

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

Present:-

The Hon'ble Justice Subhasis Dasgupta.

CRR No. 324 of 2021

**Rangalal Mavai
Vs.
State of West Bengal**

For the Petitioner	:Mr. Ayan Basu, Adv. Mr. P.K. Das, Adv. Mr. Sourav Bera, Adv. Mr. Sumit Routh, Adv.
For the State	:Mr. Ranabir Roy Chowdhury, Adv. Mr. Mainak Gupta, Adv.
Heard on	:04.03.2021.
Judgment on	:08.04.2021.

Subhasis Dasgupta, J:-

The impugned order dated 19th December, 2020, passed by Learned Additional District and Sessions Judge, Special Court, Tamluk, Purba Medinipur, in NDPS case being TR-(NDPS) 05/2020, extending the period of investigation under Section 36-A (4) proviso of Narcotic Drugs and Psychotropic Substances Act, and thereby rejecting the prayer of statutory bail for the petitioner (default bail) is the subject of challenge in this revisional application.

Petitioner was brought arrested on 27.06.2020 by Bhagawanpur P.S. for the alleged recovery of sixty three (63) kg. of Ganja, which was above the commercial quantity. During investigation the samples of the seized articles after necessary collection were forwarded for chemical examination. The report of the said examination could not be collected by the Investigating Officer in spite of sending reminder, even by D.O. for the purpose. The investigation of the case was almost completed, but it was due to the delay in completion of the report of expert, the charge-sheet could not be submitted against the petitioner/accused person.

On 17th December, 2020, the Investigating Officer of this case initiated a prayer for extension of statutory period of investigation for submission of charge-sheet. After receipt of such prayer, the learned court below proceeded to pass an order dated 17th December, 2020, directing the learned Public Prosecutor-in-charge to submit a report by 18th December, 2020, in justification of the prayer of Investigating Officer, as contemplated under Section 36-A (4) proviso of NDPS Act.

On the scheduled date i.e. 18th December, 2020, learned Public Prosecutor-in-charge submitted his report regarding extension of statutory period of investigation of the instant case in context with the prayer of the Investigating Officer, made separately on 17th December, 2020. The prayer for extension of investigation beyond the statutory period was taken up for hearing on 19th December, 2020, in presence of learned advocate representing the accused/petitioner as well as other

accused persons, and the learned advocate representing the State for the purpose.

The learned court below, however, by its order dated 19th December, 2020, extended the period of investigation beyond the statutory period in application of the provision of Section 36-A (4) proviso of NDPS Act, for a further period of 90 days.

Upon appreciating the progress of investigation together with the reasons, causing delay in the submission of the charge-sheet due to non-submission of chemical report from the expert of State Drugs Control & Research Laboratory, where the collected samples were sent for chemical examination and report, the prayer for default bail was refused by the learned court below holding that there was fair possibility of tampering of evidence in the event of accused being released on bail, and further that accused/petitioner may flee away from the clutches of the court.

Mr. Ayan Basu, learned advocate for the petitioner, assailing the order impugned submitted that the learned court below had improperly exercised its jurisdiction, while extending the period of investigation beyond statutory period without conferring to legal requirements of law, as specifically enunciated in Section 36-A (4) proviso of NDPS Act. Mr. Basu contended that the legislator expected that the investigation be completed with utmost promptitude, but where it became necessary to seek some more time for completion of investigation, the Investigating Officer would submit himself to the scrutiny of learned Public

Prosecutor, and satisfy the progress of investigation and furnish reasons for seeking further custody of an accused.

The learned Public Prosecutor, according to Mr. Basu, was expected to independently apply his mind to the request of Investigating Officer before submitting a report to the court for extension of time with a view to enable the Investigating Officer to complete the investigation.

