

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRIL. PETN. No. 45 of 2023

Khupsiankim @ Kimboi, aged about 33 years, W/o
Khupkhanhau, resident of Lalzakham Road,
Gouchinkhup Veng, New Lamka, Churachandpur,
Manipur – 795128.

.... Petitioner

- Versus -

The Officer-in-Charge, Moirang Police Station, P.O. &
P.S. Moirang, Bishnupur District, Manipur 795133.

.... Respondent

B E F O R E

HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the petitioner	:	Mr. K.R. Pamei, Advocate
For the respondent	:	Mr. S. Nepolean, P.P.
Date of hearing	:	15.12.2023
Date of order	:	12.01.2024

JUDGEMENT & ORDER **(CAV)**

[1] Heard Mr. K.R. Pamei, learned counsel appearing for the petitioner and Mr. S. Nepolean, learned PP appearing for the State respondent.

[2] The present petition has been filed under Section 482 of the Criminal Procedure Code, 1973 praying for quashing of the order dated 12.09.2023 passed in Cril. Misc. Case No. 39 of 2023 by the Ld. Special Judge (ND & PS Court), Bishnupur, wherein vide the aforesaid order dated 12.09.2023, the Ld. Special Judge (ND & PS Court), Bishnupur had extended time to complete the investigation for another 180 (one hundred and eighty) days w.e.f. 13.09.2023 to 13.03.2024. Prayer in the present petition reads as follows:

"Quash or set aside the order dated 12.09.2023 passed in Cril. Misc. Case No. 39 of 2023 by the Ld. Special Judge (ND & PS Court), Bishnupur."

[3] The petitioner sought relief on the following grounds:

"(i) The impugned order dated 12.09.2023 passed by the Ld. Special Judge (ND & PS Court), Bishnupur is arbitrary and the same had been passed without applying its judicious mind in contrary to the condition as laid down under Section 36 – A(4) of the Narcotics Drugs & Psychotropics Substance Act, 1985 (hereinafter referred to as ND & PS Act).

(ii) As per Section 36-A(4) of the ND & PS Act, if the investigation could not be completed within 180 days, the Special Court may extend time upto 1 (one) year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reason for the detention of the accused beyond the said period of 180 days. In the present case the Public Prosecutor had not indicated the progress of the investigation and in addition to that no specific reason was given for detention of the petitioner beyond the aforesaid period of 180 days.

(iii) The Ld. Special Judge (ND & PS Court), Bishnupur has greatly erred in the accepting the submission of the prosecution in toto without considering the facts and circumstances of the case. It is submitted that in para No. 4 of the application, the allegation alleged against the petitioner is that the petitioner is a habitual

drug smuggler without any evidence. There is no case or FIR pending against the petitioner except the present FIR.

(iv) The Ld. Special Judge (ND & PS Court), Bishnupur had greatly erred in ignoring the intention of the legislature for seeking extension of time for completion of investigation on a report of the prosecutor. It is submitted that the legislature did not purposely leave it to an investigating officer to make an application for seeking of extension of time from the Court. The intention of the legislature is to complete the investigation expeditiously and not to allow an accused to be kept in continued detention during prolonged investigation at the whims of the police. The legislature expects that the investigation must be completed with utmost promptitude considering the liberty of the petitioner as guaranteed under the Constitution of India.

(v) The Ld. Special Judge (ND & PS Court), Bishnupur had greatly erred in granting 180 days of time for completion of the investigation in the absence of an appropriate report or that the Ld. Special Judge (ND & PS Court), Bishnupur would have no jurisdiction to deny bail to the petitioner when the petitioner has indefeasible right to be released on bail on account of default of the prosecution to file the challan within the prescribed time."

(vi) The Ld. Special Judge (ND & PS Court), Bishnupur had greatly erred in ignoring the fact that the application filed for extension of time does not indicate two important aspects viz (a) the progress of the investigation and (b) the specific reason for the detention of the petitioner beyond the period of 180 days. It is submitted that failure to narrate the twin aspects together would make the application outside the ambit of the proviso to Section 36-A(4) of the ND & PS Act.

(vii) The Ld. Special Judge (ND & PS Court), Bishnupur had greatly erred by extending of time for another 180 days to complete the investigation ignoring the fact that statutory bail is an indefeasible right of the petitioner and the same is liable to be granted since the extension of time as sought by the prosecution is not in accordance with statutory mandate of Section 36-A(4) of the ND & PS Act.

(viii) The Ld. Special Judge (ND & PS Court), Bishnupur had over emphasized the constitutional guarantee of protection of life and liberty against unauthorized and arbitrary detention and the same must be interpreted in consonance with the provisions of Section 167 (2) of Criminal Procedure Code. The Ld. Special Judge (ND & PS Court), Bishnupur had mechanically extended time period for investigation under Section 36-A(4) of the ND & PS Act.

(ix) The Ld. Special Judge (ND & PS Court), Bishnupur has abused the process of law by extending/granting additional 180 days of time w.e.f. 13.09.2023 for completion of the investigation in the absence of an appropriate report.

