

04.08.2022
Sl. No.6
akd

C. R. M. (NDPS) 840 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 21.07.2022 in connection with Kaliachak Police Station Case No. 988 of 2021 dated 15.09.2021 under Sections 21(c)/29 of the NDPS Act. (NDPS Case No.87 of 2021)

And

In Re: ***Israil Sk. @ Md. Israil Momin***

... .. Petitioner

Mr. Ayan Bhattacharyya
Mr. Sagar Saha

... .. for the petitioner

Mr. Sudip Ghosh
Mr. Apurba Kr. Datta

... .. for the State

Petitioner prays for statutory bail. It is submitted on behalf of the petitioner that he was produced before the Special Court on 16.09.2021. On the 176th day i.e. 11.03.2022, a purported application for extension of detention for a period of one month in terms of proviso to Section 36-A(4) of the NDPS Act was filed. By order dated 14.03.2022, the period of detention was extended till 23.03.2022. A subsequent application praying for extension of period of detention for another three months was filed on 23.03.2022. Hearing of the application was adjourned till 25.03.2022 and an interim extension was granted till that day. On 25.03.2022 due to lawyer's strike the matter could not be taken up and was posted on 30.03.2022. Arguing no interim extension had been granted on the earlier date, petitioner has prayed for statutory bail which came to be denied.

Mr. Ayan Bhattacharyya, learned advocate appearing for the petitioner relying on various authorities argued in absence of express order of extension of period of detention, a right to statutory bail had

crystallised. He further submits reasons given in the applications for extension are not germane for further detention of the petitioner. Hence, his client may be granted statutory bail.

On the other hand, Mr. Apurba Kumar Datta, learned advocate appearing for the State submits application for extension of period of detention under 36-A(4) of the NDPS Act was filed on 11.03.2022 i.e. before the expiry of the statutory period of detention i.e. 180 days. By order dated 14.03.2022, the period of detention was extended till 23.03.2022. On that date another application for extension was filed which was fixed for hearing on 25.03.2022. Interim extension was granted till that date. On 25.03.2022, prayer for extension could not be taken up for hearing due to lawyer's strike. Once an application for extension has been made by the prosecuting agency, the same requires to be disposed of first before the right of the petitioner to statutory bail can be said to have crystallised. Hence, the court below rightly denied statutory bail to the petitioner.

Moot issue which falls for decision is whether failure to pass an interim extension of period of detention on 25.03.2022 i.e. the day on which normal functioning of the court was hindered due to lawyer's strike would entitle the petitioner to statutory bail or not. An ancillary issue has also been raised with regard to the justification for extension *qua* the reasons stated in the report filed by the prosecutor.

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

“36-A. Offences triable by Special Courts. – (1) *** *******

(2) **** **** *****

(3) **** **** *****

(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.”

In the present case, application for extension of period of detention was filed prior to the expiry of the initial statutory limit i.e. 180 days and thereafter, within 25.03.2022 i.e. extended period of detention as per order of the court. Failure on the part of the court to take up the matter for hearing was due to circumstances beyond the control of the prosecution i.e. cessation of work by lawyers. Taking advantage of such a situation, petitioner has sought to invoke his right to statutory bail.

It is argued before us that in absence of an extension for the period of detention, by way of an interim order on 25.03.2022 his right has crystallised.

We are unable to accept such proposition. In the event, the prosecution files a report seeking extension of the period of detention in terms of proviso to Section 36-A(4) of the NDPS Act, we are of the considered opinion such application takes precedence over the right to statutory bail. Failure to consider such application by the court due to myriad systemic reasons cannot, in our estimation, result in crystallisation of right in favour of the accused.

In ***M. Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence***¹, the Apex Court while interpreting the right of an accused to statutory bail held such right would not crystallise in the event a report seeking extension of the period of detention of an undertrial in terms of proviso to the said Section had been filed prior to the prayer for statutory bail. Similar view is expressed in ***Rambeer Shokeen vs. State (NCT of Delhi)***².

¹ (2021) 2 SCC 485 (Para 25.3)

² (2018) 4 SCC 405 (Para 31)

It is trite law an act of court would not prejudice a party. Such proposition applies both in favour of the prosecution as well as the accused. In the present case, prosecution took all necessary steps seeking extension of period of detention in terms of proviso to Section 36-A(4) of the NDPS Act. Failure to consider the application cannot lie at its doorstep. Due to lawyer's strike, the prosecution was unable to even press for an extension of the interim order granted on 14.03.2022. As the substantive prayer for extension of period of detention had been filed prior to the petitioner availing his right to statutory bail, mere adjournment of the hearing of the said application due to lawyer's strike or otherwise cannot enure to his benefit and crystallise into a substantive right in his favour.

With regard to the other issue namely, justification of extension of period of detention vis-à-vis purpose of investigation, we note adequate reasons namely, abscondence of co-accused and failure to obtain FSL report are articulated in the application.

Petitioner is alleged to be in conspiracy with co-accused who is absconding. Endeavour to nab the co-accused would certainly be adversely affected if a co-conspirator is released on bail in the meantime.

In these circumstances, we are of the opinion that weighty and relevant reasons were canvassed in the reports praying for extension of time and such report being filed prior to the petitioner seeking statutory bail, the court below was justified in denying such relief.

The application for bail is accordingly dismissed.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)

