

IN THE HIGH COURT OF PUNJABA AND HARYANA
AT CHANDIGARH

CRM-M-5270-2016 (O/M)
Date of Decision : 29.3.2016

Manjinder Singh and others Petitioners

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Jasdeep Singh Gill, Advocate, for the petitioners.

Mr. Ashish Sanghi, Deputy A.G. Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes.
2. To be referred to the Reporter or not. Yes.
3. Whether the judgment should be reported in the digest ? Yes.

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KULDIP SINGH, J.

By way of this petition, filed under Section 482 Cr.P.C., the petitioners have sought the quashing of impugned order dated 24.12.2015 (Annexure-P-2), passed by the learned Judge, Special Court-cum-Additional Sessions Judge, Tarn Taran, vide which an application filed by the Public Prosecutor under Section 36-A(d)(4) of the Narcotic Drugs and Psychotropic Substances Act, 1985, (in short 'the NDPS Act, 1985') for extension of period for submission of report under Section 173(2) Cr.P.C. was allowed and thereby the period for presentation of

challan was extended by three months.

Suffice to say that a case bearing FIR No. 64 dated 30.6.2015, under Sections 21 and 29 of the NDPS Act, 1985, has been registered against the present petitioners at Police Station Valtoha, District Tarn Taran. During the pendency of the proceedings, the said application was filed by the Public Prosecutor, which was allowed, vide order dated 24.12.2015 (Annexure-P-2), passed by the learned Judge, Special Court-cum-Additional Sessions Judge, Tarn Taran.

I have heard the learned counsel for the petitioners, the learned State counsel and have also carefully gone through the file.

The learned counsel for the petitioners has vehemently argued that the impugned order is not sustainable in the eyes of law as merely on the application of the prosecution, such prayer could not be allowed. Sufficient reasons are not given in the said report. It is also argued that the said extension of time is contrary to the law laid down by the Apex Court in Sanjay Kumar Kedia @ Sanjay Kedia Versus Intelligence Officer, Narcotic Control Bureau and another, 2010 (1) RCR (Criminal) 942 and in Hitendra Vishnu Thakur Versus State of Maharashtra, 1994 (3) RCR (Criminal) 156, which was followed by this Court in Gurpreet Singh @ Gopi Versus State of Punjab (arising out of CRM-M-32170 of 2015, decided on 11.1.2016).

The question would arise as to what conditions are to be satisfied before allowing such application, filed under Section 36-A(4) of the NDPS Act, 1985.

Section 36-A(4) of the NDPS Act, 1985, provides as under :-

“36A. Offences triable by Special Courts.- (1) Notwithstanding anything contained in the Code of Criminal procedure, 1973 (2 of 1974)

(a) to (d) xxxxxxxx xxxxxxxx

(2) and (3) xxxxxxxx xxxxxxxx

(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.

(5) xxxxxx xxxxxxxx”

In Sanjay Kumar Kedia's case (supra), the Apex Court observed as under :-

“10. 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.”

The further extracts on the further observation of the Apex Court are as under :-

“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:

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.

12. 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.”

Regarding the facts of the said case, it was observed as under :-

“14. A bare perusal of this application shows that it has been filed by the investigating officer of respondent No.1 and does not indicate even remotely any application of mind on the part of the public prosecutor. It further does not indicate the progress of the investigation, nor the compelling reasons which required an extension of custody beyond 180 days. This application was allowed by the Special Judge on 2nd August, 2007 i.e. on the day on which it was filed which also reveals that no notice had been issued to the accused and he was not

even present in Court on that day.”

In the said case (i.e. Sanjay Kumar Kedia's case (supra)), Hitendra Vishnu Thakur's case (supra) was also discussed. The similar conditions were relied upon by this Court in Gurpreet Singh @ Gopi's case (supra), while the order on 11.1.2016 in CRM-M-32170-2015 was passed. In the said case, the application was filed by the Investigating Agency under Section 36-A(4) of the NDPS Act, 1985, seeking extension of time on the ground that report of Chemical Examiner has not been furnished.

Reverting to the facts of the present case, the application dated 21.12.2015 (Annexure-P-3) was filed by the Public Prosecutor, Tarn Taran. The subject of the application itself shows that it is report of the Public Prosecutor under Section 36-A(d)(4) of the NDPS Act, 1985, for extension of time for filing report under Section 173 (2) Cr.P.C. While mentioning that 1 kilogram 200 grams heroin was recovered from all the accused, it is mentioned that the Station House Officer, Police Station Valtoha, has brought to the notice (of the Public Prosecutor) that report of Chemical Examiner has not been received. The reasons for the same are rush of work in the Chemical Laboratory. It is further mentioned by the Public Prosecutor as under :-

“4. I have gone through the record request made by the SHO dated 21.12.2015. I have applied

my mind to the record and came to the conclusion that report of Chemical Examiner is necessary evidence to prove that the recovered contrabands falls under the provisions of NDPS Act and without the report of Chemical Examiner challan cannot be presented against the accused without said report and fact about investigation of other case and the fact of habitual offender of the accused is still to be investigated. I am also satisfied and submit my report that further period for filing the challan against the accused be extended for period of six months as the recovery effected from the accused stated above is commercial and provisions of Section 36-A(d)(4) of the NDPS Act clear cut attracted in this case.”

Therefore, the prayer was made for extension of time by the Public Prosecutor.

The learned counsel for the petitioners has contended that the said application does not satisfy the conditions laid down by the Apex Court, referred above.

However, I am of the view that the present application dated 21.12.2015 (Annexure-P-3) is the application filed for extension of time for submitting the report under Section 173 (3) Cr.P.C. by the Public Prosecutor. The contents of application show that when the Station House Officer, Police Station Valtoha, District Tarn Taran, approached the Public Prosecutor, he went through the record and satisfied himself about the sufficiency of the reasons to seek extension of time. The mere fact that the consolidated application-cum-report was filed, does

not make any difference. It being so, I am of the view that in the present case, the conditions laid down by the Apex Court in Sanjay Kumar Kedia's case (supra) are satisfied. It is also in common knowledge that due to large number of cases under the NDPS Act, the Chemical Laboratories in Punjab are flooded with the work of analysis of such contrabands. This Court has been informed that two Chemical Laboratories have to be opened in addition to the Chemical Laboratory at Kharar to meet the rush. Therefore, the reasons for non submission of the report of Chemical Examiner are also genuine and valid. It being so, I am of the view that there is no illegality or infirmity in the impugned order.

Accordingly, the present petition is dismissed.

(KULDIP SINGH)
JUDGE

29.3.2016
sjks