

24.01.20

Sl. No.3

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Ct. No.1

CALCUTTA HIGH COURT

In the Circuit Bench at Jalpaiguri

C. R. R. 6 of 2020

In Re: ***Ajay Singha & Anr.***

... .. Petitioners

Mr. Sandeep Dutta for Petitioners.

Mr. Aditi Shankar chakraborty,
Mr. Arun Kumar Sarkar for State

This revision petition has been preferred by accused on continuing to remain in custody particularly by reason of order dated 30th October, 2019, 3rd December, 2019 and 5th December, 2019 passed by Learned Judge, Special Court (NDPS Act), Jalpaiguri arising out of Bhaktinagar Police Station Case no.101 of 2019 dated 07.02.2019 under section 22(c)/23(c) in Narcotic Drugs and Psychotropic Substances Act, 1985.

Mr. Dutta, learned advocate appears on behalf of petitioners and submits, sub-section (4) in section 36A of N.D.P.S. Act, 1985 gives time for completion of investigation up to 180 days. This 180 days period expired without there being application for extension of time. As such, indefeasible right of his client to be enlarged on bail, arose. All that he was required to do thereafter, to avail of this right, was to make an application for furnishing bail. That application was made but by orders impugned, bail denied. It is irrelevant that State also brought

belated application for extension of time to complete investigation. Mr. Sarkar, learned advocate appears on behalf of State and submits, the period expired at a time when Court was in vacation. First available opportunity for both State and petitioner was reopening date. State had also applied, on reopening day, for extension of time to complete the investigation. The time was extended ultimately to 300 days. Charge sheet was filed on 300th day. Thus, there should not be interference.

Mr. Dutta relies on judgment of a Division Bench in **Md. Israil – Versus –State of West Bengal** reported in **(2009) 1 C Cr LR (Cal) 908**, paragraph 14 to 16. He submits, Calcutta High Court had relied on judgment of Supreme Court in **Uday Mohanlal Acharya – Versus – State of Maharashtra** reported in **(2001) 5 SCC 453**. In reply, Mr. Sarkar relies on **order dated 18th April, 2017** a learned single Judge in **CRR 1143 of 2017 (Pa Gurupada Roy – Versus – State of West Bengal)**.

Sub-section (4) in section 36A makes applicable period of 180 days to period of 90 days occurring in sub-section (2) of section 167 in Code of Criminal Procedure, 1973. In **Uday Mohanlal Acharya** (supra) majority view was delivered on facts being that the period had expired. Immediately on expiry accused had applied saying, he was prepared to furnish bail. Said Court held that the magistrate has to dispose of such application and on being satisfied that the accused has been in custody for specified period, that no charge sheet has been filed and that accused is prepared to furnish bail, the magistrate is obliged to grant bail even if after filing of application by accused, a charge sheet had

been filed. In **Md. Israil** (supra), learned advocate representing State had conceded that even where on the same day of filing application for bail on expiry of the period, application for extension of time had also been filed, bail was to be granted. In **Pa Gurupada Roy** (supra) the learned Judge said as follows:-

“From the scheme of the aforesaid provision, it is clear that submission of a valid report of the Public Prosecutor indicating progress of investigation and disclosing specific reasons for extension of period of detention is a sine qua non for extension of the period of the detention under Section 167(2) Cr.P.C. from six months to one year. [See Sanjay Kumar Kedia vs. N.C.B., (2009) 17 SCC 631(para-12)]. Hence, it is axiomatic that the stringent pre-conditions for extension of the time period is to be sought for by submission of a report by the Public Prosecutor prior to the expiry of the said period and not thereafter. It is, therefore, mandatory for the Public Prosecutor to submit report specifying the progress of investigation and the compelling reasons for detention beyond 180 days prior to the expiry of the said period so as to confer jurisdiction on the Special Court to act on such report and extend the period of detention, as aforesaid. Any report filed after the expiry of period of 180 days is clearly non est in the eye of law and cannot confer jurisdiction on the Special Court to retrospectively legitimize the detention of the accused after expiry of the statutory period by granting a retrospective extension of time after lapse of the statutory period of detention (See Sayed Mohd Ahmad Kazmi vs. State, (2012) 12

SCC 1]. It is another thing if the report is filed within the statutory period but the Court is unable to consider the report before the expiry of the period and passes an order extending the period subsequent to the expiry of 180 days as, in such cases, the extension shall relate to the date of filing of the report and not the date of the order of extension.”

In impugned order dated 30th October, 2019 following have been said:-

It is a fact that on 4th October, 2019 period of investigation expired. It is also a fact that on that date the court and office remained closed during puja vacation there was no scope for the prosecuting agency to file proper application praying for extension of the period of investigation and as such under the law, this application can be accepted by the court on the date of re-opening of the court i.e. today. Thereafter, I do not find any irregularities in accepting the application filed by the prosecution.

Now the question is whether the period of investigation should be extended further or not and on this score I have gone through the report filed on behalf of the Ld. A.P.P. wherefrom it is seen that investigation is on progress awaiting for F.S.L. report and on careful study of the case record it is also seen that huge quantity of contraband have been recovered from the possession of the accused and considering all these things I think it is a fit case where period of investigation should be extended. Accordingly, prayer of the prosecution stands allowed.”

It appears from extract of impugned order that though 4th October, 2019 was date of expiry of investigation period, as on 30th October, 2019, when application for extension was being considered, F.S.L. report had not yet been made available to the investigation. As such and otherwise learned Judge of Special Court extended the period, lastly up to 300 days, within which charge sheet was filed. Accused continued to be in custody. On query from Court, Mr. Dutta submits, his client applied to furnish bail on waiting for Court to reopen.

Peculiar circumstance is Court being in vacation, which both petitioner and State cited as reason for it not being approached on, prior to or immediately after expiry of specified period of investigation. In **Pa Gurupada Roy** (supra) clear view is that it is mandatory for Public Prosecutor to submit report specifying the progress of the investigation and the compelling reasons for detention beyond 180 days, prior to the expiry of the said period so as to confer jurisdiction on the Special Court to act on such report and extend the period of detention, as aforesaid. Since, it appears, as on 30th October, 2019 F.S.L. report was not available to the investigation, this Court does not find there has been abuse of process of Court or inherent power must be exercised to secure ends of justice.

For reasons aforesaid, the application is dismissed.

(Arindam Sinha, J.)