Adverting to the report of learned Public Prosecutor, submitted on 18th December, 2020, Mr. Basu submitted that there left nothing about putting any endorsement of the learned Public Prosecutor himself, or signing even the report, while seeking for further investigation, and as such, such report of the learned Prosecutor could not be regarded to be a product of due application of mind of the learned Public Prosecutor, as contemplated under Section 36-A (4) proviso of the NDPS Act.

Mr. Basu, was of the view that the role of Public Prosecutor was not merely a post office, or merely a forwarding agency, and he was expected to do something more revealing his due application of mind, while proposing for further investigation beyond statutory period.

Thus, for seeking extension of time under Section 36-A (4) proviso of NDPS Act, the Public Prosecutor was under the obligation to put his independent application of his mind to the request of the Investigating Agency indicating therein the progress of the investigation, and disclosing also the justification for keeping the accused in further custody to enable the Investigating Agency to complete the investigation.

Mr. Basu, strenuously contended that jurisdiction of the learned court below having improperly exercised, granting of extension of period of investigation beyond statutory period, without strictly adhering to the legal requirements of the law, as contemplated in the Act itself; the right of petitioner to be released on bail on account of default of the prosecution became indefensible right, and that could not be defeated by any reasons, other than those contemplated in the Section itself.

Reliance was placed by Mr. Basu, on a decision reported in **1994 (4) SCC 602** delivered in the case of ***Hitendra Vishnu Thakur & Ors. Vs. State of Maharashtra***, in order to contend that the stand taken by the learned Public Prosecutor in the given facts and circumstances of this case could hardly be considered to have applied his mind to the request of the Investigating Agency, and rather acted as “post office”. The learned court below was deprived of the opportunity of scrutinizing the report before granting extension. According to Mr. Basu, while submitting report, the learned Public Prosecutor did not even endorse on the application with any comments to indicate as to whether he was agreeing with the statements contained in the application, submitted by the Investigating Officer himself, praying for further investigation or not.

Referring another decision reported in **2009 (17) SCC 631** rendered in the case of ***Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotics Control Bureau & Anr.***, Mr. Basu submitted that the ratio of the decision given in ***Hitendra Vishnu***

Thakur (Supra) by the Apex Court was reinforced in such decision while granting default bail upon due appreciation of the infraction of the provisions of law, as contained in Section 36-A (4) proviso of NDPS Act.

Mr. Ranabir Roy Chowdhury, learned advocate representing State, controverting the submission raised by the petitioner, submitted that the court below had rightly extended the period of investigation beyond the statutory period upon duly satisfying the requirements, contained in the Act itself. According to Mr. Roy Chowdhury, the entire endeavour of the petitioner was to indicate the laches, or discrepancies in the report of Public Prosecutor, which was nothing but a question of form, rather than substance. The question of substance, according to Mr. Roy Chowdhury, should be prevailed over in the given circumstances of this case, instead of making restrictive application of the report of the Public Prosecutor emphasizing more upon the question of form.

Mr. Roy Chowdhury, in support of his contention referred a decision reported in **2019 (5) SCC 178 : 2019 (2) SCC (Cri) 472**, delivered in the case of State of **Maharashtra Vs. Surendra Pundlik Gadling and Ors.**, wherein emphasis was led upon the substance of the report of the Public Prosecutor, rather than its form. Mr. Roy Chowdhury was of the view that absence of endorsement of the learned Public Prosecutor in his report, or lack of putting his signature therein might be infirmities relatable to the form, rather than the substance it contained in the report, which was grossly emphasized in the case of **Hitendra**

Vishnu Thakur (Supra), and as such infirmities in the form should not entitle the petitioner to the benefit of the default bail, when in substance, there has been sufficient application of mind by the learned Public Prosecutor by himself in his report, so submitted.

The grounds set out in the report of the Public Prosecutor having independently and individually extracted from the report of the Investigating Officer, from his prayer for further investigation, according to Mr. Roy Chowdhury, would certainly fall within the category of compelling reasons, as enunciated in the case of ***Sanjay Kedia (Supra)***.

