

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Application (APL) No. 489 / 2021

Kuldeep Suresh Indalkar .. Applicant

Versus.

The State of Maharashtra .. Respondent

Alongwith

Criminal Application (APL) No. 511 / 2021

Kiran Dinkar Rajguru .. Applicant

Versus.

The State of Maharashtra .. Respondent

And

Criminal Application (APL) No. 543 / 2021

Manoj Eknath Palande .. Applicant

Versus.

The State of Maharashtra .. Respondent

And

Writ Petition No. 1882 / 2021

Tushar Suryakant Kale and Anr. .. Petitioners

Versus.

The State of Maharashtra .. Respondent

And

Writ Petition No. 3260 / 2021

Akshay Shiwaji Kale and Anr.

.. Petitioners

Versus.

The Senior Inspector of Police,
Chakan Police Station and Anr.

.. Respondents

Mr. Bhavesh Thakur, Advocate for the Applicant in APL-489/2021.

Mr. M.A. Ansari, Advocate for Petitioner in WP-1882/2021.

Mr. Taraq Sayed i/by Advait Tamhankar, Advocate for Applicant
in APL-511/2021 and APL-543/2021.

Mr. A.R. Patil, APP for State in all matters.

CORAM : SANDEEP K. SHINDE J.

RESERVED ON : 28th OCTOBER, 2021.

PRONOUNCED ON : 04th DECEMBER, 2021.

JUDGMENT : -

1. These applications under Section 482 of the Code of Criminal Procedure, 1973, seek to quash and set aside the order dated 30th March, 2021 passed by the Special Court of Sessions, in

exercise of powers under Section 36A(4) of the Narcotics Drugs and Psychotropic Substance Act, 1985 (NDPS Act for short), extending the period to complete investigation by hundred and eighty days, in Crime No. 1089/2020 lodged by the Chakun Police Station Pune for the offences punishable under Section 8(c), 21(c), 22(c), 27-A, 29, 31-A of the NDPS Act and Section 120-B of the Indian Penal Code, 1860.

2. Briefly stated prosecution case is as follows;

(a) On 7th October, 2020 on a tip off, the investigating agency intercepted a car bearing MH-12-MN4716 on the Chakan Shikrapur Road, Pune.

(b) Five persons were occupying the car; three out of them were sitting on back seat and each had a bag on their laps. They were Chetan Dandwate (A-1), Ananddeep Goswai (A-2), Akshay Kale (A-3); Sanjeev Kumar Bansiv Raut (A-4), Tauseef Tasleem (A-5).

(c) Akshay Kale (A-3 and Petitioner in Writ Petition No. 3260/2021) is before this Court.

(d) That upon searching the bags, occupants of the car, were found in possession of 20KG Mephedrone (MD) i.e. commercial quantity worth Rs. 20 Crores and Cash Rs. 23100/-.

(e) That subsequently in all 22 accused were arrested. Their complicity in manufacturing 'Mephedrone' at Sanyog Biotech Plant at Ranjangaon MIDC owned by accused no. 7 – Ashok Sankpal was revealed. Some accused were procuring and making available the raw material i.e. 'Methyle Propiophenone' a essential ingredient for manufacturing M.D. Accused No.3 was found procuring, Acetone; whereas Accused No. 9 Kuldeep Indalkar was found procuring "Methyle Propiophenone" from Bangalore. The accused no. 11 Tushar Kale and Rakesh Khandiwadekar – Accused No. 14, were found manufacturing the drugs with the help of co-accused. The training to manufacture the drugs was imparted by accused no. 14 and 19. These two

accused were found engaged in manufacturing drugs at Mahad MIDC at M/s Alchemy Industries and Nimbus Pharma. Accused No. 11 Tushar Kale had taken a rented flat at Mumbai to make the crystals of M.D. Investigation has revealed that Tushar Kale was selling the drugs in the market through a Nigerian National, Zubi- Accused No. 13. The formula for manufacturing the drugs and the related documents were found and seized from Arvind Kumar - Accused No. 18. The Accused No.11 and 14 had purchased the land and farm house and were planning to commence manufacturing drugs in the farm house.

3. The investigation revealed 132 KG MD was manufactured at Sanyog Biotech Plant at Ranjangaon; 55 KG MD was manufactured at Mahad MIDC at Alchemy and Nimbus Pharma; 52 KG crystals of M.D. was found at Kandivali flat taken on rent. However, only 20 KG MD has been recovered. The investigation further revealed criminal antecedents of accused no. 13 Zubi a

foreign national against whom offence under the NDPS act was registered; Rakesh Khandiwadekar – accused no. 14, two offences under the NDPS Act and two under IPC; Arvind Kumar Lohare – one offence under NDPS act; Afzal – Accused No. 20 one offence under NDPS act and another under IPC.

