

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(CrI.) No.04 of 2024

Smt. Ritu Parna Sen,
Daughter of Sri Manash Sen,
wife of Sri Abhijit Nama, R/O-
Siddhi Ashram, Agartala, P.S.
Amtali, P.O. Amtali, West Tripura
on behalf of:

Sri Abhijit Nama
Son of Sri Ajit Nama, R/O-
Siddhi Ashram, Agartala, P.S.
Amtali, P.O. Amtali, West
Tripura.

..... **Petitioner(s)**

- V e r s u s -

1. **The State of Tripura,**
to be represented by the Principal
Secretary, (Home) to the Government
of Tripura
2. **The Investigating Officer**
of GRPS Case No.07/2022,
GRPS, Agartala, Tripura (W).

..... **Respondent(s)**

For the Petitioner (s)	:	Mr. D. Biswas, Adv.				
For the Respondent (s)	:	Mr. R. Datta, PP				
Date of hearing & delivery of Judgment & order	:	20.02.2025				
Whether fit for reporting	:	<table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="padding: 2px 10px;">YES</td><td style="padding: 2px 10px;">NO</td></tr><tr><td style="padding: 2px 10px; text-align: center;">√</td><td style="padding: 2px 10px;"></td></tr></table>	YES	NO	√	
YES	NO					
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Biswas, learned counsel appearing for the
petitioner and Mr. R. Datta, learned PP appearing for the State.

[2] The writ petition has been filed challenging the order dated
04.05.2024 passed by the learned Special Judge (NDPS), Court No.2, West
Tripura, Agartala in Agartala GR PS case no.07 of 2022 registered under

sections 21(c)/29 of NDPS Act, whereby the learned Special Judge allowed the prayer of the learned Special P.P by extending the period of detention of the petitioner in custody beyond 180 days under Section 36A(4) of the said Act.

[3] On 26.04.2022, the FIR was lodged by one Rajib Saha, Inspector of Police (Anti Narcotics), Tripura Police Crime Branch, Agartala to the O.C., Agartala, GR PS against some accused persons including one Abhijit Nama of Agartala, *inter-alia*, with the allegations that on the basis of a secret information they recovered 4792 bottles of Phensedyl and 4520 bottle of Eskuf syrup from the parcel van of Sealdah to Agartala Kanchanjhanga Express and the said 4520 Nos. bottle of Eskuf syrup were booked by M/S Sristi Enterprise, B.G road, Kolkata for the accused person, namely Abhijit Nama.

[4] Mr. Biswas, learned counsel submits that Abhijit Nama surrendered before the court and he was in custody from 07.11.2023. On 04.05.2024 the learned Special P.P submitted a report under Section 36A(4) of the NDPS Act before the Ld. Special Judge for extending the detention of the accused Abhijit Nama beyond 180 days. On that day, the accused himself was also produced before the court and a separate bail application was filed on his behalf. Mr. Biswas, learned counsel submits that the copy of said petition/report of the learned Special PP was never served upon the accused or to his learned counsel and without hearing them, the impugned order was passed. Mr. Biswas, learned counsel further argues that similar petition was also filed by the investigating officer on the

same day [Annexure-2 of the writ petition] before the Ld. Special Judge and simultaneously learned Special PP also submitted his petition. The three points as raised Mr. Biswas, learned counsel in support of his challenges to the impugned order are that – (i) the copy of the petition of Ld. P.P. was not furnished to the accused or to his Ld. Counsel for which they were in dark about such petition and there is also no indication in the impugned order that Ld. Defence Counsel was heard on that petition and (ii) the petition submitted by the learned Special PP was a mere a “copy-paste version” of what the investigating officer mentioned in his petition submitted before the learned Special Judge and there was no independent application of mind by learned Special PP. Therefore, according to Ld. Counsel, Mr. Biswas, the impugned order is liable to be set aside.

[5] Mr. R. Datta, learned PP, on the other hand, appearing for the State submits that there is no legal requirement to supply of the copy of the petition filed under Section 36A(4) of the Act by to the concerned accused person or to his engaged counsel. Mr. Datta, learned PP further submits that the writ petition has become infructuous as already the accused, Abhijit Nama has been released on bail and the charge-sheet has also been laid by the investigating officer in this case. Mr. Datta, learned PP tries to gain support on a decision of Calcutta High Court (3-Judge Bench) in the case of **Subhas Yadav vs. the State of West Bengal** reported in **2023 SCC OnLine Cal 313** wherein the High Court held that a written notice and copy of the report of the Public Prosecutor submitted under section 36A(4) of NDPS Act may not be required to be supplied to

the accused, but the accused is required to be produced physically or through the video linkage before the court when the prayer for extension is considered and he must be made aware of such consideration. It was further observed that in that case, the accused will also be entitled to raise objection, if any, with regard to the compliance of the mandatory requirements of law. The High Court in said case also relied on the ratio laid down by the Apex Court in **Sanjay Dutt vs. State through CBI, (1994) 5 SCC 410, Jigar alias Jimmy Pravinchandra Adatiya vs. State of Gujarat (Criminal Appeal No.1656 of 2022 arising out of SLP (Cri) No.7696 of 2021 decided on 23.09.2022)** and in **Sanjay Kumar Kedia v. Intelligence Officer, Narcotics Control Bureau, (2009) 17 SCC 631**. The relevant paragraph regarding conclusions reached by the Calcutta High Court in the above said case is extracted hereunder:

