefit of bail pending trial to the petitioner in case FIR No.26 dated 08.05.2015, under Sections 22, 61, 85 of Narcotic Drugs and Psychotropic Substances Act, registered at Police Station City-2, Abohar, 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 05 kgs of intoxicant powder.

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. The application was allowed on 11.11.2015, a period of 60 days extension was granted. A second application

under Section 36-A of the NDPS Act was filed by the prosecution on 24.12.2015 and time was extended for another 30 days. A third application was moved by the prosecution on 30.01.2016 and on 02.02.2016 another 30 days time extension has been granted vide order at Annexure P-2.

On the other hand, an application filed by the petitioner under Section 167(2) Cr.P.C. dated 02.02.2016 has been dismissed vide order dated 10.02.2016 at Annexure P-3 on the ground that extension in time for submission of challan has already been granted.

Having heard learned 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 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 case, 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 petitioner have been passed in a routine and mechanical fashion. The petitioner under Section 167(2) Cr.P.C had an indefeasible right notwithstanding the presentation of the challan thereafter.

Accordingly, the present petition is allowed. Petitioner be enlarged on bail subject to satisfaction of Trial Court/Duty Magistrate, Fazilka.

Petition stands disposed of.

30.03.2016

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**