4. In the course of investigation, Rs. 60 Lacs, 25 Lacs and 25 Lacs were seized from Tushar Kale – accused no. 11; Rakesh Khandiwadekar Accused No. 14 and Lalit Patil – Accused No. 21 respectively.

5. Thus, it is prosecution case that a large syndicate of persons from various streams of life, were involved in right from procuring the raw material; manufacturing the prohibited drugs; selling the drugs to the Foreign National across the State; purchasing the properties from the proceeds of crime; parking of ill-gotten money in foreign land through Hawala.

6. Accused before me are Accused Nos. 3, 6, 8, 9, 11, 14 and 19;
Akshay Kale (Accused No.3) was arrested on 8th October, 2020;
Kiran Kale (Accused No. 6) was arrested on 10th October, 2020;
Kiran Rajguru (Accused No. 8) was arrested on 10th October, 2020;
Kuldeep Indalkar (Accused No. 9) was arrested on 12th October,
2020;
Tushar Kale (Accused No. 11) was arrested on 16th October, 2020;
Rakesh Khandivadekar (Accused No. 14) was arrested on 16th
October, 2020;
Manoj Palande (Accused No. 19) was arrested on 5th December,
2020;
Thus, akshay Kale (accused no.3) was arrested first in point of
time on 8th October, 2020 and other accused herein were arrested
thereafter.

7. So far as Akshay Kale (Accused No.3) is concerned, the
period of 180 days for completion of investigation envisaged

under Section 36A (4) of the NDPS Act was to end on 3rd April, 2021; AND so far as, Kuldeep Indalkar (Accused No.9) is concerned on 7th April, 2021.

8. Yet, on 15th March, 2021 (much before the time) Public Prosecutor moved an application under Section 36-A(4) of the NDPS Act, seeking extension of time of 180 days, to complete the investigation.

9. The learned Sessions Court issued a notice on 18th March, 2021.

10. On 30th March, 2021, learned Judge extended period to complete the investigation in crime in question by hundred and eighty days, having found that report was indicating progress in the investigation and disclosing and/or justifying the reasons for keeping accused in further custody beyond 180 days to enable to complete the investigation.

11. Feeling aggrieved by the order dated 30th March, 2021, Applicants-Accused assailed this order on the following grounds.

(a) That the application moved by the Public Prosecutor under Section 36A(4) of the NDPS Act, does not lay out specific and cogent reasons for which further time is required to complete investigation by requiring custody of the Applicants.

(b) That no compelling reasons have been disclosed for seeking extension of time for filing the charge-sheet beyond 180 days. Reliance was placed on the judgment of the Apex Court in the case of **Sanjay Kumar Kedia Vs. Intelligence Officer, NCB and Others**; 2009 17 SCC 631.

(c) The learned Public Prosecutor has not independently applied his mind to the facts of the case but simply forwarded a report of the Investigating Officer. Reliance was placed on the judgment of the Apex Court in the case of Hitendra Vishnu Thakur.

(d) Report of the investigating officer does not disclose progress in the investigation and acceptable a reason for continuing the

custody of the Applicants.

(e) That sufficient investigation has already been carried out and there is nothing more to be recovered at the instance of the Applicants

(f) Complicity of each of the Applicants, has not been disclosed and report does not justify to continue the custody of the Applicants.

. In other words, it is Applicants' case that Prosecution ought to have disclosed, nature and kind of investigation remained to be carried out as against each Applicant. However, as it appears, the extension was sought on general ground, in which according to Petitioner defeats the purpose and object of the provisions of Section 36-A(4) of the NDPS Act. It was argued, since Prosecution has recorded the statements of 42 witnesses; collected the CDRs; recovered the commercial quantity of the contraband, nothing more remained to be investigated. Applicants therefore argued, that reasons put forth

for seeking time for completing the investigation is completely farcical and clearly portrays unreasoned approach of the investigating agency. On these grounds, Applicants seek to quash the impugned order and press the consequential reliefs.

12. Learned Prosecution on the other hand supported the impugned order and would rely on affidavit-in reply filed by the Officer in each application and justified the application moved under Section 36-A(4) of the NDPS Act.

