

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

CRM No.M-42854-2016 (O&M)

Date of decision: 21.03.2017

Chhattarpal Singh

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present : Mr. Charanpreet Singh, Advocate for the petitioner (s).

Mr. Luvinder Sofat, AAG, Punjab

Jitendra Chauhan, J. (Oral)

By filing the present petition under Section 167(2) of the Code of Criminal Procedure, the petitioner has sought regular bail in FIR No.7 dated 07.02.2016, registered under Sections 21 and 29 of NDPS Act, Sections 307 and 148 read with Section 149 IPC, Section 25 of the Arms Act, Section 14 of F. Act, Section 3/34/20 I.P. Act and Section 3 OS Act, at Police Station Khem Karan, Distt. Tarn Taran.

As per the record, the petitioner surrendered before learned Judicial Magistrate 1st Class, Patti on 22.04.2016 and in the presence of learned APP, learned Court had sent the petitioner to judicial custody till 06.05.2016. On the application dated 25.04.2016, the petitioner was formally arrested on 26.04.2016. These above stated facts are not in dispute. The question arises for consideration of this Court as to from which date the

period of 180 days shall be reckoned. Section 167(2) Cr.P.C. laying down procedure when investigation cannot be completed in twenty-four hours, reads as under :-

“(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police”

This is not in dispute that the petitioner was not in custody. At this stage, it will not be relevant whether the petitioner was in the judicial custody/Court custody or the police custody for the purpose of disposal of

this petition. The paramount issue for consideration is the custody period of the petitioner. As per the record, the petitioner was in custody since 22.04.2016 and completed 180 days on 18.10.2016. Whereas, application under Section 36-A of the NDPS Act was moved on 21.10.2016 i.e. after 180 days had been completed by the petitioner. The learned counsel for the petitioner cites '**Ravinder Singh VS. State of Punjab**', 2005(2) RCR (Criminal) 340.

On the other hand, the learned State counsel submits that the petitioner is not entitled to the relief sought as the application for extension of time was filed before the expiry of 180 days.

Heard.

Considering the fact that the petitioner sent to judicial custody/Court custody by learned Judicial Magistrate 1st Class, Patti on 22.04.2016 and completed 180 days on 18.10.2016 and application for extension of time was filed after the expiry of 180 days, this petition is allowed. The petitioner be admitted to bail during the pendency of the trial, on his furnishing bail bonds and surety bonds, to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

21.03.2017

ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No