

**In the High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Subhasis Dasgupta.

**CRR No. 133 of 2021
With
CRAN 1 of 2021**

**Serajul Sk.
Vs.
State of West Bengal**

For the Petitioner	: Mr. Anjan Bhattacharya, Adv. Mr. Kingsuk Mondal, Adv. Ms. Anita Shaw, Adv.
For the State	: Mr. Sanjoy Bardhan, Adv. Ms. Manisha Sharma, Adv.
Heard on	: 09.04.2021.
Judgment on	: 22.04.2021.

Subhasis Dasgupta, J.

The impugned order dated 2nd January, 2021 passed by the learned Judge, Special Court under NDPS Act cum Additional District Judge, 2nd Court, Behrampore, Murshidabad in NDPS Case No. 157 of 2020 under Section 21(C)/29 of NDPS Act, rejecting the prayer for default bail upon extending the period of investigation, in application of the provisions under Section 36-A (4) proviso of NDPS Act is a subject of challenge in this revisional application.

Petitioner was arrested on 05.07.2020 and produced before the learned ACJM Lalbagh, Murshidabad on 06.07.2020 for the alleged recovery of contraband, above the commercial quantity.

Mr. Anjan Bhattacharya, learned advocate representing the petitioner submitted that neither issuing any notice of hearing as regards the prayer for extension of period of investigation beyond the statutory period, nor causing production of the petitioner (custody accused) on the scheduled date, the prayer for extension of statutory period of investigation was accorded making violation of the settled proposition of law.

Mr. Bhattacharya further contended that the indefeasible right of the petitioner to be released on bail already accrued on 2nd January, 2021, and further that the learned court below had committed a gross illegality in disposing of the prayer for extension of investigation with a serious delay, which ought to have been disposed of expeditiously.

Mr. Bhattacharya referring a decision reported in **2011 CriLJ 3020**, delivered by Division Bench of this court in the case of **Saraswati Rai vs. Union of India (UOI)** contended that the court ought to have disposed of an application praying for extension of investigation beyond the statutory period, without causing any delay, and further that no written notice could be given to the petitioner/accused, as regards the prayer for extension of investigation beyond the statutory period, and more so the order granting extension of investigation beyond the

statutory period was accorded in absence of the petitioner, who admittedly remained in custody.

Reliance was further placed by Mr. Bhattacharya on an unreported decision rendered by Orissa High Court, Cuttack delivered in the case of ***Iswar Tiwari vs. State of Odisha*** to contend that the issuance of a notice mandatorily upon the petitioner remaining in custody together with causing production of the accused is the requirement of law, while making application of the provisions available under Section 36-A(4) proviso of the NDPS Act. Being emboldened by such decision, argument was raised by Mr. Bhattacharya that the learned court below committed illegality by causing delay in the disposal of the petition, filed by the investigating agency, praying for extension of the period of the investigation beyond the statutory period, which ought to have been disposed of expeditiously, and that too certainly before the expiry of the statutory period of investigation.

Mr. Bardhan representing the State countered the submission of Mr. Bhattacharya replying that the prayer for investigation was made before the learned court below on 24th December, 2020, and on the same date the learned Public Prosecutor submitted his independent prayer reflecting sufficient application of his mind, and the compelling reasons in justification of the extension period of investigation together with the compelling reasons, supportive of further detention of the accused persons in custody, beyond the statutory period of investigation.

According to Mr. Bardhan, twin conditions laid down in the Act itself were duly satisfied by the learned Public Prosecutor, while submitting his independent report before the learned court below in support of the prayer for extension of period of investigation beyond the statutory period. Mr. Bardhan further contended that, when learned defence advocate representing the petitioner participated in the hearing process, notice shall be deemed to have been served with, as participation of the learned advocate representing the petitioner in the hearing, before the learned court below, shall be sufficient proof to construe that that notice of hearing in application of the principles of *audi alteram partem* had been sufficiently extended to the petitioner.

Reliance was placed by Mr. Bhardhan on a decision reported in and **(1986) 3 SCC 141** delivered in the case of **Chaganti Satyanarayana and Ors. Vs. State of Andhra Pradesh, 2015 (8) SCC 340** delivered in the case of **Ravi Prakesh Singh vs. State of Bihar** and **(2020) AIR (SC) 5245: (2020) 12 SCALE 191** delivered in the case of **M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence**, to contend that the detention can be authorised by the Magistrate only from the time, the order of remand is passed, and the earlier period, when the accused is in the custody of the police officer in exercise of powers under Section 57 Cr.P.C. cannot constitute detention, pursuant to an authorisation issued by the Magistrate.

Thus according to Mr. Bardhan, in computing the statutory period of detention of 180 days, the day on which the accused was remanded to judicial custody has to be excluded and the day on which the challan/charge-sheet is filed in the court has to be included.

Having considered the submissions of both sides, it appears that points so raised are squeezed to one and only issue as to whether the learned court below was justified in extending the period of investigation beyond the statutory period, and while according such extension whether the learned court below satisfied the legal requirements of law, as specifically contained in the Act itself and rightly rejected the prayer for default bail or not.

Before addressing the issue, a reference to the relevant provisions of the law mentioned in Section 36-A(4) proviso of N.D.P.S. Act, is of utmost necessity, which may be mentioned as hereunder:

“provided further 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 the specific reasons for detention of the accused beyond said period of 180 days.”

