

**HIGH COURT OF TRIPURA
AGARTALA
B.A.No.70 of 2024**

Sri Mantosh Ranjan Biswas,
son of Late Monoranjana Biswas,
resident of Office Lane, P.O.HPO,
P.S. West Agartala, District-West Tripura,
Pin-799001

----Petitioner(s)

For and on behalf of :

Rabin Biswas,
son of Sri Mantosh Ranjan Biswas,
resident of Office Lane, P.O.HPO,
P.S. West Agartala, District-West Tripura,
Pin-799001

----Applicant(s)

Versus

The State of Tripura

----Respondent(s)

For Applicant(s)	:	Mr. S. Kar Bhowmik, Sr. Adv. Mr. Sreekanta Bal, Adv. Mr. E.L. Darlong, Adv. Mr. Jyotishmay Das, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P. Mr. S. Ghosh, Addl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT
Order

18/11/2024

This application under Section 439 of Cr.P.C. is filed for releasing of the accused in custody namely Sri Rabin Biswas who is lodging in jail in connection with GRPS Case No.07/2022 under Section 21(c)/29 of NDPS Act.

Heard Mr. S. Kar Bhowmik, Learned senior counsel assisted by Mr. Sreekanta Bal, Learned counsel, Mr. E.L. Darlong, Learned counsel, Mr. Jyotishmay Das, Learned counsel appearing for the accused in custody and

also heard Mr. Raju Datta, Learned P.P. assisted by Mr. S. Ghosh, Learned Addl. P.P. appearing for the State-respondent.

Taking part in the hearing, Mr. S. Kar Bhowmik, Learned senior counsel appearing on behalf of the accused in custody drawn the attention of the Court that the accused was arrested by the police in connection with the aforesaid case on 19.03.2024 and since then, he is lodging in jail. Learned senior counsel further submitted that the statutory period of detention was over on 15.09.2024 but the investigating agency filed a petition under Section 36A(4) of NDPS Act for extending the period of detention, despite non-filing of charge sheet within the statutory period on 13.09.2024. But on that day, no order was passed in absence of regular presiding officer and thereafter, by order dated 18.09.2024 the concerned Learned Special Judge by the said order allowed the prayer of the prosecution beyond the statutory period in view of the provision provided under Section 36A(4) of NDPS Act without any jurisdiction as the prayer of the prosecution order was not a "report" as required by law.

Learned senior counsel further submitted that he sought default bail within time on 15.09.2024 for failing to submit charge sheet by the IO and he also referred the copy of receipt sent through courier. Learned senior counsel also submitted that on 13.09.2024, all though Learned Addl. P.P. submitted prayer for extending the period under Section 36A(4) of NDPS Act and on that day the IO also submitted a similar prayer before the Court and the subject matter of both the petitions were almost same. Learned senior counsel also submitted that the petition filed by the prosecution appears to be non-application of mind beyond the principle of law laid down by the Hon'ble Apex Court. He also drawn the attention of the Court the aforesaid provision of the NDPS Act and in support of his contention Learned senior counsel drawn the attention of the Court of para No.23 of the citation of Hon'ble Supreme Court of India in **Hitendra Vishnu Thakur and Others versus State of**

Maharashtra and Others reported in **1994 4 SCC 602** wherein the Hon'ble Apex Court in the said para observed as under :

"23. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before Submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "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" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release hi on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of

the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the Justification, from the report of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes indefeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier part of this judgment. We are unable to agree with Mr Madhava Reddy or the Additional Solicitor General Mr Tulsi that even if the public prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the report of the public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution of any expression in it. We have already dealt with the importance of the report of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (bb) of sub-section (4) of Section 20. Since the law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid report falls in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether the public prosecutor labels his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (bb) (supra). Even the mere reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report to seek extension of time. In the absence of an appropriate report the Designated Court would have no jurisdiction to deny to an accused his Indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. Moreover, no extension can be granted to keep an accused in custody beyond the prescribed period except to enable the investigation to be completed and as already stated before any extension is granted under clause (bb), the accused must be put on notice and permitted to have his say so as to be able to object to the grant of extension."

