

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

CRR-973-2020

Date of Decision : June 29, 2020

Onkar Chand @ Kala

..... PETITIONER(S)

VERSUS

State of Punjab

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Manjinder Singh Saini, Advocate, for the petitioner.
Mr. Mehardeep Singh Dhullat, Additional Advocate General,
Punjab.

...

Sanjay Kumar, J.

By way of this Criminal Revision, the petitioner assails the order dated 11.06.2020 passed by the learned Judge, Special Court, Hoshiarpur.

The petitioner is the accused in FIR No.214 dated 10.12.2019 on the file of Police Station City Hoshiarpur, District Hoshiarpur, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, 'the Act of 1985'). He was arrested on 10.12.2019 and has been in custody since then. In terms of Section 36-A(4) of the Act of 1985, the outer limit for filing of the challan would be 180 days as the offence alleged against the petitioner involves commercial quantity of the prohibited drug/substance, as prescribed under the Act of 1985. In effect, the last date for

Filing of the challan was 06.06.2020.

While so, it appears that the police filed an application on 05.06.2020 seeking extension of time for completing the investigation and filing the challan. The petitioner, on the other hand, filed an application on 08.06.2020 under Section 167(2) Cr.P.C. seeking statutory default bail. By the order under revision, the learned Judge, Special Court, Hoshiarpur, granted two months time to the local police to file a challan and dismissed the default bail application filed by the petitioner. The correctness of this order is presently called in question.

Well settled is the legal position that an order granting extension of time to the police to file the challan beyond the stipulated period cannot operate with retrospective effect. Permitting the same would negate the indefeasible right that accrues to the accused, who is in custody, under Section 167(2) Cr.P.C. (see **Gurjit Singh @ Bunt v/s. State of Punjab [2015(3) RCR (Criminal) 911]**). Extension of time, if any, must therefore be granted before expiry of the statutorily prescribed period.

In the case on hand, the application filed by the police was on the penultimate day, viz. 05.06.2020, as the stipulated 180 days period was to expire on 06.06.2020. Had the learned Judge, Special Court, Hoshiarpur, passed an order on the said application before the expiry of the stipulated period there would have been no difficulty. However, the record bears out that the order was actually passed on 11.06.2020 which, in effect, granted time to the police retrospectively. The error on the part of the learned Judge, Special Court, Hoshiarpur, would therefore enure to the benefit of the petitioner as the settled legal position, undeniably, supports him.

The order under challenge is accordingly set aside. The revision petition is allowed directing the release of the petitioner on regular

bail in FIR No.214 dated 10.12.2019 on the file of Police Station City, Hoshiarpur, District Hoshiarpur, upon his furnishing a personal bond for a sum of ₹50,000/- along with two sureties for a like sum each to the satisfaction of the Duty/Illaqa Magistrate concerned. Further, the petitioner shall not offer any threat, inducement or promise to any person involved with the case.

June 29, 2020
Kang

(Sanjay Kumar)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No