[4] The State respondent has filed objection to the present petition as follows:

“(i) With reference to para No. 1 & 2 of the present petition, the respondent has no comment to offer as the same are matter of records.

(ii) With reference to para No. 3 of the petition, the respondent begs to submit that on 01.03.2023 at -01:10 pm the complainant SI Onkhomang Haokip of Moirang PS lodged a written report with OC/Moirang PS stating that on the same day at about 09:20 am, a team of Tronglaobi VDF post led by HC Md. Wahidur Rahaman, HC AMd. Azad Hasan and VDFs and Moirang Police team along with women police led by the complainant being assisted by S.I.H. Haridas Singh, Hav. Rafik and Hav. Md. Islamuddin of CDO/BPR conducted normal routine frisking and checking at Tronglaobi Makha Leikai along Tidim Road NH – 2.

During the course of frisking and checking, one passenger vehicle was stopped at the spot and on further checking the said vehicle, one carry bag was found on the top of said vehicle which was suspected to be containing some contraband items. On further verification, one lady passenger was found in a very suspicious manner and she also accepted that the carry bag black in colour belongs to her and she identified herself as Mrs. Khupsiankim@Kimboi (33) w/o, Khupkhanhau of Lalzakhm Road, Gouchinkhup Veng, New Lamka CCpur, Sub-Div-CCpur. So, she was detained. As the police team need to check her belongings, the complainant gave the options whether she would like her belongings to be searched in presence of an Executive Magistrate or a Gazetted Officer or Civil witness. In that she offered to be searched in the presence of an Executive Magistrate. Thereafter, Boinao Singh Oinam, SDC/SDM Moirang came to the spot and in his presence the search was conducted. On searching her carry bag 104 (one hundred and four) soap cases suspected to be Heroin Ho. 4 were found from inside the carry bag. He (SDC/SDM) opined that the soap cases were suspected to be contraband items (Heroin No. 4 powder) after testing the Drug by using Drug Detection Kit. Accordingly, the said 104 (one hundred and four) soap cases suspected to be Heroin No. 4 power weighing about 4.270 kgs approximately in total including/containing the weight of the soap cases were seized at @ 11:50 am by preparing a formal seizure memo at the spot. Hence, she was arrested at @ 12:45 pm from the spot by observing due formalities. Hence, the arrested person, the seized items along with arrest and seizure memo are handed over to OC/MRG-PS for further necessary legal action.

(v) With reference to para No. 4, 5, 6, 7, 8 and 9 of the petition, the respondent has no comment to offer.”

[5] For better appreciation on the facts and law involved in the present case, Section 36-A(4) of the ND & PS Act, 1985 is reproduced herein below:

"(4) In respect of persons accused of an offence punishable under section 19 or section 14 or section 27A or for offences involving commercial quantity the references in sub-section (2) of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to 'ninety days', where they occur, shall be construed as reference to 'one hundred and eighty days':

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days."

[6] The allegations made in the present Cril. Petition by the petitioner is that the respondent failed to indicate the progress of the investigation and in addition to that, no specific reason was given for detention of the petitioner beyond the period of 180 days.

From the facts available on record and on perusal of the pleadings of the parties and after hearing both the learned counsels, it is evident that the default bail application was filed before the Trial Court by the present petitioner, when pending Cril. Misc. Case No. 39 of 2023 for extension of detention of the accused beyond 180 days which was filed by the I.O. of the case.

Perused the application filed by the I.O. of the case under Section 36-A(4) of the ND & PS Act, 1985. The ground taken by the I.O. of the case is reproduced herein below:

"4. That the accused person is a habitually drug supplier and they may influence the young generations of her locality. Further, they will meddle in the investigation which will hamper and temper the investigation by influence PW's and may even evade police arrest in future. So, their detention behind the bars is absolutely necessary for smooth completion of the case. The accused persons into the judicial custody is highly required in order to avoid further supply of drugs and manufacturing of such contraband items.

5. *That, from the above facts and circumstances available so far have reasonable beyond doubt that the accused person have committed the offence U/S 18(b) ND&PS Act. The seized items were sent to DFS, Pangei for examination and opinion of expert vide memo No. 120/MRG-PS/2023 dated 2/05/2023. The opinion of expert from DFS, Manipur Pangei is awaited.*

6. *That, the investigation is in progress and continuing without any break and the charge sheet shall be submitted soon."*

It is evident that the I.O. of the case placed the reasonable grounds for allowing the petition for extending detention period of the accused beyond the 180 days.

[7] Perused the impugned order of the Ld. Special Judge (ND&PS), Bishnupur and found that Ld. Court considered all these facts put up by the parties and rightly passed the impugned order.

[8] In the background of the discussions made hereinabove and on taking an overall view, I find no ground for quashing/setting aside the impugned order dated 12.09.2023 passed by the Ld. Special Judge (ND & PS), Bishnupur.

[9] Accordingly, the present application is dismissed and disposed of, without costs. However, the petitioner is given liberty to file a fresh application on other grounds, if desired.

[10] Send an extract copy of this order to the Court of Special Judge (ND&PS), Bishnupur.

JUDGE

(FR/NFR)

Bipin