

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Revision No.543 of 2015

Smt. Reena @ Sarvari, W/o Irfan @ Mohammad Gufran, aged about 24 years, R/o Kasim Vihar, Amitin Enclave, Police Station Kornika, City Loni, Civil & Revenue District Gajiyabad (Uttar Pradesh)

---- Applicant

Versus

State of Chhattisgarh, through Police Station Sukma, District South Bastar Dantewada (Chhattisgarh)

--- Non-applicant

For Applicant : Mr. P.R. Patankar, Advocate.

For Non-applicant : Mr. Anupam Dubey, Deputy Govt. Advocate, on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/08/2015

1. By this impugned order dated 17-6-2015 passed by the Special Judge under the NDPS Act, South Bastar Dantewada, in Special Case No.4/2015, the applicant seeks to challenge the rejection of her application filed under Section 167 (2) of the CrPC for grant of bail.
2. Mr. P.R. Patankar, learned counsel for the applicant would submit that from the present applicant only 8 Kgs., of cannabis / Ganja was recovered, whereas from co-accused Asgar Ali 21 Kgs., of Ganja was recovered and thus, 29 Kgs., of Ganja was recovered from two accused in Crime No.36/2015, registered at Police Station Sukma, Distt. South Bastar Dantewada for the offence punishable under Section 20 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'). He

would further submit that the FIR was made on 12-4-2015, seizure was also made on 12-4-2015 and the applicant was arrested on 12-4-2015. Learned counsel would further submit that since the Ganja allegedly recovered from the possession of the applicant is only 8 Kgs., and 8 Kgs., of Ganja is less than commercial quantity, charge-sheet ought to have been filed within 60 days by virtue of the provisions contained in proviso (a) (ii) to Section 167 (2) of the Cr.P.C., as the punishment is less than ten years and since the charge-sheet was filed after 60 days, therefore she is entitled to be released on bail under the provisions contained in Section 167(2) of Cr.P.C. and the Special Judge is absolutely unjustified in rejecting her application filed for grant of bail under above-stated provision, as such impugned order deserves to be set-aside and applicant be directed to be released on bail.

3. Mr. Anupam Dubey, learned counsel for the State, would submit that in Crime No.36/2015 from the applicant and one another co-accused Asgar Ali, total 29 Kgs., of Ganja was recovered and quantity of Ganja is more than commercial quantity, as commercial quantity is 20 Kgs., as per the notification dated 16th July, 1996 (serial No.55 of the Table) issued by the Central Government and, therefore, Section 167 (2) (a) (i) of the CrPC would be attracted. Learned State counsel would further submit that charge-sheet was filed on the date on which the application of the applicant was decided as such, learned Special Judge was absolutely justified in rejecting the application for grant of bail under Section 167 (2) of the CrPC. He would also submit that since the Ganja recovered from the possession of the applicant and the co-accused is more

than commercial quantity, Section 36-A (4) of the NDPS Act, would be attracted and the period for filing charge-sheet would be 180 days, as such, the revision petition deserves to be dismissed.

4. I have heard learned counsel appearing for the parties and perused the records with utmost circumspection.
5. It is not in dispute that charge-sheet was filed against the applicant and the co-accused Asgar Ali by the jurisdictional police in Crime No.36/2015 for being in possession of 29 Kgs., of Ganja / cannabis and pursuant to the FIR made on 12-4-2015 and the accused were arrested on same day. It is also not in dispute that as per the notification issued by the Central Government on 16-7-1996 (serial No.55 of the Table), commercial quantity of Ganja is 20 Kgs.. By virtue of the provisions contained in Section 36-A (4) of the NDPS Act, if in the offence commercial quantity of *Ganja* is involved then the period for filing charge-sheet would be 180 days instead of 60 days. It is also not in dispute (on 65th day) that the date on which the applicant's application was decided by the Special Court, the charge-sheet was filed as such, on 17-6-2015, the date on which the application of the applicant was decided, charge-sheet stood filed.
6. Section 167 of the Code deals with the procedure wherein investigation cannot be completed in 24 hours and the various sub-sections provide for the maximum period beyond which a person cannot be detained and this period varies between 60 and 90 days keeping in view the gravity of the offence – the maximum period of 90 days being provided with respect to the offences punishable with death, etc. and 60 days for other offences, and if

the investigation is not completed within this period, the accused is entitled to bail under Section 167 sub-section (2) if he makes an application for that purpose and is prepared to furnish bail.

7. That Section 167 does not envisage an extension of the period of detention of an accused in custody beyond the specified periods. The legislature, however, thought in its wisdom, that certain special categories or situations required that the investigating agencies should be given more time to investigate a matter and to file their complaint or charge-sheets and such provisions have been made under special statutes. The NDPS Act is one of such special legislation
8. Sub-section (4) of Section 36-A of the NDPS Act states as under:-

“36- Offences triable by Special Courts. – (1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a)-(d)	*	*	*
(2)-(3)	*	*	*

(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.”

9. Thus, the maximum period of 90 days fixed under Section 167(2) of the Code has been increased to 180 days for several categories of the offences under the Act including where the offence involves commercial quantity *i.e.* 20 Kg. of Narcotics Drug.
10. Thus, keeping in view the provisions contained in sub-section (4) of Section 36-A of the NDPS Act, if the facts of the case are examined it is quite vivid that the jurisdictional police have recovered 29 Kg. of Ganja from the possession of applicant and one other co-accused in Crime No. 36 of 2015 which is an commercial quantity as per notification issued by Central Government and thereby the provisions contained in sub-section (4) of Section 36-A would attracted and therefore the period for filing the charge-sheet against the applicant/accused further offence registered against him would be 180 days, it is not in dispute that the charge-sheet has already been filed on sixty fifth day from the date of arrest of the applicant and as such the Special Judge has not committed any jurisdictional error while rejecting the application filed by applicant, requiring interference in exercise of revisional jurisdiction by this Court.
11. Consequently, the revision petition deserves to be dismissed and is hereby dismissed, at the admission stage itself, without notice to the other side.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma