

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1114 OF 2021

Vaibhav S/o Ranba Ujagare,
Age 22 Years, Occupation Nil,
R/o. Near Wale English School,
Khadgaon Road, Latur.

.. Petitioner

Versus

The State of Maharashtra,
Through Investigation Officer,
MIDC Latur Police Station, Latur.

.. Respondent

...
Advocate for the Petitioner : Mr. H.P. Jadhav
A.P.P for Respondent State : Mrs. G.L. Deshpande
...

CORAM : N.R. BORKAR, J.

DATE : 22.10.2021

PER COURT :-

This writ petition takes an exception to the order dated 04-09-2021 passed by the learned Additional Sessions Judge, Latur in Criminal Miscellaneous Application No. 536 of 2021.

2. The petitioner, who is an accused, in Crime No. 346 of 2021 registered at MIDC Police Station, Latur, for the offence punishable under Section 20(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (In short, "N.D.P.S.Act") moved

an application under Section 167(2) of the Code of Criminal Procedure, for default bail. The learned Additional Sessions Judge allowed said application by order dated 02-09-2021 and the petitioner was released on bail. The application was thereafter moved by the State before the very same learned Additional Sessions Judge for recalling the said order releasing the petitioner on bail on the ground that the petitioner is an accused for the offence punishable under Section 20 (B) of the N.D.P.S. Act and the statutory period for filing charge sheet under Section 36(A)(4) of N.D.P.S. Act is 180 days and not 90 days. The learned Additional Sessions Judge allowed the application filed by the State and recalled its order dated 02.09.2021 and cancelled the bail granted to the appellant.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondent-State.

4. Learned counsel for the petitioner submits that in view of Section 362 of the Cr.P.C. which states that no court, when it has signed its Judgment or final order shall alter or review the same except to cancel a clerical or arithmetical errors. The learned Additional Sessions Judge was not justified in recalling its own order dated 02-09-2021. It is, thus, submitted that the order impugned needs to be set-aside.

5. On the other hand, learned Additional Public Prosecutor for respondent-State submits that, the statutory period to file chargesheet under Section 36(A)(4) of N.D.P.S. Act is 180 days. It is submitted that, the application was, however, moved on expiry of 90 days and before expiry of 180 days. It is submitted that the learned Additional Sessions Judge was thus justified in recalling it's order dated 02-09-2021.

6. The learned counsel for the petitioner has not disputed that under Section 36(A)(4) of the N.D.P.S Act the time period for filing the charge sheet is 180 days. It appears that application for default bail was moved on expiry of 90 days and before the expiry of 180 days. Thus, the petitioner was not entitled to default bail on the day on which the order was passed releasing him on the bail. If the order impugned is set-aside, the order which was not in accordance with law would get revived. The same cannot be done much less in writ jurisdiction. The writ petition is, therefore, dismissed.

7. The dismissal of the present petition will not preclude the petitioner from moving an application for default bail in accordance with law.

(N. R. BORKAR)
JUDGE