

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL REVISION APPLICATION NO.26 OF 2019**

Mr. Florian Kern

.... Applicant

V/s.

State & Anr.

.... Respondents

Shri Kamlakant Poulekar, Advocate for the Applicant.

Shri S.R. Rivankar, Public Prosecutor for the Respondents.

**Coram:- PRITHVIRAJ K. CHAVAN, J.**

**Reserved on :- 29<sup>th</sup> July, 2019**

**Pronounced on :- 7<sup>th</sup> August, 2019**

**ORDER :**

Legality, propriety and correctness of the impugned order dated 01/06/2019 passed by the Sessions Judge, Panaji in Crime No.151/2018 has been impugned by way of this revision.

2. The applicant is a German national. He was arrested by the respondent no.1 on 05/12/2018 as according to the prosecution the applicant was caught red handed for having possessed liquid substance suspected to be LSD weighing about 100.91 gms and charas weighing about 50 gms at flat no.B-6, block no.B, Red Rock Elegance, Marna, Siolim, Bardez-Goa. The narcotic substances were

found in six transparent auto press polythene packets, worth ₹10,35,000/- approximately in the international market.

3. Investigating Officer Mr. Amonkar, after placing the applicant under arrest on 05/12/2018 at 16.30 hrs., explained him the grounds of arrest and requested him to intimate German Consulate. After completing the necessary formalities of seizure of the narcotic drugs under panchanama, the representative samples procured and seized have been forwarded to CFSL Kolkata for examination. Since, the seized drugs LSD is in commercial quantity and the charas had been sent to the Director of Central Forensic Science Laboratory, Kolkata and the Director of Goa Forensic Science Laboratory for chemical analysis. The reports are awaited.

4. Shri Poulekar, the learned Counsel for the applicant contends that the applicant has been falsely implicated in this case and a false FIR under Sections 20(b)(ii)(A) & 22(c) of the NDPS Act has been registered.

5. According to the learned Counsel for the applicant as per

Section 36(A)(4) of the NDPS Act, the respondent was required to complete investigation and file charge sheet within a period of 180 days from the date of first remand. The period of 180 days expired on 03/06/2019. He was produced before the Sessions Judge on 01/06/2019. The copy of the application for extension of remand was handed over to the applicant on 30/05/2019.

6. It is contended that there is absolutely no application of mind neither by the learned Public Prosecutor in filing the application for extension of time nor there is any application of mind by the learned Special Judge while extending the period by 01/09/2019. In short, it is the contention of the learned Counsel for the applicant that a charge sheet could have been filed against the applicant when there is report of the chemical analysis as it is the case of the prosecution that they had used Field Drug Detection Kit on the spot in order to come to a conclusion that the said substances are prohibited substances under the NDPS Act and therefore time should not have been extended to file the charge sheet.

7. It is contended that the impugned order extending the

period further is violative of the principles of natural justice as the applicant was not reasonably notified nor was awarded any opportunity to respond to the application dated 01/06/2019.

8. Shri Rivankar, on the other hand, justified the further extension of period by contending that at the time of seizure of the suspected narcotic drug, representative samples were procured which were forwarded to CFSL, Kolkata, for examination and report and therefore the investigation is still in progress.

9. It is further contended that unless such report is received, the investigation cannot be said to be complete. It is submitted that despite interrogation by the applicant to find out the source of the drug, there is no response from the applicant, who is not cooperating with the Investigating Officer. The applicant was found involved in activities of drugs in Siolim area and other parts of Goa.

10. It appears from the reply of the prosecution and the application dated 30/05/2019 moved by the Public Prosecutor seeking further extension of time of 90 days when the investigation is still not

concluded in the sense that the report from CFSL, Kolkata in respect of the representative samples of suspected charas and LSD is awaited. The reply also reveals that it is a commercial quantity and therefore is a very serious offence which needs to be investigated thoroughly.

11. In the light of the fact that it being a commercial quantity of narcotic drug about which a final report from the CFSL, Kolkata is awaited and so also the prosecution is yet to find out the source of the drug from the applicant, the further extension of time to file charge sheet is justified. A discretion is given to the Special Judge by the statute to exercise it appropriately and judiciously after considering the material on record. A specific reason have been given by the learned Public Prosecutor indicating the progress of the investigation and the specific reason for detention of the applicant beyond the period of 180 days.

12. Admittedly, an application for bail moved by the applicant came to be rejected by this Court. As such, I do not find any legality or impropriety in the impugned order.

