

Sr. No.213

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

**CRR No. 3377 of 2015 (O&M)
Date of Decision: 07.04.2016**

Lakhbir Singh @ Bir

...Petitioner

Versus

State of Punjab

... Respondent

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

Present:- Mr. D.S.Pheruman, Advocate,
for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

TEJINDER SINGH DHINDSA. J (ORAL)

The instant revision petition is directed against the orders dated 05.05.2015 and 03.08.2015 passed by the trial Court whereby applications filed by the investigating agency seeking extension of time for submission of final report pertaining to FIR No.157 dated 09.11.2014 under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act'), registered at Police Station Valtoha, District Tarn Taran have been allowed. Petitioner is further aggrieved in terms of having been denied the benefit of bail under Section 167(2) Cr.P.C.

Suffice it to notice that the petitioner was arrested on 09.11.2014 and the alleged recovery made at that point of time was 200 grams of heroin. Subsequently, recovery of 01 kgs and 200 grams of heroin is stated to have been effected on 12.11.2014.

Since the statutory period of 180 days for presentation of challan was expiring on 08.05.2015, investigating agency preferred an application dated 04.05.2015 under Section 36-A of the NDPS Act seeking extension of time. Vide impugned order dated 05.05.2015, a period of 90 days extension has been granted by the trial Court for filing of the report under Section 173 of the Code of Criminal Procedure. On the other hand, an application filed by the petitioner seeking bail under Section 167 (2) Cr.P.C. was declined on 05.05.2015 itself on the ground that extension for submission of challan already stands granted. It may further be noticed that a second application seeking extension of time was moved by the investigating agency on 29.07.2015 and the same has been allowed on 03.08.2015 and extension of 60 days time till 02.10.2015 has been granted.

Challan is stated to have been presented on 19.09.2015 within the extended period.

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, it may be noted that 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. the 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 provision mandates a report of the Public Prosecutor indicating the progress of the investigation as also the specific and compelling reasons for seeking the detention of the accused beyond a period of 180 days. In the facts of the present case and upon perusal of the impugned orders dated 05.05.2015 and 03.08.2015 passed by the trial Court, it becomes apparent that no such compelling reasons had been cited by the investigating agency and as such there was no occasion for the trial Court to have noticed and dealt with the same. Extensions have been granted merely on the ground that the Chemical Examiner Report has not been forthcoming.

This Court would have no hesitation in observing that the impugned orders have been passed in a routine and mechanical fashion and without adhering to the mandate contained in Section 36-A of the NDPS Act.

The petitioner under such circumstances was vested with the right to be released on bail under Section 167 (2) Cr.P.C., which was an indefeasible right notwithstanding the presentation of the challan thereafter.

For the reasons recorded above, the present petition is allowed. Impugned orders dated 05.05.2015 and 03.08.2015 passed by the trial Court are set aside.

Petitioner is held entitled to the benefit of regular bail during pendency of the trial in case FIR No. 157 dated 09.11.2014 under Sections 21 and 29 of the Narcotic Drugs and Psychotropic

Substances Act, registered at Police Station Valtoha, District Tarn
Taran. Petitioner be enlarged on bail subject to satisfaction of the trial
Court.

Disposed of.

07.04.2016
vandana

(TEJINDER SINGH DHINDSA)
JUDGE