

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM No. M-8316 of 2016 (O&M)

Date of Decision: 11.03.2016

Jarmal Singh

...Petitioner

Versus

State of Punjab

... Respondent

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

Present:- Ms. Gurvir Kaur Gill, Advocate,
for the petitioner.

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

TEJINDER SINGH DHINDSA. J (ORAL)

The present petition has been filed under Section 439 read with Section 167(2) of the Code of Criminal Procedure (for short 'Cr.P.C.') for grant of bail to the petitioner in case FIR No.152 dated 02.08.2015, under Section 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act'), registered at Police Station Sadar Fazilka, District Fazilka.

Suffice it to notice that the petitioner was arrested on 03.08.2015 and as per prosecution version the alleged recovery effected is of 300 gms. of heroin.

Since the statutory period of 180 days for presentation of the challan was on the verge of expiry, investigating agency preferred an application under Section 36-A of the the NDPS Act seeking extension of time on 30.01.2016. In terms of the order dated 01.02.2016, a period of 60 days extension was granted by the trial

Court for filing of a report under Section 173 Cr.P.C. On the other hand, the petitioner moved an application under Section 167 (2) Cr.P.C. seeking benefit of bail. However, the application moved by the petitioner has been dismissed by the trial Court on 01.02.2016 itself on the ground that extension for presentation of challan has already been 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 application 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 provisions 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 was not forthcoming. This Court would have no hesitation in observing that the orders granting extension as also declining bail to the petitioner have been passed in a routine and mechanical fashion.

Learned State counsel upon instructions from HC Gurcharan Singh would apprise the Court that the challan till date has not been presented.

The petitioner under Section 167(2) Cr.P.C. had an indefeasible right to be released on bail. Accordingly, present petition is allowed. Petitioner be enlarged on bail subject to satisfaction of the trial Court/Duty Magistrate, Fazilka.

Disposed of.

11.03.2016

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**