He further drawn the attention of this Court referring another citation in **Sanjay Kumar Kedia alias Sanjay Kedia versus Intelligence Officer, Narcotics Control Bureau and Another** reported in **2009 17 SCC**

631 wherein para Nos.12, 15 & 16 the Hon'ble Apex Court has observed as under :

"12. The maximum period of 90 days fixed under Section 167 (2) of the Code has been increased to 180 days for several categories of offences under the Act but the proviso authorizes a yet further period of detention which may in total go upto one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:

- (1) a report of the public prosecutor,**
- (2) which indicates the progress of the investigation, and**
- (3) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and**
- (4) after notice to the accused.**

15. Mr. Lalit, has further contended that the two applications for extension of time could not, by any stretch of imagination, be said to be reports of the public prosecutor as envisaged under Section 36A (4) and has again referred us to the case ibidem: Hitendra Vishnu Thakur v. State of Maharashtra reported in (1994) 4 SCC 602

"23. A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with this request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "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" as occurring in clause (bb) in sub- section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the

consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor.

16. The court further went on to say that even if the application for extension of time was either rooted through the public prosecutor or supported by him would not make the said application a report of the public prosecutor. Mr. Bhattacharjee has, however, pointed out that the applications for extension filed by the public prosecutor Section 36A (4) of the Act did satisfy the aforesaid conditions and merely because an independent report had not been tendered would not change the nature of the application."

Learned senior counsel also referred other citations of the Hon'ble Punjab & Harayana High Court in **Parmod Kumar versus State of Haryana** dated 16.01.2024 and **Ravinder @ Bhola versus State of Haryana** dated 03.11.2023 and another order dated 29.02.2020 delivered by this High Court in connection with Case No.B.A.20/20 [**Subhadra Debbarma on behalf of Accd. Rupan Miah versus State of Tripura**].

Referring the aforesaid principles of law laid down by the Hon'ble Apex Court and other High Courts Learned senior counsel finally submitted that the prayer of the prosecution was nothing but a mechanical petition contrary to the provision of Section 36A(4) of NDPS Act. So, Learned senior counsel lastly submitted that since the accused is lodging in jail for a period of almost eight months so considering the facts and circumstances of the case, he may be released on bail in any condition.

On the other hand, Mr. Raju Datta, Learned P.P. appearing on behalf of the State-respondent strongly opposed the bail application submitted by the accused in custody and submitted that as referred by Learned senior counsel the charge sheet is submitted by the IO. However, prior to the statutory period the prosecution has submitted application for extension of period of detention beyond the statutory period which was within time and by order dated 18.09.2024 the Learned Special Judge has allowed the said application of the prosecution and also rejected the bail application of the accused. So, considering the materials on record at this stage there is no scope to release the accused on bail as alleged by the accused in custody. Learned

P.P. also relied upon two citations of the Hon'ble Apex Court of India. In **M. Ravindran versus Intelligence Officer, Directorate of Revenue Intelligence** reported in **(2021) 2 SCC 485** the Hon'ble Apex Court in para Nos.20 & 20.1 has observed as under :

"20. There also appears to be some controversy on account of the opinion expressed in Hitendra Vishnu Thakur versus State of Maharashtra : (1994) 4 SCC 602 that the Public Prosecutor may resist grant of default bail by filing a report seeking extension of time for investigation. The Court held that:

"30...It is, however, permissible for the public prosecutor to resist the grant of bail by seeking an extension under clause (bb) by filing a report for the purpose before the court. However, no extension shall be granted by the court without notice to an accused to have his say regarding the prayer for grant of extension under clause (bb). In this view of the matter, it is immaterial whether the application for bail on ground of 'default' under Section 20(4) is filed first or the report as envisaged by clause (bb) is filed by the public prosecutor first so long as both are considered while granting or refusing bail. If the period prescribed by clause (b) of Section 20(4) has expired and the court does not grant an extension on the report of the public prosecutor made under clause (bb), the court shall release the accused on bail as it would be an indefeasible right of the accused to be so released. Even where the court grants an extension under clause (bb) but the chargesheet is not filed within the extended period, the court shall have no option but to release the accused on bail if he seeks it and is prepared to furnish the bail as directed by the court..."

