

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

CRR No. 2947 of 2016 (O&M)

Date of decision: 03.03.2017

Satnam Singh @ Satta

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.P. Dhir., Advocate for the petitioner.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

Jitendra Chauhan, J. (Oral)

By way of the present criminal revision, the petitioner has challenged the impugned order dated 09.08.2016 (Annexure P-4), passed by Judge Special Court, Hoshiarpur whereby, the application under Section 167(2) Cr.P.C., filed by the petitioner was dismissed and application under Section 36(A) of NDPS Act for extension of time period, filed by the prosecution was allowed.

Learned counsel for the petitioner argued that the petitioner was arrested on 09.01.2016 and produced on 10.01.2016. The 180 days were to expire on 08.07.2016. The prosecution filed an application for extension of time on 04.07.2016 and another extension was granted on 09.08.2016 which was beyond the period

of 210 days. In support of his contentions, the learned counsel cites Uday Mohanlal Acharya Vs. State of Maharashtra, 2001(2) RCR (Criminal) 452, Nardev Inder Singh Vs. State of Punjab, 2015(4) RCR (Criminal) 509, Hardeep Singh Vs. State of Punjab, 2015(4) Criminal) 557, Surinder Kumar Vs. State of Punjab, 2015(4) RCR (Criminal) 156, Ravinder @ Binder Vs. State of Haryana, 2015(4) RCR (Criminal) 441, Som Nath and another Vs. State of Punjab, 2011(3) RCR (Criminal) 515, Satnam Singh Vs. State of Punjab, 2013(2) RCR (Criminal) 356, UOI through CBI Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, 2014(3) RCR (Criminal) 534 and Sayed Mohd. Ahmed Kazmi Vs. State, GNCTD and others, 2012(4) RCR (Criminal) 875 and states that the fact of filing the application under Section 36(A) of NDPS Act is of no consequence and a decision thereof is the relevant factor.

Heard.

The Hon'ble Apex Court in Union of India Vs. Nirala Yadav @ Raj Ram Yadav, 2014 (4) Recent Apex Judgments (RAJ) 365, observed as under:-

“Coming to the facts of the instant case, we find that prior to the date of expiry of 90 days which is the initial period for filing the charge-sheet, the prosecution neither had filed the charge-sheet nor had it filed an application for extension. Had an application for extension been filed, then the matter would have been totally different. After the accused

*respondent filed the application, the prosecution submitted an application seeking extension of time for filing of the charge-sheet. Mr. P.K. Dey, learned counsel for the appellant would submit that the same is permissible in view of the decision in **Bipin Shantilal Panchal** (supra) but on a studied scrutiny of the same we find the said decision only dealt with whether extension could be sought from time to time till the completion of period as provided in the Statute i.e., 180 days. It did not address the issue what could be the effect of not filing an application for extension prior to expiry of the period because in the factual matrix it was not necessary to do so. In the instant case, the day the accused filed the application for benefit of the default provision as engrafted under proviso to sub-Section (2) of Section 167 CrPC the Court required the accused to file a rejoinder affidavit by the time the initial period provided under the statute had expired. There was no question of any contest as if the application for extension had been filed prior to the expiry of time. The adjournment by the learned Magistrate was misconceived. He was obliged on that day to deal with the application filed by the accused as required under Section 167(2) CrPC. We have no hesitation in saying that such procrastination frustrates the legislative mandate. A Court cannot act to extinguish the right of an accused if the law so confers on him. Law has to prevail. The prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused. Such an act is not permissible. If we permit ourselves to say so, the prosecution exhibited sheer negligence in not filing the*

application within the time which it was entitled to do so in law but made all adroit attempts to redeem the cause by its conduct.”

The necessary application for extension had been filed by the prosecution well within time. The prosecution by filing the application has discharged its onus. No benefit could be granted if the said application was not decided within the statutory period as the prosecution has fully discharged its onus. Moreover, the petitioner has failed to refer to any evidence or circumstance that the finality of the application could not be achieved on account of any failure on the part of the prosecution. In view of the law laid down by the Hon'ble Supreme Court in Union of India Vs. Nirala Yadav @ Raj Ram Yadav (supra), no case for releasing the petitioner under Section 167(2) is made out. The ratio of case law cited by the learned counsel is distinguishable on facts and will not apply in the present case.

Dismissed.

03.03.2017
sumit.k

(JITENDRA CHAUHAN)
JUDGE

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