

17.03.2021

KS

5

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

CRR 12 of 2021

Alamgir Mondal & Anr.

Vs.

State of West Bengal & Ors

Mr. Sunil Kumar Sarkar

...for the Petitioner.

Mr. Aditi Shankar Chakraborty,

Mr. Nilay Chakraborty

... For the State.

The impugned order dated 2nd December, 2020 passed by the learned Judge, Special Court under NDPS Act, 2nd Court, Jalpaiguri in NDPS Case No.32 of 2020 extending the period of investigation upon receipt of a prayer from the Prosecuting Agency is subject of challenge in this case.

Mr. Sunil Kumar Sarkar, learned Advocate representing the petitioner, who is in custody for alleged recovery of the contraband above the commercial quantity, adverting to the order impugned submits that the petitioner has been seriously prejudiced for not serving any notice of the report of the I.O. while proposing for further investigation of this case. It is further contended that no notice was given to the petitioner, and even the order was recorded on the strength of a put up petition filed by the Prosecuting Agency. Learned Advocate also contends that there was no lawyer engaged for the custody accused even to represent the petitioner at the time when the prayer for further investigation was been allowed.

Referring decision reported in **2010(1) SCR 555** rendered in the case of **Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau & Anr.**, learned Advocate for the petitioner submits that non-service of the notice in view of the proposition of law laid down by the Apex Court in such decision, there has been much prejudice caused to the petitioner and by reason of such infirmity caused to the order impugned, the instant proceeding is liable to be quashed.

Mr. Chakraborty, learned Advocate representing the State submits that no prejudice can be claimed to have occurred, merely on the ground of non-service of any notice upon the petitioner, while proposing for further investigation in terms of the provisions of law contained in 36A(4) of NDPS Act. It is also submitted by the State that the learned court below has not even mechanically exercised its authority, while extending the period investigation upon receipt of a prayer for further investigation within the stipulated period of time, as envisaged in the Act itself.

Upon perusal of the impugned order, it appears that the court has taken into account that the prayer for further investigation was submitted by the Prosecuting Agency within the statutory period of time, when there was pandemic surfaced over the entire country, and the status of the progress of the investigation already reached in the case together with the ground requiring further detention of the petitioner, accused in custody.

The requirement of law is very clear, while making extension of the prayer for further investigation, which may be mentioned as hereinbelow:

“(4) In respect of persons accused of an offence punishable under Section 19 or Section 24 or Section 27-A or for offences involving commercial quantity the references in sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 thereof to “ninety days”, where they occur, shall be construed as reference to “one hundred and eighty days”.

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may 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 the detention of the accused beyond the said period of one hundred and eighty days.”

The twin requirements in terms of the provisions, referred above, while extending the period of investigation are:

- (i) The learned Judge is under obligation to see the status of the progress of investigation.
- (ii) To see the assigning of reasons, if supportive of further detention of the accused person beyond the period of 180 days.

The learned court below has taken care of the above requirements of law, while extending the period of investigation.

It cannot be disputed that the impact of Covid-19 has largely disturbed the ordinary function of the court.

True it is that there has been no notice issued upon the petitioner, when the prayer for further investigation was allowed, but it was so allowed upon fulfillment of the requirements of the law, as laid down in Section 36A(4) of NDPS Act. Service of the

notice upon the petitioner may be the need of the principle of natural justice, but for violation of the same, no prejudice can be claimed to have been caused. The decision referred above by the learned Advocate for the petitioner appears to have emerged on a different factual matrix and as such the factual position involved in this case differs from the facts involved in the decision, as cited above.

Having considered the submission of the both sides and for the reasons as aforementioned, there is hardly any merits involved in this case.

The revisional application fails being without merit.

Since the petitioner is in custody for some considerable period of time, the case of the custody accused needs to be expeditiously disposed of.

Learned court below is directed to take care of the pending investigation and take all possible steps in accordance with the provisions of the law so that the fall out of investigation may be submitted to court within a reasonable period of time in terms of the provisions of law.

After the report of Investigation is received, steps may be taken for the commencement of the trial keeping in mind for expeditious disposal of this case. While conducting trial, the learned court below is free to resort to Section 309 Cr.P.C. taking such steps or such other steps, as may be deemed practical so as to ensure expeditious disposal of the pending case.

The pending investigation be, however expedited.

With this observation and direction, the revisional application is disposed of.

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

(Subhasis Dasgupta, J.)