13. The learned Counsel for the applicant has relied upon the judgment of the Supreme Court in case of ***Hitendra Vishnu Thakur & Ors. V/s. State of Maharashtra***<sup>1</sup>. The accused was prosecuted under Section 3 and 20 of the Terrorist and Disruptive Activities Act, 1987. Paras 28 and 33 of the said judgment read as under :

*“28. In conclusion, we may (even at the cost of repetition) say that to sum up, an accused person seeking bail under Section 20(4) has to make an application to the court for grant of bail on grounds of the 'default' of the prosecution and the court shall release the accused on bail after notice to the public prosecutor uninfluenced by the gravity of the offence or the merits of the prosecution case since Section 20(8) does not control the grant of bail under Section 20(4) of TADA and both the provisions operate in separate and independent fields. It is, however, permissible for the public prosecutor to resist the grant of bail by seeking an extension under clause (bb) by filing a report for the purpose before the court. However, no extension shall be granted by the court without notice to an accused to have his say regarding the prayer for grant of extension under clause (bb). In this view of the matter, it is immaterial whether the application for bail on ground of 'default' under Section 20(4) is filed first or the report as envisaged by clause (bb) is filed by the public prosecutor first so long as both are considered while granting or refusing bail. If the period prescribed by clause (b) of Section 20(4) has expired and the court does not grant an extension on the report of the public prosecutor made under clause (bb), the court shall release the accused on bail as it would be an indefeasible right of the accused to be so released. Even where the court grants an extension under clause (bb) but the charge-sheet is not filed within the extended*

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*period, the court shall have no option but to release the accused on bail, if he seeks it and is prepared to furnish the bail as directed by the court. Moreover, no extension under clause (bb) can be granted by the Designated Court except on a report of the public prosecutor nor can extension be granted for reasons other than those specifically contained in clause (bb), which must be strictly construed.”*

*“33. On 6-7-1993 the petitioner, Hitendra Vishnu Thakur filed an application for grant of bail under Section 20(4) of the Act on the ground that 180 days had expired on 4-6-1993 but no charge-sheet/challan had been filed. On 12-7-1993 the Public Prosecutor presented a request of the investigating officer dated 29-6-1993 to the Designated Court seeking extension of time to complete the investigation and objections were also filed to the application for bail filed by Hitendra Vishnu Thakur under Section 20(4) of the Act by the Public Prosecutor. The bail application was dismissed by the Designated Court on 31-7-1993 and the prosecution was granted extension of time till 30-8-1993 to file the challan/charge-sheet treating the application of the investigating officer as a report of the Public Prosecutor. M/s Vanamalai and Swaraj Kaushal, Senior Advocates, have assailed the order dated 31-7-1993 by urging that the extension to complete the investigation has been granted ignoring the requirements of law as contemplated by clause (bb) and that the prayer for bail under Section 20(4) has been rejected on extraneous considerations. Learned counsel submitted that once it is found that extension under clause (bb) was erroneously granted, the right to be released on bail under Section 20(4) of TADA could not be defeated on any account. Learned counsel for the respondent on the other hand submitted that the Designated Court rightly rejected the application for grant of bail sought under Section 20(4) of TADA by taking into consideration the objections filed by the public prosecutor and the application of the investigating officer seeking*

*extension, after detailing the progress of the investigation and furnishing specific reasons for seeking extension of time.”*

14. Section 20(4) of the TADA makes Section 167 of Cr.P.C. applicable in relation to case involving an offence punishable under TADA, subject to the modification specified therein. Clause (bb) of Section 20 of TADA provides that if it is not possible to complete the investigation within the said period of 180 days, the designated Court shall extend the said period up to one year, on the report of the Public Prosecutor indicating the progress of the investigation and specific reasons for the detention of the accused beyond the said period of 180 days. This provision is in para materia with sub-section 4 of Section 36(A) of the NDPS Act. The Supreme Court has therefore observed that when Court grants an extension under Clause (bb) but the charge sheet is not filed within the extended period, the Court shall have no option but to release the accused on bail, if he seeks it and is prepared to furnish the bail as directed by the Court.

15. Under TADA also no extension under clause (bb) can be granted by the designated Court except on a report of the public prosecutor nor can extension be granted for the reasons other than

those specifically contained in clause (bb), which must be strictly construed.

16. Thus, in view of the facts of this case further extension to file charge sheet has been rightly extended. I, therefore, do not find any illegality in the impugned order. The revision is devoid of substance and, as such, stands rejected.

**PRITHVIRAJ K. CHAVAN, J.**

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