(emphasis supplied)

This was affirmed by the Constitution Bench in Sanjay Dutt versus State : (1994) 5 SCC 410, wherein it was held that the grant of default bail is subject to refusal of the prayer for extension of time, if such a prayer is made. This seems to have given rise to the misconception that Sanjay Dutt (supra) endorses the view that the prosecution may seek extension of time (as provided for under the relevant special statute) for completing the investigation or file a final report at any time before the accused is released on bail, notwithstanding the fact that a bail application on ground of default has already been filed.

20.1 The observations made in Hitendra Vishnu Thakur (supra) and Sanjay Dutt (supra) to the effect that the application for default bail and any application for extension of time made by the Public Prosecutor must be considered together are, in our opinion, only applicable in situations where the Public Prosecutor files a report seeking extension of time prior to the filing of the application for default bail by the accused. In such a situation, notwithstanding the fact that the period for completion of investigation has expired, both applications would have to be considered together. However, where the accused has already applied for default bail, the Prosecutor cannot defeat the enforcement of his indefeasible right by subsequently filing a final report, additional complaint or report seeking extension of time."

Learned P.P. further referred another citation of High Court of Calcutta in **Subhas Yadav versus State of West Bengal** reported in **2023 SCC OnLine Cal 313** wherein para No.31 the said High Court observed as under :

31. In light of the aforesaid discussion, the issues are answered as follows:-

"1. Right of an accused to statutory bail upon expiry of the period of detention prescribed under section 36A(4) of NDPS Act is an inchoate one till he avails of his right by seeking statutory bail either by way of an application or even orally. Hence, he cannot be released automatically on statutory bail on the mere expiry of 180 days even if the prosecutor has failed to submit report seeking extension of detention in terms of the proviso to section 36A(4) of the Act before expiry of the said period;

2. Order extending the period of detention under proviso to section 36A(4) of NDPS Act on a report of the Public Prosecutor submitted after expiry of 180 days but prior to the accused availing of his right does not envisage retrospective operation but the total period of detention under the aforesaid provision cannot exceed one year in the whole;

3. As per Para 25.3 of M. Ravindran (supra) the right to statutory bail stands extinguished once the report of the Public Prosecutor seeking extension is filed. Hence, remand of the accused till the prayer of the prosecutor is disposed of is traceable to section 167 (2) Cr. P.C. read with section 36A(4) of the NDPS Act. In the event, the application for extension is dismissed or an order extending detention is set aside by a superior court right to statutory bail revives in favour of the accused;

4. Upon expiry of 180 days of detention, Special Court as a cautionary measure ought to inform the accused (particularly if he is from an underprivileged section of society and is unrepresented by a counsel) of his right to statutory bail. However, failure to intimate the accused of his right by itself would not entitle him to statutory bail unless he avails of such relief;

5. Prayer for extension of period of detention must be on the basis of a report of Public Prosecutor which must record progress of investigation and spell out specific reasons to justify further detention beyond 180 days pending investigation;

6. Special Court on the basis of the report of Public Prosecutor and materials in support of such plea must be satisfied of the twin requirements, i.e., (a) there is appreciable progress in the investigation and (b) there are specific/compelling reasons to justify further detention pending investigation. Each case has to be decided on its own merits. For example, failure to complete investigation solely on the score of non-submission of FSL report of the samples drawn from the contraband is an institutional shortcoming. This by itself may not justify further detention pending completion of investigation. But if the aforesaid fact situation is coupled with compelling circumstances like complexities in investigation in an organized crime racket or inter- state/trans-border trafficking, criminal antecedents of the accused giving rise to possibility of recidivism, abscondence of co-accused, etc., constituting 'specific reasons' justifying further detention, the Court may be inclined to extend the period of detention and deny liberty;

7. Prayer for extension of period of detention must be decided at the earliest without undue delay preferably within 7 days from

making such application. Reasons for adjournment must be specifically stated;

8. No written notice or copy of report of Public Prosecutor requires to be served upon the accused or his counsel but the accused or his counsel must be present personally or through video linkage at the time of consideration of the application. Accused and/or his counsel must be aware of such consideration and may raise objection, if any, with regard to compliance of mandatory requirements of law."

