

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18960 of 2016

Arising Out of PS.Case No. -125 Year- 2015 Thana -TARAPUR District- MUNGER

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1. Md. Rinku S/o Md. Jaseem R/o Village- Mirzapur, Bardah, P.S.-
Muffasil, District- Munger. Petitioner/s

Versus

1. The State of Bihar Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Syed Mohammad Shabbir Alam, Advocate

For the Opposite Party/s : Mr. M.K. Khare (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 09-09-2016

Heard learned counsel for the petitioner as well as

learned APP for the State.

2. Petitioner has challenged the order dated 18.03.2016 passed by Additional Sessions Judge-1st, Munger in Cr. Revision No. 10/2016 arising out of Tarapur PS Case No. 125/2015 affirming the order of the learned lower court whereby and whereunder prayer for bail has been rejected in terms of Section 167(2) of the Cr.P.C. Side by side, extending period of remand according to Section 43D(2)(b) of the Unlawful Activities (Prevention) Act 1967.

3. On getting confidential information, O/C of Tarapur PS constituted a raiding party and conducted a raid in the house of Md. Akhtar against whom, he had confidential information that after manufacturing illegal fire arms, he used to supply the same to Naxalites, a banned outfit. As none dared to become witness of the



search and seizure, some of the police personnel transformed themselves as witnesses. During course of search, an underground room was found wherefrom articles, as per seizure list, were recovered and seized. Furthermore, one person was also found engaged in manufacturing ammunition who was apprehended and on interrogation, disclosed his name as Md. Rinku, the petitioner. Self statement of the informant got recorded at the spot itself along with preparation of search and seizure list and after coming to PS, registered substantial case bearing Tarapur PS Case No. 125/2015 under Sections 25(1-b)a, 25(1-A), 25 (1-AA) 25(1-AC), 26 (i) (ii) (iii)/35 of the Arms Act as well as 16(A) 17, 18, 22 U.A.P. Act and subsequently thereof, the accused was produced before a competent court on 01.10.2015 whereupon was put under judicial remand.

4. Because of the fact that charge-sheet was not submitted within the stipulated period of 90 days, prayer was made on behalf of petitioner for grant of bail under statutory provision as envisaged under Section 167(2) (a) of the Cr.P.C. which has been rejected by the learned lower court simultaneously extending judicial remand under Section 43D(2) (b) of Unlawful Activities (Prevention) Act, 1967 against which revision was filed and the same has also been rejected whereupon the instant petition

has been filed under the garb of Section 482 of the Cr.P.C.

5. From perusal of the order impugned as well as from the order of the learned lower court, it is apparent that main ground for rejection of the prayer of the petitioner happens to be on account of extension of remand in terms of Section 43D(2) (b) of the Unlawful Activities (Prevention) Act, 1967 and the basis thereof, happens to be a petition dated 18.12.2015, Annexure-3 which was filed by the I.O. and seen by the learned SDJM on the same date and further petition dated 05.01.2016 filed by Assistant Prosecution Officer (Annexure-2) and simultaneously, at one end, the prayer of the petitioner was rejected and on the other end, period of remand was extended.

6. For better appreciation, it looks desirable to deal with the requirement of Section 43D and for that, first of all, the aforesaid Section is to be taken note of:-

[43D. Modified application of certain provisions of the Code.— (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2), --

(a) the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days”

and “ninety days” respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:--

“ Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with 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 ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.”

7. From plain reading of the proviso of 43D (2) (b) of the aforesaid Act, it is evident that the Court has to satisfy with the report of the Public Prosecutor indicating the progress of the investigation and further, specific reasons have to be assigned for the extension of detention of the accused beyond the period of ninety days. That means to say, detention of the accused was not at all to be passed in mechanical manner after expiry of ninety days rather there should have been an application of judicial mind over contents of the petition having been submitted by the Public Prosecutor and further, the reason so assigned thereunder.

8. The aforesaid event is found identical to Section 20(4) of the TADA whereunder extension of period of remand like

the present one is found validated up to 180 days and the same has come up for consideration before the Hon'ble Apex Court in *Hitendra Vishnu Thakur v. State of Maharashtra* reported in **(1994) 4 SCC 602** wherein it has been held as under:-

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 him on bail if he furnishes bail as required by the Designated Court.

9. From the order impugned as well as from Annexure-2, a petition filed on behalf of Assistant Prosecution Officer, it is evident that there happens to be non compliance on that very score and further, the learned lower court while conceiving failed to perceive that Investigating Authority had no role to ask for an extension of remand rather it happens to be the Public Prosecutor who has to respond and in likewise manner, the order happens to be lacking on the score that there happens to be any kind of satisfaction at the end of learned lower court with regard to contents of the petition having so filed by the APO. Moreover, as remand was on 01.10.2015 and so on 05.01.2016, petitioner, as covered his detention for a period of more than 90 days, would have been informed by the Court regarding his entitlement that of being released on statutory bail in terms of Section 167(2) (a) of the Cr.P.C just after consuming the statutory period.

10. As found above, there happens to be non compliance of 43D (2) (b) proviso, on account thereof, extension of period of remand vide order dated 05.01.2016 is found illegal and in likewise manner, the order dated 18.03.2016 passed by

Additional Sessions Judge-1st, Munger in Cr. Revision No. 10/2016 happens to be.

11. That being so, both the successive orders passed by Additional Sessions Judge-1st, Munger in Cr. Revision No. 10/2016 as well as order dated 05.01.2016 passed by SDJM, Munger are set aside.

12. Consequent thereupon, petitioner is found entitled to avail the privilege as envisaged under Section 167(2) (a) of the Cr.P.C. whereupon, petitioner, Md. Rinku is directed to be released on bail on furnishing bail bond of Rs.10,000/- with two sureties of the like amount each to the satisfaction of S.D.J.M. Munger in G.R. No. 1868 of 2015 arising out of Tarapur PS Case No. 125/2015 subject to the condition as laid down under Section 437(3) of the Cr.P.C. Petition is, accordingly, allowed.

(Aditya Kumar Trivedi, J)

Patna High Court
September 9th 2016
Perwez/AFR

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