

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Criminal Miscellaneous Jurisdiction
Appellate Side

C.R.M 834 of 2021

Sukumar Sen
-Vs.-
The State of West Bengal

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Bivas Pattanayak

For the petitioner : Mr. Soubhik Mitter, Adv.
Mr. Arkadeb Bhattacharya, Adv.
Mr. Sabir Ali, Adv.

For the State : Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Aniruddha Biswas, Adv.

Heard On : 02.09.2021 & 14.09.2021

CAV on : 14.09.2021

Judgment On : 24.09.2021

Arijit Banerjee, J.:-

1. The petitioner seeks bail in connection with Dinhata Police Station Case No. 505/2020, dated 28.12.2020 under Sections 20(b) (ii) (B)/21 (c) of the NDPS Act.

2. It is not in dispute that the petitioner along with three other persons were arrested on December 28, 2020. The charge-sheet was not submitted before the Learned Trial Court within the statutory period of 180 days from the date of arrest. 180 days was due to expire on June 27, 2021. On June 23, 2021, the Investigating Officer made a written prayer to the Court of Learned Additional Sessions Judge, Sadar Court, Cooch Behar for extension of time by three months for completion of the investigation of the case. The said application was forwarded by the Public Prosecutor-in-charge to the Learned Court. It appears that on June 25, 2021, the Learned Trial Court extended the time period for completing investigation by two months from the date of the expiry of the initial period of 180 days.

3. The petitioner says that the Public Prosecutor, without application of mind, merely forwarded the prayer of the Investigating Officer for extension of time to the Learned Court. This was not in accordance with the provision of Section 36 A(4) of the NDPS Act. Hence, the extension that was granted by the Learned Court was invalid in law and the petitioner is entitled to statutory bail.

4. Learned Advocate for the State strongly opposes the petitioner's prayer for bail. He submits that there are enough incriminating material against the petitioner which point towards he having committed the offence he has been charged with. He should not be enlarged on bail.

5. We have considered the rival contentions of the parties.

6. Section 36A(4) of the NDPS Act reads as follows:-

“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 (2 of 1974) 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.

7. The proviso to the sub-section quoted above clearly requires the Public Prosecutor to apply his mind and submit a report indicating the progress of the investigation and the reasons as to why the accused is required to be detained beyond the period of 180 days. The Public Prosecutor cannot merely act as a post office which he has done in the present case. He merely forwarded the prayer of the Investigating Officer to the Learned Court without furnishing his report as required by the proviso to the sub-section. He has merely performed a clerical job. As observed by a coordinate bench of this Court in its order dated April 11, 2019, passed in **CRM 2312 of 2019 (In the matter of Raj Ali and Anr.)**, “The proviso, on

an appropriate interpretation, requires responsibility and accountability on the part of the Public Prosecutor”. What was forwarded by the Public Prosecutor to the Learned Trial Court cannot by any stretch of imagination be said to be a report of the Public Prosecutor as envisaged under Section 36A(4) of the 1985 Act.

8. In ***Sanjay kumar Kedia V. Intelligence Officer, Narcotics Control Bureau and Anr., (2009) 17 SCC 631***, the Hon’ble Supreme Court emphasized that the Public Prosecutor being a responsible officer of the State must apply his mind and satisfy himself that the investigation is progressing well and genuinely extension of time to complete the investigation is necessary for the ends of justice. In paragraph 15 of the reported judgment, the Hon’ble Supreme Court quoted paragraph 23 of its decision in ***Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602*** which is to the following effect:-

“23. A Public Prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The Public Prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A Public

Prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public Prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The Public Prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression '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' as occurring in clause (bb) in

sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the Public Prosecutor. The report of the Public Prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an Investigating Officer for extension of time is no substitute for the report of the Public Prosecutor.”

9. The Court further went on to say that even if the application for extension of time was either routed through the Public Prosecutor or supported by him, the same *per se* would not make the said application a report of the Public Prosecutor.

10. In the present case, the Public Prosecutor mechanically forwarded the prayer of the Investigating Officer for extension of time to the Learned Trial Court. This does not satisfy the requirements stipulated in the proviso to Section 36A (4) of the NDPS Act. The extension of time obtained by the Investigating Agency was and is invalid in law and the petitioner was entitled to statutory bail upon the expiry of the period of 180 days from the date of his arrest as there was no extension of time in accordance with law.

11. We may also take note of the age old principle of law enunciated in the case of ***Nazir Ahmad v. King Emperor AIR, 1936 PC 253***, that if a statute stipulates a procedure for doing something, then that thing must be done strictly in accordance with the prescribed procedure or not at all. In the present case extension of time for completion of investigation was not sought for in accordance with the procedure prescribed by statute.

12. This petition succeeds. The petitioner shall be released on bail upon furnishing bond of Rs. 10,000/- (Rupees ten Thousand only), with two sureties of like amount one of whom must be local, to the satisfaction of the Additional Sessions Judge, First Court, Cooch Behar, on the condition that he shall not intimidate the witnesses or tamper with the evidence in any manner whatsoever and shall appear before the trial Court on every date of hearing. In the event of violation of any of the conditions of bail, the trial Court will be at liberty to cancel the bail without reference to this Court. Such cancellation will be subject to the charge-sheet being validly filed.

13. The prayer for bail is allowed, subject to the conditions stated above.

14. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance of necessary formalities.

(BIVAS PATTANAYAK, J.)

(ARIJIT BANERJEE, J.)