Referring the aforesaid citations Learned P.P. submits that considering the materials on record at this stage there is no scope to release the accused on bail as the allegation against the accused in custody is serious in nature and there is evidence of possessing contraband items of commercial quantity. So, he urged for dismissal/rejection of the bail application.

Considered.

I have heard detailed arguments of both the sides and perused the relevant prosecution papers. In this case, the prosecution was set into motion on the basis of an FIR laid by Inspector Rajib Saha, Inspector of Police (Anti Narcotics), Tripura Police Crime Branch, to O/C Agartala GRPS Agartala, West Tripura alleging inter alia that on 25.04.2022 they received a secret information that huge quantity of codeine based cough syrup was being transported from Kolkata to Agartala through Sealdah to Agartala Kanchanjangha Express in the parcel Vans and the bottles of cough syrup were concealed in cartons of different Rexin bags and jute bags. Accordingly, the matter was brought to the knowledge of higher authority and on receipt of permission, they formed a team comprising of the officers and man of anti narcotic units and after sharing the information with O/C GRPS and entered the same in Agartala GRPS GD entry No.22 dated 25.04.2022 at about 1635 hrs. they conducted search in Sealdah Agartala Kanchanjangha Express following the formalities in presence of Chief Commercial Inspector of parcel bag and in course of search they could recover and seized huge numbers of escuf syrup which were ultimately seized by him as per procedure and hence he laid the FIR and the case was registered and in course of investigation, the present

accused was arrested and produced before the Court on 19.03.2024 and since then he is lodging in custody.

I have also seen the prayer of the prosecution dated 13.09.2024 submitted to the Learned Court below and also the prayer of the IO submitted to the Court under Section 36A(4) of NDPS Act on that date and that petition was taken up for hearing and order by the Learned Special Judge on 18.09.2024. By the said order Learned Special Judge, Court No.2, West Tripura, Agartala also allowed the prayer of the prosecution for extension of the period beyond 180 days. For the sake of convenience I would like to refer herein below the relevant provision of Section 36A(4) of NDPS Act which provides as under :

Section 36A(4) in The Narcotic Drugs And Psychotropic Substances Act, 1985

(4)In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 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."

We have already received the LCR and from the LCR it appears that by this time the IO has submitted charge sheet against this present accused and Others and accordingly, on 18.11.2024 necessary order is passed and cognizance of offence punishable under Section 21C/29 of the NDPS Act was taken by the Learned Special Judge against the accused person in custody and others. From the relevant prosecution papers and also from the principles of law laid down by the Hon'ble Apex Court in the above cases and also from the prayer submitted by Learned Addl. P.P. on behalf of the prosecution at this stage I do not find any infirmity in the said "report" of the prosecution, as such I do not find any material to consider the bail application of the accused in custody since there is direct allegation against the accused in

custody showing his involvement with the alleged offence. So, the bail application filed on behalf of the accused person in custody stands rejected being devoid of merit. The accused shall remain in jail custody as before. Learned Court below shall take all steps to dispose of this case given top priority since the accused persons are lodging in jail. It is ordered that Learned P.P. shall take up the matter with all the PP's and Addl. P.P.'s who are posted at different Courts across the State to ensure that whenever any situation arises to file any application under Section 36A(4) of NDPS Act for extension of period beyond the statutory period of detention of any accused in custody, in that case, at the time of submission of application/report, all the concerned PP's and Addl. PP's shall file their application strictly in accordance with the provisions contained in the law as mentioned above.

Returned back the CD to IO through Learned PP along with a copy of this order for information and compliance.

Send back the LCR along with a copy of this order.

With this observation, the bail application stands disposed of.

JUDGE

SABYASACHI
BHATTACHARJ
EE



Digitally signed by
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BHATTACHARJEE
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