Having considered the submissions of both sides, it appears that the 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 contemplated 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 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.

At the cost of repetition it may be mentioned over here that on 17.12.2020, the Investigating Officer himself made a prayer for further investigation indicating the progress of investigation together with reasons causing delay in investigation, and thus offered reasons therein for the detention of the accused beyond the statutory period. Such prayer was addressed to the learned court below, and it bears the endorsement of the learned Public Prosecutor-in-charge, who put his signature on the same on 17th December, 2020, with an endorsement as **“seen”**.

Upon receipt of the prayer, the learned court below proceeded to pass an order dated 17th December, 2020, directing the learned Public Prosecutor to submit a report on such issue by 18th December, 2020. By filing a put up petition dated 18th December, 2020, the report of the Public Prosecutor-in-charge, as called for by learned court below, was submitted serving a copy upon the learned advocate representing the petitioner/accused, who received the copy putting his endorsement as **“seen”** with objection. Therefore, there has been no violation of natural justice.

Upon perusal of the impugned order, it appears that the learned advocate representing the petitioner participated in the hearing process pertaining to the prayer for further investigation, after responding to the service of notice of report of the Public Prosecutor, dated 18th December, 2020, proposing extension of investigation beyond statutory period.

There has been sufficient demonstration in the report of the Public Prosecutor about the progress of the investigation, which was almost completed except collection of report from expert, to whom the samples, from seized articles were sent for chemical analysis and report.

Here in this case alleged recovery relates to 63 Kg. Ganja in all, which was above the commercial quantity, and samples from the contraband after having collected were sent to Director of State Drugs Control & Research Laboratory, 2, Convent Lane, Kolkata-700015, for chemical examination and report, which was awaited.

The learned Public Prosecutor after independent application of his mind to the request of the Investigating Agency, not only revealed the progress of the investigation, but also disclosed justification for keeping the accused in further custody to enable the Investigating Agency to complete the investigation, otherwise the petitioner/accused person will be free from clutches of the court, if released on bail together with possibility of tampering the evidence in this case.

True it is that learned Public Prosecutor in his individual report never made any comment agreeing with the Investigating Officer for extension of the investigation, but when the learned Public Prosecutor himself submitted an individual report upon extracting the statements from the I.O. of this case, from his prayer for further investigation, in the absence of anything others to the contrary being shown to exist, it would be sufficient enough to construe that the report, so submitted by the

learned Public Prosecutor was a product of his application of mind, done after making due scrutiny of the prayer of the I.O. for further investigation, wherein the progress of investigation coupled with the reasons supportive of further detention was disclosed.

Absence of putting signature or any conspicuous endorsement of learned Public Prosecutor himself presenting the report before the court below may be an error, or irregularity, sufficient enough to be considered to come within the category of “form” rather than its “substance” contained in the report of the learned Public Prosecutor itself.

The learned court below, as such cannot be considered to have overlooked and ignored the requirements of valid report of the learned Public Prosecutor, as contemplated in the Act itself.

Whether the learned Public Prosecutor labels his report, as a report, or as an application for extension, would not be of much consequence, so long it demonstrates on the face that he had applied his mind, and he was satisfied with the progress of the investigation and the genuineness of the reasons for the grant of extension to keep the accused in further custody, as envisaged in the Act itself.

Pursuant to the order of the learned court below, when learned Public Prosecutor separately and individually submitted his report, satisfying the twin requirements of law, after making scrutiny of the statement from the I.O. revealed from his prayer for further investigation, it would tantamount to application of mind of the learned Public

Prosecutor, while submitting his report in justification of extension of the period of investigation beyond statutory period.

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

With this discussion and observation, the instant revisional application fails being without any merits.

The instant revisional application stands disposed of.

Urgent certified copy of this judgment, if applied for, be made available to the parties upon compliance with requisite formalities.

(Subhasis Dasgupta, J.)