

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRR 4430 of 2016

Date of Decision: November 30, 2016

Mukhwinder Singh @ Khindi

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

-. -

**Present:- Mr.Bikramjit Aroura, Advocate
for the petitioner.**

-. -

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

Petitioner claims that he was not arrested from the spot on June 1, 2016 when his co-accused Sukhwinder Singh was arrested along with 5 bags of poppy husk. The petitioner was involved in the case on the basis of disclosure statement made by the co-accused on April 21, 2016 i.e. after 10 months of the recovery from his co-accused. Three bags of poppy husk were allegedly recovered from the petitioner. The prosecution agency filed an application under Section 36 A (4) of the NDPS Act, for short 'the Act', for extension of time which was allowed vided order dated October 13, 2016. The said application was allowed and two months time was granted to present the challan. The said period has not expired. The petitioner has filed

the revision petition against the order granting extension to the prosecution agency and dismissing the application under Section 167 (2) Cr.P.C.

Counsel for the petitioner submits that the non-receipt of report of chemical examiner is not a sufficient ground for extension of time to present challan. Counsel claims that co-accused of the petitioner had been granted concession of bail under Section 167 (2) Cr.P.C.

I have heard counsel for the petitioner and gone through the order passed in the case of Sukhwinder Singh by this Court. The co-accused of the petitioner had been granted the concession of bail under Section 167 (2) Cr.P.C. as the State had approached the Court by moving an application under Section 36 A (4) of the Act prior to the expiry of 180 days but the Court had adjourned the case beyond 180 days. The reason for grant of bail to Sukhwinder Singh is absolutely different as such the petitioner cannot rely upon the judgment in Sukhwinder Singh case passed by this Court.

I have gone through the impugned order and I am of the opinion that in the present case it was not possible for the investigating agency to complete the investigation within a period of 180days and the Public Prosecutor had submitted the report indicating the stage and progress of the investigation by giving specific reasons for detention of the petitioner beyond the period of 180 days.

Counsel for the petitioner relies upon the judgment of the Apex Court in **Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau and anr.**, (2009) 17 SCC 631.

The circumstances of the present case are not covered by the said judgment. Moreover, the said judgment does not lay down an absolute

rule of law that in every case where the report of the chemical examiner is not received the benefit is to be given to the accused. I am of the considered opinion that objective of Section 36 A(4) of the Act is to defeat the right of an accused under Section 167 (2) Cr.P.C. by the prosecution agency by filing an application under Section 36 A (4) of the Act prior to 180days.

In the present case, the prosecution agency has taken abundant auction to file the application under Section 36 A (4) of the Act by bringing it to the notice of the Court the progress of the investigation and reasons for detention in a case of recovery of commercial quantity of poppy husk. No ground is made out for grant of bail to the petitioner under Section 167 (2) Cr.P.C.

Dismissed. However, it will be open to the petitioner to seek concession of regular bail on merits, in case so advised by filing a separate petition under Section 439 Cr.P.C.

Dismissal of this petition will not prejudice the rights of the petitioner to seek the concession of regular bail in accordance with law.

November 30, 2016
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.