

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL REVISION APPLICATION NO. 23 OF 2019
WITH
CRIMINAL APPLICATION (BAIL) NO.171 OF 2019.

Mr. Stanislav Karatevskiy,
S/o, Mr. Victor Karatevskiy
Age 46 years,
R/o Central Street, 18-11,
Chernogolovka, Moscow,
Russia, 142432
Presently Lodged at Judicial
Lock Up, Colvale, Bardez, Goa.

.... Applicant.

Vs.

1. State
(As represented by Officer
In-charge) Anti-Narcotic Cell
Police Station
Panaji, Goa).

2. The Public Prosecutor,
High Court Building,
Altinho Panaji, Goa.

.... Respondents.

Mr. J. P. D'Souza and Mr. K. Poulekar, Advocates for the applicant..

Mr. M. Amonkar, Additional Public Prosecutor for the respondents.

Coram:- PRITHVIRAJ K. CHAVAN,J.
Reserved on:-12th July 2019.
Pronounced on :-16th July 2019.

JUDGMENT:-

Legality, propriety and correctness of the impugned order dated 15.6.2019 passed by the learned Sessions Judge in crime no.29/2018 is challenged by invoking revisional jurisdiction of this Court.

2. Heard learned Counsel for the applicant and learned Additional Public Prosecutor.

3. The applicant is a Russian National. He alongwith co-accused Ms. Svetlana Fedorova were arrested by the respondent no.1 in crime no.29/2018 for alleged possession of LSD weighing 15.120 gms and charas 30.130 grams. The applicant was picked up by the officers of respondent no.1 on 18.12.2018 from Morjim, Pernem Goa. It is contended that no documents were supplied to the applicant before or after his arrest.

4. Subsequently, the relevant documents in the form of FIR,

Panchanama and seizure report etc were received on 24.12.2018. The applicant has been booked under Sections 22(C), 20(b)(ii) (A) and Section 29 of the Narcotic Drugs Psychotropic Substance Act (for short “NDPS Act”). The Co-accused Ms. Svetlana Fedorova has already been granted bail.

5. The applicant was remanded to custody on 19.12.2018. His custody continued to be extended from time to time. It is contended that in terms of Section 36A(4) of the NDPS Act respondent no.1 was required to complete investigation and file chargesheet within a period of 180 days from the date of first remand. The period of 180 days expired on 16.6.2019. It is contended that an application dated 11.6.2019 was handed over to the applicant in Colvale Jail on 12.6.2019. It was in English Language. Said application was addressed to Special Public Prosecutor, Principal and Sessions District Judge, Panaji Goa by PSI Videsh Pilgaonkar, ANC Police Station for seeking extension of detention of the applicant beyond 180 days.

6. According to the learned Counsel for the applicant said

application dated 11.6.2019 was referred to the Special Public Prosecutor by the PSI of ANC seeking extension of detention beyond 180 days and not to the Sessions Judge which shows non application of mind by the Public Prosecutor. It is also brought to my notice that the learned Judge in the impugned order, due to non application of mind, failed to consider that the Public Prosecutor has not filed any report of his own indicating the progress of the investigation. It was an application by Investigating Officer and not by Public Prosecutor. It is, therefore, contended that the learned Sessions Judge has failed to assigned any specific reason warranting further detention of the applicant despite a mandate under Section 36A(4) of the NDPS Act.

7. Mr. Amonkar, learned Additional Public Prosecutor on the other hand supported the impugned order by contending that report from the CFSL, Kolkata was not received in respect of LSD. However, report as regards contraband charas is concerned, has been filed. The learned Additional Public Prosecutor has not countered the arguments of the learned Counsel for the applicant on the mandate of Section 36A(4) of the NDPS Act.

8. This court in ***Criminal Application No.123/2010 dated 7/06/2010 in case of Mr. Antonios Kaminis Vs Union of India*** has observed at paragraphs 5,6 and 7 thus:-

5. *It is true that chemical analysis report dated 26.2.2010 now placed before this Court reveals that the seized material weighing 243gms sent to it for analysis gave positive test for the presence of Cocaine. This fact further signifies that at the time of moving the application for extension of time the report was not in the hands of the complainant/superintendent of Central Excise. However, it poses a question whether such circumstances gave liberty to the Investigating Officer to directly approach the Court without the intervention of the Public Prosecutor. To answer this question it would be necessary to look into the relevant provision of law.*
6. *Sub section (4) of section 36-A of the Narcotic Drugs and Psychotropic Act, 1985 provides outer limit for filing of the chargesheet/complaint against the persons accused of the offence punishable under section 19 or 24 or section 27A or for offences involving commercial quantity of the NDPS as 180 days. However, the proviso to sub section (4) reads as under:
" Provided that, if it is not possible to complete the investigation within the said period of 180 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 180 days"