"As noted earlier, the only modification made by the larger Bench in the case of Sanjay Dutt to the decision in the case of Hitendra Vishnu Thakur is about the mode of service of notice of the application for extension. If so many words, in paragraph 53(2)(a) of the Judgment, this Court in the case of Sanjay Dutt held that it is mandatory to produce the accused at the time when the Court considers the application for extension and that the accused must be informed that the question of extension of the period of investigation is being considered. The accused may not be entitled to get a copy of the report as a matter of right as it may contain details of the investigation carried out. But, if we accept the submission of the respondents that the accused has no say in the matter, the requirement of giving notice by producing the accused will become an empty and meaningless formality. Moreover, it will be against the mandate of clause (b) of the proviso to sub-section (2) of section 167 Cr.P.C. It cannot be accepted that the accused is not entitled to raise any objection to the application for extension. The scope of the objections may be limited. The accused can always point out to the Court that that the prayer has to be made by the Public Prosecutor and not by the investigating agency. Secondly, the accused can always point out the twin requirements of the report in terms of proviso added by sub-section (2) of Section 20 of the 2015 Act to sub-section (2) of Section 167 of Cr.P.C. The accused can always point out to the Court that unless it is satisfied

that full compliance is made with the twin requirements, the extension cannot be granted."

The first point as raised by Mr. Biswas, learned counsel is answered accordingly that written notice or furnishing of copy of the petition or report of the Public Prosecutor under section 36A(4) of the Act to the accused or his engaged counsel is not compulsory, however, the accused or his counsel must be present personally or through virtual mode at the time of consideration or hearing of such petition and they should be aware of such consideration, so that they may raise objection, if any, with regard to compliance of mandatory requirements of law.

[6] Regarding the second point of challenge that there was no independent application of mind of learned PP while submitting the petition under Section 36A(4) of the Act, it appears that the maximum paragraphs of the petition submitted by the investigating officer were carried forward in the petition filed by learned PP with certain addition of further facts and therefore, it is not correct that the exact 'copy-paste version' of the petition submitted by the investigating officer before the learned Special Judge. Law is settled by the Apex Court in the case of **Sanjay Kedia (supra)** and earlier thereto in ***Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602***. The relevant paragraph no.23 of **Hitendra Thakur's** case as referred to in Sanjay Kedia is extracted hereunder:

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 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).

[7] In view of above position, it is also incumbent upon the Ld. Special Judge to be satisfied that Ld. Special Public Prosecutor while submitting report through a petition or otherwise, has independently applied his mind while making such report and that the twin test as enumerated in proviso to section 36A(4) of the Act about the progress in the investigation and the specific reasons justifying detention of the accused beyond said 180 days, are indicated in the said report. The Court cannot mechanically or casually deal with such a report.

[8] What disturbs the Court is that in the impugned order there is no mention whether the accused or his learned counsel was made aware of submission of such petition by learned Special PP and whether the accused

person or his learned counsel was heard on that petition. The order passed by the learned Special Judge also appears to be very cryptic in nature and no reasoning was assigned by him as to how he became satisfied about the necessity of further detention of the accused person in the custody beyond 180 days. Learned Special Judge simply observed that there were reasonable and sufficient grounds to extend the period of detention of the accused Abhijit Nama beyond such period of 180 days and therefore, the petition was allowed. The relevant paragraph of the impugned order is excerpted herein below:

"Considering the petition so filed by the Ld. Special PP accompanied by the report of the IO of the case, I find there is reasonable and sufficient ground to extend the period of detention in respect of the accused person namely, Sri Abhijit Nama beyond the period of 180 days. Hence the petition so filed by the Ld. Special PP U/S 36A(4) of the NDPS Act stands allowed in respect of accused person, namely Sri Abhijit Nama."

[9] Time and again it has been reiterated by the Apex Court that reasoning is the very sole of a judicial order which not only manifests the application of judicial mind of a Judge but also bears clarity in the decision making process. It is the basic foundation of just and fair decision and therefore, omission or failure on the part of a Judge to give reasoning in support of his decision otherwise amounts to denial of justice to the parties. It is a method of communication of the thought process and wisdom of the court in such decision making exercise. It also generates satisfaction in the mind of the litigant that the court is conscious and careful about their causes and the same are being dealt within the arena of law.

[10] In this regard, the relevant paragraph no.24 of a decision of the Apex Court in case of **Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota vs. Shukla and brothers, (2010) 4 SCC 785** is being profitably quoted hereunder:

"24. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever precise they may be."

[11] In the case in hand, apart from what were mentioned by the investigating officer in his petition, Ld. Special P.P. while submitting his petition before Ld. Special Judge also mentioned that earlier the accused Abhijit Nama was released on interim bail in the case on medical ground and he had also submitted some documents of his dialysis done at Holy Mission Hospital, Patna which on enquiry later on were found to be fake. Ld. Special P.P. also mentioned that the investigation was not completed and raid was being conducted to arrest the co-accused and moreover, the accused being a habitual offender, if released on bail he would commit similar offence. He also gave references of two other such cases under NDPS Act wherein said Abhijit Nama was a FIR named accused. Anyway considering the changed circumstances that the accused has already been released on bail and the charge-sheet has also been laid by the investigating officer, the writ petition has practically become infructuous and therefore, no further scrutiny is being done by this Court as to whether

such twin conditions as enumerated in proviso to section 36A(4) of the Act have been satisfied in this case or not. Doing of such exercise will now be futile. However, direction is given to the learned Special Judge to deal with such a petition filed under Section 36A(4) of the NDPS Act in future strictly in accordance with the settled principle of law as discussed above.

With such observations, the writ petition is disposed of accordingly.

Interim application(s), if any, shall also stands disposed of.

The Registry is directed to circulate this judgment and order to all the learned Special Judges immediately.

JUDGE



Sujay

SUJAY GHOSH

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