While submitting a report, the learned Public Prosecutor concerned is obliged to satisfy twin requirement of law: (a) the report of the Public Prosecutor will be specific, conspicuous in indicating the progress of

investigation, (b) the report of the Public Prosecutor must spelt out reasons for the detention of the accused person beyond statutory period of 180 days.

Upon sufficient compliance of the twin requirements of law, what is supposed to be discharged by learned Public Prosecutor himself in connection with his prayer for extension of period of investigation beyond the statutory period, designated court would in turn record its satisfaction in respect of the report of the Public Prosecutor, while extending the period of investigation.

From the plain reading of the aforesaid Section, following four matters are of highest significance, which may be considered to be the parameters for making due consideration of the prayer for further investigation under NDPS Act:

- (i) It is not possible to complete the investigation within the period of 180 days,
- (ii) A report to be submitted by the learned Public Prosecutor,
- (iii) The said report would indicate the progress of investigation, and specific reasons for detention of accused beyond the period of 180 days,
- (iv) Satisfaction of the court to be recorded in respect of the report of the Public Prosecutor.

It is thus without any controversy that extension of period of investigation must be limited to the progress of investigation, so that there could be submission of charge-sheet within such extended period of time, and such consideration will be of paramount consideration restricting to the Act itself, but not controlled by any other provisions of the Act itself.

The use of expression “*on the report of the Public Prosecutor indicating the progress of investigation and specific reasons for the detention of the accused beyond the statutory period.*” are highly important, and indicative of the legislative intent not to keep the accused in the custody unreasonably and to grant extension of investigation on the report of Public Prosecutor.

The report of the Public Prosecutor undoubtedly is not merely a formality, but a very vital report. It is not merely the question of form in which the request for extension of investigation under the Act is made, but one of substance. Therefore, much emphasis has to be put on substance, rather than its form, in which the request for extension of investigation has been made.

In paragraph 2 of the revisional application, petitioner had mentioned the computation of the statutory period of investigation of 180 days taking into account the day on which the petitioner was admittedly produced before the learned Magistrate on 06.07.2020. From Page 27 being annexure P-2 of the instant revisional application, it appears that

the petitioner prayed for default/compulsive bail upon mentioning that the petitioner was produced before the learned ACJM, Lalbagh, Murshidabad on 06.07.2020, though he was arrested on 05.07.2020. The contention raised by the petitioner of this case is that the right to be released on default bail already accrued on 02.01.2021, and as such the period of extension of the statutory period of investigation was granted after the expiry of the statutory period of investigation.

It is not in dispute that the accused was produced before the learned Magistrate for the first time after arrest on 06.07.2020. The settled proposition of law is very clear and specific, which was rightly referred by Mr. Bardhan citing three (03) decisions of the Apex Court referred above. The statutory period of 180 days in the given circumstances of the case in context with the provisions laid down in Section 36-A (4) proviso of NDPS Act, will begin to commence only from the date of order of remand, and the earlier period when the accused was in the custody of a police officer in exercise of the powers under Section 57 of Cr.P.C. cannot constitute detention, pursuant to an authorisation issued by the learned court below. The date of arrest is thus insignificant in computing the period of 180 days, as appearing in Section 36-A(4) proviso of NDPS Act.

Learned Public Prosecutor by reason of his independent application had already reflected his sufficient application of his mind to the request of the investigating officer revealing the progress of

investigation, and also disclosed justification for keeping the accused in further custody to enable the investigating agency for completion of the investigation. The delay caused in collecting the chemical report is perceived to be within the meaning of compelling reasons in justification of the prayer for further investigation. As regards non-service of the notice of hearing and non-production of the accused on the day, when the prayer for extension of statutory period of investigation was accorded, it appears from the impugned order that learned advocate representing the petitioner/accused participated in the hearing process raising his objections, which were duly noted in the order itself, and upon consideration of the same, the prayer for extension of period of investigation was allowed upon making cancellation of for prayer for bail. The very object of issuing notice to the petitioner in application of the principles of *audi alteram partem* was thus duly complied with objectively. The learned advocate representing the petitioner having thus participated in the hearing process, it cannot be concluded in the given circumstances of the case that no notice of hearing was given to the petitioner, while according the extension of period of investigation beyond the statutory period. Similarly causing production of the accused, when his learned lawyer was very much present and participated in the hearing process is, therefore not a crying demand of law.

Upon perusal of the impugned order, it appears that the prayer for extension of period of investigation was filed on 24.12.2020, following

which the judicial functioning of the court below was suspended by reason of an abstinence programme observed by local Bar Association, and thereafter winter vacation intervened till 1st of January, 2021. The hearing of the petition was thus fixed on 2nd January, 2021, the date, when the court reopened after winter vacation. It is under these compelling circumstances, beyond the control of the learned court below, the court had to fix the matter on 2nd January, 2021. That being the position, the contention raised by the petitioner that there was delay caused in the disposal of the prayer for investigation is without any substance.

For the discussion made above, the right of the petitioner to be released on bail on account of the default of the prosecution was rightly refused by learned court below, upon extending period of investigation in due application of the provisions of Section 36-A(4) proviso of NDPS Act.

The instant revisional application fails being without any merits and accordingly dismissed.

The revisional application along with its connected application stands disposed of.

Urgent photostat certified copy of this judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with all necessary formalities.

(Subhasis Dasgupta, J.)