The public prosecutor therefore plays a key role in the scheme for extension of time to file complaint/chargesheet. The public prosecutor is a watch dog who is expected to scrutinize the progress of the investigation, apply his mind and take conscious decision as to the need to keep the accused in custody. This mechanism has been devised in order to ensure the legislative intent not to keep the accused in custody unreasonably and to grant extension only on the report of the public prosecutor.

7. *In the instant case there is nothing to indicate that this mechanism provided by the law was resorted to. There is no answer coming forth either from the application dated 31.1.2010 or the reply to this application dated 19.5.2010 as to why such important mechanism envisaged by law was not resorted to. Express legal provisions-Proviso to sub section (4) of section 36-A of the Narcotic Drugs and Psychotropic Act, 1985, requiring the report of the Public Prosecutor for extension of time to file complaint/chargesheet beyond the period of 180 days, clearly declines any liberty to the Investigating Officer to directly approach the Court without the intervention of the Public Prosecutor. Obviously, the present circumstances give right to the accused to seek bail and further afford material to suspect that the person/s concerned with the investigation have procured such circumstances."*

9. A bare look at the application dated 11.6.2019 addressed to the Special Public Prosecutor by the Investigating Officer reveals that it

was simply placed before the Court, sans independent application of mind by the Public Prosecutor. As already held by this Court in the ruling of *Mr. Antonios Kaminis (supra)* that the Public Prosecutor plays a key role in the scheme of extension of time to file complaint/chargesheet. The Public prosecutor is a watch dog who is expected to scrutinize the progress of investigation, apply its mind and take a conscious decision as to the need of keeping the accused in custody. Indeed, such mechanism has been devised by legislature in order to ensure not to detain the accused in the custody unreasonably and to grant extension only on report of the Public Prosecutor. The learned Addl. Public Prosecutor has failed in indicating that this mechanism provided by law was resorted to.

10. Mechanism envisaged by law in view of express proviso to sub Section 4 of Section 36A of the NPDS Act, 1985, requiring the report of the Public Prosecutor for extension of time to file chargesheet beyond period of 180 days, clearly declines any liberty to the Investigating Officer to directly approach the Court without the intervention of the Public Prosecutor. It is manifest from the said

application dated 11.6.2019 that there is non-compliance of this mandatory provisions, obviously present circumstance would give rise an opportunity to the accused to seek bail.

11. A bare look at the impugned order exhibits non application of mind by the learned Sessions Judge too, which simply indicate that because the extension was sought for the first time, it should be granted to the Investigating Agency and more particularly because the Investigating Officer is new to the matter. Such observations cannot be said to be judicious which are in ignorance of mandate of Section 36A(4) of the NDPS Act. The impugned order, therefore, suffers from non-application of mind and is in ignorance of legal provisions. It is interesting to note that even the reply filed to the revision application by the prosecution is not filed through the Public Prosecutor but directly filed by the Investigating Officer.

12. Consequently, revision application is allowed. Order dated 15.6.2019 passed by the learned Special Judge is quashed and set aside.

13. In the result, the applicant qualifies to be enlarged on bail in the present matter merely on the technical ground. Care therefore needs to be exercised in granting bail, particularly when accused person is a foreigner. Now, to the order:-

The applicant be released on furnishing a Personal Recognition Bond in the sum of Rs.1,00,000/- (Rupees one lakh only) with one or two sureties in the like amount to the satisfaction of the Special Court, subject to the following conditions:-

- (i) The applicant shall deposit his passport with respondent no.1, if not already deposited.
- (ii) The applicant shall not make any attempt to influence any of the prosecution witnesses either directly or indirectly.
- (iii) The applicant shall not leave the jurisdiction of Special Court without seeking prior permission.
- (iv) The applicant shall furnish his cell phone number as well as his address of residence in the State of Goa.
- (v) The applicant shall report the office of respondent no.1 on every Monday between 10.am to 2.00p.m till filing of the chargesheet.

(vi) In the light of the observations made herein above,
application stands disposed of.

Parties to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

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