

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRR 384 of 2015

Date of Decision: March 2, 2015

Gurparkash Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. D.S. Pheruman, Advocate
for the petitioner.

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M.M.S. BEDI, J.

Petitioner was allegedly found in possession of 500 grams of heroin on June 29, 2014. Vide order dated December 24, 2014, Judge, Special Court, Tarn Taran has allowed the application under Section 36 A (4) of the NDPS Act filed by Additional PP, Tarn Taran and granted permission for detention of the petitioner beyond a period of 180 days.

Counsel for the petitioner has submitted that no doubt the application filed under Section 36 A (4) of the NDPS Act has been decided prior to the expiry of 180 days but the power has been misused in contravention to the law laid down in **Sanjay Kumar Kedia @ Sanjay**

Kedia Vs. Intelligence Officer, Narcotic Control Bureau and another, 2010 (1) RCR (CrI.) 942 and also in **Hitendra Vishnu Thakur Vs. State of Maharashtra,** AIR 1994 SC 2623.

Counsel for the petitioner has vehemently urged that there is absence of independent application of mind by the Addl. Public Prosecutor. He has urged that vide annexure P-3, the SHO, Police Station City, Tarn Taran had forwarded a communication on December 19, 2014 indicating that 180 days after arrest of petitioner were going to expire on December 26, 2014 and the sample for chemical examination had been sent on October 15, 2014 but the report had not yet been received. The investigation was still pending as such a request was made for extension of the judicial custody. On the basis of the said application annexure P-3, the Additional Public Prosecutor, Tarn Taran framed an application reporting the circumstances on December 20, 2014.

The main grievance of the learned counsel for the petitioner is that in the present case the father of the petitioner Prem Singh had been intimated by AIG of Police (Crime) vide communication dated December 18, 2014 that a Special Investigation Team had been constituted in the present case in which DIG Border Range, Amritsar, SSP, Gurdaspur and SP (Crime) Zonal had been nominated as members of the Special Investigation Team. The said fact of Special Investigation Team having been constituted was required to be reflected in the application which was submitted in the Court.

Referring to judgment in **Hitendra Vishnu Thakur's** case (supra), learned counsel has urged that while considering the provisions of Section 20 (4) (bb) of the Terrorist and Disruptive Activities (Prevention) Act, 1987, analyzing the said provision which is at par with the provisions under Section 36 A (4) of the NDPS Act, it was observed that the report of the Public Prosecutor is not a mere 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 of the statute. It has been urged that the report of the Public Prosecutor should mention the progress of investigation and special reason for non-presentation of the challan. He has also referred to observations in **Sanjay Kumar Kedia's** case (supra) to contend that the extension of judicial remand beyond 180 days can be permitted only if the following conditions are fulfilled:-

- i) There is a report of Public Prosecutor;
- ii) The report of Public Prosecutor should indicate the progress of the investigation;
- iii) The report should specify the compelling reasons for seeking the detention of accused beyond the period of 180 days; and
- iv) The application under Section 36 A (4) of the NDPS Act should be decided after giving notice to the accused.

I have heard learned counsel for the petitioner and carefully gone through the facts and circumstances of the case. The legality and

propriety of the order dated December 24, 2014 has been questioned in the present revision petition, mainly on the ground that the report of the Public Prosecutor being a vital report affecting the liberty of the petitioner, in the present case, is silent about the progress of the investigation and the special reasons for non-presentation of challan, therefore, as per **Hitendra Vishnu Thakur's** case (supra), the application under Section 36 A (4) of the NDPS Act should have been dismissed.

In the present case, the application for extension of time under Section 36 A (4) of the NDPS Act was filed on December 20, 2014, prior to the expiry of 180 days. The application has been moved by the Additional Public Prosecutor. The application specifically mentions the fact regarding the progress of investigation and the compelling reasons for seeking detention of the petitioner beyond period of 180 days. Notice of the application under Section 36 A (4) of the NDPS Act was given to the petitioner and the application was decided prior to the expiry of 180 days. The scope of revisional jurisdiction to interfere in the subjective satisfaction of the trial Court is remote.

I have considered the impugned order in context to the ratio of the judgment in **Sanjay Kumar Kedia's** case (supra) and I am of the opinion that the impugned order cannot be set aside on the ground that the report of the Public Prosecutor is vague and uncertain. I have also considered the contention of Mr. Pheruman that Special Investigation Team has been constituted in this case which included the DIG Border Range,

SSP, Gurdaspur and SP (Crime) Zonal as members and that the said Special Investigation Team was investigating the culpability of the petitioner as such the Public Prosecutor had, without informing the said fact, filed the application resulting in passing of impugned order dated December 24, 2014, I am of the opinion that the investigation conducted by Special Investigation Team will not be considered beyond the provisions of Chapter XII of Cr.P.C. It is the report of the Public Prosecutor which is required to be considered irrespective of the investigating agency. The constitution of Special Investigation Team and pendency of the investigation with the said team will not, in any manner, prejudice the rights of the prosecution agency to move application under Section 36 A (4) of the NDPS Act to seek extension of the custody.

No ground is made out for interference.

Dismissed.

March 2, 2015
sanjay

(M.M.S.BEDI)
JUDGE