

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

CRR No.1077 of 2015 (O&M)

Date of Decision: 18.02.2016

Balwinder Singh @ Binder

... Petitioner

Versus

State of Punjab

... Respondent

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

Present:- Mr. D.S. Pheruman, Advocate for the petitioner.
Ms. Manpreet Dhaliwal, AAG, Punjab.

....

TEJINDER SINGH DHINDSA.J.

CRM No.5714 of 2016:

Application is allowed as prayed for. Documents at Annexures

P-13 and P-14 are taken on record.

Application is disposed of.

Main case:

The instant revision petition is directed against the order dated 02.02.2015 passed by learned Judge Special Court, Tarn Taran, whereby second extension for a period of 60 days has been granted to the prosecution for submission of challan document in FIR No.146 dated 08.05.2014 under Sections 22, 61 and 85 of the NDPS Act and Sections 25, 54 and 59 of the Arms Act, registered at Police Station City Tarn Taran.

Suffice it to notice that the petitioner along with two other co-accused was arrested on 08.05.2014 and as per prosecution version, the alleged recovery effected from the present petitioner is 500 grams of heroin.

Concededly, since the statutory period of 180 days for presentation of the challan was on the verge of expiry, the Investigating Agency preferred an application under Section 36(A) of the Narcotic Drugs

and Psychotropic Substances Act, 1995 (in short 'NDPS Act') seeking extension of time. In terms of order dated 05.11.2014, a period of 90 days extension was granted by the trial Court for filing of report under Section 173 Cr.P.C. The final report having not been filed, a second application seeking extension was filed on 29.11.2015 and the same was also allowed by the trial Court in terms of the impugned order dated 02.02.2015 granting the extension for a further period of 60 days. On the other hand, the petitioner moved a separate application under Section 167(2) Cr.P.C. seeking benefit of bail. However, application moved by the petitioner has been dismissed by the trial Court on the ground that same has been rendered infructuous as 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 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 NDPS Act seeking extension of time cited only one ground i.e. report of the Chemical Examiner having not been furnished.

There has been 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 a period of 180 days.

In the facts of the present case, no such compelling reasons have been cited by the Investigating Agency apart from mentioning that the chemical examiner report has not been forthcoming. This Court would have

no hesitation in observing that the impugned order dated 02.02.2015 granting extension as also the order dated 04.02.2015 declining bail to the petitioner have been passed in a routine and casual manner. The petitioner under Section 167(2) Cr.P.C. has an indefeasible right notwithstanding the presentation of the challan thereafter.

Accordingly, the present petition is allowed. Impugned order dated 02.02.2015 is set aside.

Petitioner is held entitled to the benefit of bail. He be enlarged on bail subject to satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Tarn Taran.

Disposed of.

18.02.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**