

(2021) 02 P&H CK 0100

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 40907 Of 2020 (O&M)

Amir Hussain Wani And Others

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 08-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 167(2), 173
Unlawful Activities (Prevention) Act, 1967 — Section 13, 17, 18, 18(b) 20, 43D(2),
43D(2)(b)
Arms Act, 1959 — Section 25
Explosive Substances (Amendment) Act, 2001 — Section 3, 4, 5
National Investigation Agency Act, 2008 — Section 13(1)

Citation : (2021) 02 P&H CK 0100

Hon'ble Judges : Gurminder Singh Gill, J

Bench : Single Bench

Advocate : Manbir Singh Basra, H.S.Multani

Final Decision : Allowed

Judgement

Gurminder Singh Gill, J

1. The petitioners have approached this Court seeking grant of regular bail with the aid of Section 167(2) Cr.P.C. as their application for their release

in terms of Section 167(2) Cr.P.C. has been declined by the trial Court vide order dated 24.11.2020.

2. The FIR in question i.e. FIR No.116, dated 11.06.2020, Police Station Sadar, Pathankot, under Sections 13, 17, 18, 18(b) 20 of Unlawful Activities

(Prevention) Act, was lodged against the accused with the allegations that the accused had entered into a conspiracy for taking weapons and

explosive substances from Amritsar to Anantnag (J&K). Consequently the petitioners were booked for offences under Sections 13, 17, 18, 18-B and

20 of Unlawful Activities (Prevention) Act, Section 25 of Arms Act as well as Sections 3, 4 and 5 of Explosive Substances Amendment Act.

3. While petitioners No.1 and 2 namely Amir Hussain Wani and Wasim Hussain Bhatt were arrested on 11.6.2020, petitioner No.3 Javed Ahmed

Bhatt was apprehended on the next day i.e. on 12.6.2020. Ordinarily the investigating agency was expected to complete its investigation and to file a report under Section 173 Cr.P.C. within a period of 90 days which in case of petitioners No.1 and 2 would have expired on 10.9.2020 and in case of petitioner No.3 would have expired on 11.9.2020.

4. However, the Illaqa Magistrate in a purported exercise of powers under Section 43-D(2) of Unlawful Activities Act, extended the period of investigation from 90 days to 180 days vide order dated 7.9.2020 (Annexure P-3).

5. Learned counsel for the petitioners has submitted that it is a case registered for offence under Sections 13, 17, 18, 18-B and 20 of Unlawful Activities (Prevention) Act, which as per the schedule to National Investigation Agency Act, 2008, are "scheduled offences" which can be investigated by National Investigation Agency and which in any case are to be tried by a Special Court constituted under provisions of National Investigation Agency Act, 2008.

6. Learned counsel has submitted that since Special Courts have been constituted in the State of Punjab vide notification dated 10.6.2014 No.

S.O.141/C.A.34/2008/S.22/2014, therefore, the Magistrate in any case could not have assumed jurisdiction to extend the period of investigation in

terms of Section 43-D(2)(b) of the Unlawful Activities (Prevention) Act from 90 days to 180 days and that it is only the Special Court which could

have extended the said period, whether or not investigation was conducted by National Investigation Agency. Learned counsel in order to hammer

forth his aforesaid submission places reliance upon a recent judgment of Hon'ble Supreme Court Bikramjit Singh Vs. State of Punjab 2020(1)

SCC (Criminal) 85. The relevant paragraphs of the said judgment read as follows:

"24. Section 13(1) of the NIA Act, which again begins with a non-obstante clause which is notwithstanding anything contained in the Code, read

with Section 22(2)(ii), states that every scheduled offence that is investigated by the investigation agency of the State Government is to be tried

