

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

CRR No. 92 of 2017 (O&M)

Date of decision: 05.07.2017

Mandeep Singh @ Mandeep Kumar @ Netar Pal

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S. Jaidka, Advocate
for the petitioner.

Ms. Bhavna Gupta, DAG, Punjab.

Jitendra Chauhan, J. (Oral)

By way of the present criminal revision, the petitioner has challenged the impugned order dated 09.01.2017, passed by learned Addl. Sessions Judge, Ludhiana, whereby, the application under Section 167(2) Cr.P.C., filed by the petitioner was dismissed.

It is contended that the petitioner was arrested on 02.05.2015. The petitioner escaped from custody and was re-arrested on 27.04.2016. The challan in the present case was filed on 18.11.2015 without FSL report. He further stated that till the filing of present revision, neither the FSL report had come nor the prosecution had filed application under Section 36-A of the NDPS Act. The statutory period of 180 days stood expired on 23.10.2016. The petitioner was again

taken back into custody on 27.04.2016. However, the learned trial Court has wrongly dismissed the application filed by the petitioner under Section 167(2) Cr.P.C., ignoring the provision of Section 167(2) read with Section 36-A(4) of the Act.

On the other hand, learned State counsel submits that present petition is wholly misconceived and the same is liable to be dismissed.

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.”

It is not in dispute that the final police report under Section 173 Cr.P.C, was filed without receipt of FSL report. However, keeping in view the law laid down by Hon'ble the Supreme Court in **Union of India Vs. Nirala Yadav @ Raj Ram Yadav** (supra) and the decision rendered by this Court in CRM-M-23782 of 2015 titled as **Kulwinder Singh** Vs. **State of Punjab**, no case for releasing the petitioner under Section 167(2)

is made out.

Dismissed.

05.07.2017
ashok

(JITENDRA CHAUHAN)
JUDGE

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