

01 24.06.2021
Ct. No. 35

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

C.R.R. 1228 of 2021
(Via Video Conference)

ANIL NONIA

-VERSUS-

THE STATE OF WEST BENGAL

Mr. Uday Shankar Chattopadhyay
Mr. Pronay Basak
..for the petitioner.

Mr. Prasun Kr. Dutta
Mr. Sanjay Bardhan
Mr. P. Majhi
..for the State.

The petitioner in this case has challenged an order dated February 08, 2021 passed by the learned Special Court, under the NDPS Act, cum Additional Sessions Judge, 3rd Court at Asansol, arising out of Asansol (North) Police Station Case No. 196 of 2020 dated August 12, 2020 under Section 20 (b) (ii) (c) of Narcotic Drugs and Psychotropic Substances Act, 1985.

By the order impugned the learned Sessions Judge rejected the petition filed by the petitioner for grant of statutory bail.

The facts of this case are not in dispute. The petitioner

was apprehended in connection with the aforesaid case and he was remanded to the police custody by the Special Court on August 12, 2020. The charge sheet, in this case, was filed on February 08, 2021.

The learned Sessions Judge observed that since on the date of submission, the statutory period of 180 days did not expire, the accused was not entitled to be enlarged on statutory bail.

Before this Court, it has been submitted by Mr. Uday Shankar Chattopadhyay, learned Advocate for the petitioner, that learned Judge was not justified in calculating the period of detention of the petitioner by excluding the date of remand. He further submits that upon expiry of the 180 days the petitioner ought to have been released on bail. In support of his case, Mr. Chattopadhyay relies upon the judgments reported at **(1986) 3 SCC 141 (*Chaganti Satyanarayana v. State of Andhra Pradesh*)** and **(2017) 15 SCC 67 (*Rakesh Kumar Paul v. State of Assam*)**.

On the other hand, Mr. Sanjay Bardhan being led by Mr. Prasun Kr. Dutta, appearing on behalf of the State, submits that in computing the period of available days for investigation, the date of remand has to be excluded. He relies upon a judgment of the Supreme Court in this regard reported at **(2015) 8 SCC 340 (*Ravi Prakash Singh v. State of Bihar*)**.

The issue as to whether the date of remand is to be included or excluded for computing the permitted period for completion of investigation has not yet been settled. The issue has been referred to a Larger Bench by the Supreme Court by an order dated February 23, 2021, passed in Criminal Appeal Nos. 701-702 of 2020 (*Enforcement Directorate, Government of India v. Kapil Wadhawan*). In that judgment, the judgments relied upon by the parties before this Court have also been considered.

Supreme Court noticed the conflicting views on the proposition of law and while referring the issue to a Larger Bench, the Supreme Court held as follows:-

“8. Since the earlier position of law was not considered and the latest decision is of a 3 judges bench, it is necessary for a bench of appropriate strength to settle the law taking note of the earlier precedents. Unless the issue is appropriately determined, the courts across the country may take decision on the issue depending upon which judgement is brought to the Court’s notice or on the Courts own understanding of the law, covering default bail under Section 167 (2) (a) II of CrPC.”

It also appears that the latest law holding the field is the judgment delivered by the 3 Judges Bench in the case reported at **(2021) 2 SCC 485 (*M. Ravindran v. The Intelligence Officer, Directorate of Revenue Intelligence*)** where the Supreme Court has held that the date of remand has to be excluded in computing the available period of

investigation. The earlier contrary views appear to have been taken by the benches of lesser strength. [See: **(1986) 3 SCC 141 (Chaganti Satyanarayana v. State of Andhra Pradesh)**, **(1992) 3 SCC 141 (CBI v. Anupam J Kulkarni)**, **(1996) 1 SCC 432 (State v. Mohd. Ashraft Bhat)**, **(2002) 2 SCC 121 (State of Maharashtra v. Bharati Chandmal Varma)** and **(2011) 10 SCC 445 (Pragyna Singh Thakur v. State of Maharashtra)**.]

In this present case, above 330 Kgs of Ganja was recovered from the joint possession of the petitioner.

If we calculate the investigation period excluding the date of remand, the period of 180 days expires on February 8, 2020.

In view of the aforesaid fact and the law laid down in M. Ravindran (*Supra*), no interference is called for with the order impugned.

Accordingly, the revisional application, being No. C.R.R. 1228 of 2021, is dismissed.

All parties shall act in terms of the copy of this order downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Kausik Chanda, J.)

