

CRR No.1214-2016 (O&M)
Date of Decision : 03.05.2016Rashpal SinghPetitioner
versus

State of PunjabRespondent

CORAM : HON'BLE MR. JUSTICE M.M.S. BEDI**Present:** Mr. D.S. Pheruman, Advocate
for the petitioner.

Mr. Jashanpreet Singh, AAG, Punjab.

M.M.S. BEDI, JUDGE (ORAL)

Petitioner is aggrieved by order dated 25.08.2015 passed by the Additional Sessions Judge, Amritsar allowing the application under Section 36A (4) of the NDPS Act for extending the period of conclusion of the investigation on the ground that one of the co-accused of the petitioner was yet to be arrested and the source who made the contraband available to the accused was to be determined.

Counsel for the petitioner has contended that the trial Court has caused prejudice to the petitioner disabling him to exercise the right under Section 167 (2) Cr.P.C. to be released on bail by allowing the application claiming that there was no legal and valid reason for seeking extension as no compelling circumstances had been brought to the notice of the Court. The reasons adopted for allowing the application i.e. co-accused having not been arrested and the source of intoxicating substance having not been ascertained were not well founded and the period of presentation of challan could not have been extended.

I have heard learned counsel for the petitioner and State

counsel and gone through the record. In the present case, 3 kg of heroin had allegedly been recovered from the petitioner on 10.03.2015. Period of incarceration of 180 days had to expire on 06.09.2015. The prosecution agency, as an act of caution opted to file application under Section 36A (4) of the NDPS Act on 05.08.2015.

It is not disputed in this case that the report of the Chemical Examiner had been received prior to expiry of 180 days of incarceration.

According to the provisions of law, an accused gets an indefeasible right, to be released on expiry of the period, prescribed for presentation of challan in particular case, which period in the present case was to expire on 06.09.2015. In order to defeat the right of the accused under Section 167 (2) Cr.P.C., a specific provision has been made under Section 36A (4) of the NDPS Act. In cases falling under the NDPS Act to extend the period and defeat the indefeasible right, the prosecution agency has to file that application prior to the expiry of 180 days, in case of recovery of commercial quantity of contraband. The perusal of Section 36A (4) of the NDPS Act indicates that in case, it is not possible to complete the investigation within a period of 180 days, the prosecution agency can file an application, reporting the progress of the investigation, specifying the reasons for detention of the accused, beyond the period of 180 days. It is a settled principle of law that the said application is to be decided expeditiously by giving notice to the accused. It is mandatory that the application for extension should be based on the report of the Public Prosecutor who would indicate the

progress of the investigation with specific reasons for detention of the accused beyond the period of 180 days. Whether the ground that the co-accused of a person in detention, having not been arrested, is a reasonable ground for detention of the accused, sufficient to grant the extension, is the subjective satisfaction of the trial Court while considering the application for extension.

Technically, there has not been any irregularity in the application submitted by the investigating agency, in the present case, as is apparent from the copy of the application Annexure P-3 and P-4. In the present case, investigating officer had filed an application on 03.08.2015 Annexure P-3 which was supported by an application Annexure P-4 of the Public Prosecutor of the same date. The Public Prosecutor has specified that he has considered the report of the investigating officer. Annexure P-3 and P-4 fulfill the requirement of the Statute under Section 36A (4) of the NDPS Act that the application should be submitted with the report of the Public Prosecutor.

The progress of the investigation has been mentioned in para 2 of the application Annexure P-4. The petitioner had been given an opportunity to contest the application as reply of the application had been filed, Annexure P-5.

Taking into consideration all the above said circumstances, I am of the opinion that the trial Court has exercised its discretion under Section 36A (4) of the NDPS Act, in accordance with the procedure of law. There is no scope for interference in the satisfaction of the trial

Court, which is based upon the parameters of adjudication, of an application, under Section 36A (4) of the NDPS Act. The said discretion is not liable to be interfered with unless or until there is a patent irregularity or illegality in the order passed under Section 36A (4) of the NDPS Act.

In view of the above, this petition is dismissed without prejudice to the legal rights of the petitioner under Section 439 Cr.P.C.

(M.M.S. BEDI)
JUDGE

03.05.2016
Neha