13. I have perused the applications/ petitions; ground urged therein; affidavits in all the applications; remand applications and application moved by the Prosecution under Section 36-A(4) of the NDPS Act.

14. Herein, the investigation has unfolded complicity of large number of persons involved in manufacturing drugs with systematic and planned approach. Some of them, were found

procuring the raw material from various sources; manufacturing drugs in the industrial plants at Ranjangaon MIDC, with the assistance of the experts, selling the drugs in the market across the State and further a sending ill-gotten money across the Country. In consideration of the allegations and evidence surfaced in the investigation, Prosecution has invoked Section 120-B of the IPC. As we know, conspiracies are secretly planned and direct evidence is therefore difficult to produce and therefore in almost all cases, conspiracy is to be inferred from the circumstance pointing out one and only one hypothesis of the existence of conspiracy to commit any unlawful or illegal act.

15. In this case although there may not be a direct evidence against the Accused No. 6 to 22 revealing their complicity in the crime, yet the prosecution has brought out material against them to infer that they all colluded, planned and then ventured to manufacture the prohibited drugs and sale the same for the

consideration. In the application filed by the Prosecution and the remand report distinctly attributed the role to each Applicant, which I am summarize as under;

- (a) Akshay Kale Accused No.3 was arrested in a car which was intercepted on 7th October, 2020 and upon searching bags 20 KG MD was recovered from the occupants of the car.
- (b) Kiran Kale – Accused No.6 in investigation his complicity in the manufacturing the drugs is disclosed.
- (c) Kiran Rajguru – Accused No. 8 he had purchased the raw material Acetone; Tolune Mono Methyl Amine and supplied to Chemical Plant MIDC at the instance of Ashok Sankpal – Accused No.7.
- (d) Kuldeep Indalkar – Accused No.8, he has procured Methyle tropiophenine from Bangalore for manufacturing MD.
- (e) Tushar Kale Accused No.11, he was found in actual production of Md. He had taken a flat on rental basis for crystallizing the MD. He has sold MD to a Foreign National Zubi

through Rushikesh Mishra (Accused No.12) and accepted the consideration. This accused and Rakesh Khandivadekar paid Rs. 35 Lacs to Arvind to acquire necessary for manufacturing the MD. Rakesh Khandivadekar Accused No.14 was found actually involved in the manufacturing of MD. He alongwith Tushar Kale acquired in row house for manufacturing the MD and paid huge amount to Arvind.

Manoj Palande Accused No. 19 imparted training to Accused Tushar Kale and Rakesh Khandivadekar for manufacturing drugs in a company at MIDC Mahad.

. Thus from the role attributed and assigned to each Applicant intelligibly shows that they acted in-collusion manufacture drugs.

16. So far as progress in investigation is concerned; Application discloses the progress in investigation in the following directions and and in respect of;

- (i). Only 20 KG MD has been recovered from the Accused Nos. 1 to 5; yet 112 MD is to be recovered and investigate to whom and when, this quantity of drug was sold by the Accused and consideration received therefore.
- (ii). Trace the whereabouts of the supplier of the raw material used for manufacturing 112 KG of MD.
- (iii). Since investigation has disclosed complicity of foreign national and further investigation in that direction is underway.
- (iv). Money trail and consideration paid for purchasing the immovable properties and Forensic Audit is underway, to trace the financial transaction.
- (v). The co-accused Afzal Hussain and Abbas Sunsara paid Rs. 50 Lacs to co-accused Lalit Patil through Hawala transaction and investigation in that direction is in progress.
- (vi). Such other properties if any purchased by the Accused from the ill-gotten money, are to be traced.
- (vii). Complicity of other Accused from other State has not been

completely ruled out and investigation is in progress.

(viii). To trace the trail of drug sold to Foreign National.

17. Thus, having regard to magnitude of the offence; complicity of twenty accused, who were from different field and walks of life; complicity of Foreign National; and such other facts surfaced in the investigation, in my view, the Prosecution has indicated and disclosed the progress of investigation and justified for keeping the accused in further custody that is beyond 180 days to enable them to complete the investigation. As such it cannot be said that the special prosecutor has not applied his mind and was not satisfied with the progress of investigation and genuineness of a reason and grounds for seeking extension of time to complete the investigation.

18. That for the reasons above stated, I am not inclined to interfere in the impugned order passed by the Special Court,

granting and extending 180 days for filing the charge-sheet in the Crime in question. In the result, the applications and petitions are rejected.

(SANDEEP K. SHINDE, J.)

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