

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRLMC NO.2278 of 2021**

(This is an application filed under Section 482 of Code Criminal Procedure, 1973 challenging the order dated 17.02.2021 passed by learned Sessions Judge-cum-Special Judge, Malkangiri in T.R. Case No.84 of 2020 arising out of Orkel P.S. Case No.142 of 2020).

Surendra Gadaba

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Petitioner***-versus-******State of Odisha***

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Opposite Party**Advocates appeared in the case through Hybrid Mode:*****For Petitioner***

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Mr. Jugala Kishore Panda, Adv***-versus-******For Opposite Party***

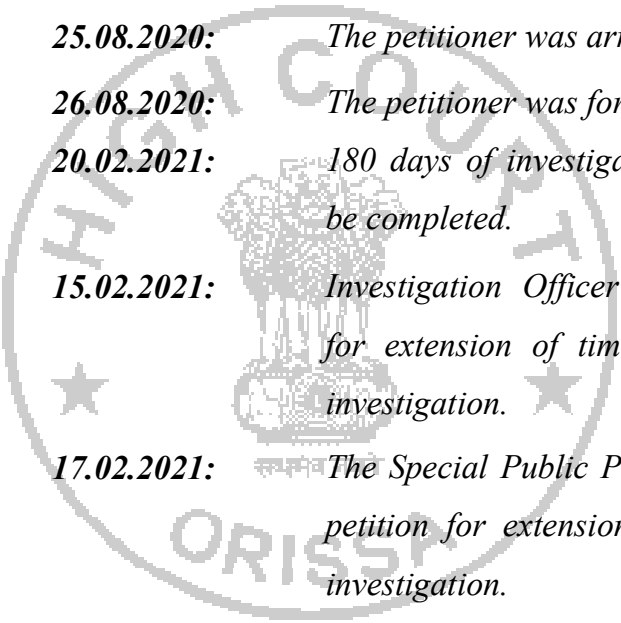
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Mr. Karunakar Gaya, ASC**CORAM:****JUSTICE V. NARASINGH****DATE OF HEARING :17.03.2022****DATE OF JUDGMENT: 13.05.2022*****V. Narasingh, J.***

1. Extension of the time period for completion of investigation by 30 days beyond the period prescribed in terms of the provisions contained under Section 36A(4) of the NDPS

Act by order dated 7.02.2021 (wrongly typed as 7.02.2020) passed by the learned Sessions Judge-cum-Special Judge Malkangiri in T.R. Case No.84 of 2020 arising out of Orkel P.S. Case No.142/2020 is the subject matter of challenge in this application under Section 482 Cr.P.C. by the accused-petitioner.

2. The relevant dates which are not in dispute and which has a bearing on the point at issue are stated hereunder;



25.08.2020: *The petitioner was arrested.*

26.08.2020: *The petitioner was forwarded*

20.02.2021: *180 days of investigation period to be completed.*

15.02.2021: *Investigation Officer filed petition for extension of time to complete investigation.*

17.02.2021: *The Special Public Prosecutor filed petition for extension of period of investigation.*

17.02.2021: *The learned Special Judge extended 30 days for completion of investigation till 22.03.2021.*

19.03.2021: *The Investigation Officer submitted Charge Sheet, before expiry of the extended period, 22.03.2021.*

3. It is submitted that petition for extension of the statutory period of 180 days under the NDPS Act, was taken up by the learned Court in seisin of the matter on 17.02.2021 and on the said date as notice of such application was not given to the petitioner exercise of such discretion for extension by the learned Court below is illegal. Whereby, petitioner's infeasible right of freedom has been infringed in as much as admittedly, no notice was given to the **accused "in person"**.
4. In support of his contention the learned counsel for the petitioner relies on the judgments of this Court in the case of ***Lambodar Bag-Vrs.- State of Odisha*** reported in ***(2018) 71 OCR 31*** and asserts that in view of the said decision, notice has to be mandatorily issued to the accused before grant of extension of period to complete investigation and in the case at hand, the same having not been done, the petitioner is entitled to be released on bail by virtue of operation of the proviso to Section 167(2) Cr.P.C., which is commonly referred to as default bail.
5. The learned counsel for the State, per contra submitted that the decisions cited by the learned counsel for the petitioner has no application in the fact situation of the present case in as much as the order of extension was passed after following the procedure as envisaged. Hence sought for dismissal of the CRLMC.

6. The right of an accused to be released on default bail is well recognized and is held to be sacred. In this context petitioner has rightly relied on the judgments reported in

- I. *1994 (5) SCC 410 – Sunjay Datt V. State*
- II. *AIR 1994 SC 2623 – Hitendra Vishnu Thakur and others v. State of Maharashtra and others*
- III. *AIR 2001 SC 1910 – Uday Mohanlal Acharya v. State of Maharashtra*
- IV. *(2017) 15 SCC 67 – Rakesh Kumar Paul v. State of Assam*
- V. *2020 SCC Online SC 867 – M. Ravindran v. The Intelligence Officer, Directorate of Revenue Intelligence.*
- VI. *(2020) 10 SCC 616 - Bikramjit Singh v. The State of Punjab*
- VII. *2020 SCC Online SC 529 – S. Kasi v. State Through, the Inspector of Police Samaynallur Police Station Madurai District.*
- VIII. *(2018) 71 OCR 31 Lambodar Bag v. State of Orissa*
- IX. *2010 (1) SCR 555 – Sanjay Kumar Kedia @ Sanjay Kedia v. Intelligence Officer, Narcotic Control Bureau and another.*

7. For deciding the point at issue it is not necessary to refer to all the judgments since it falls within a narrow compass of manner of disposal of an application for extension by the learned Special Judge while exercising his jurisdiction in terms of Section 36-A(4) of the NDPS Act.
8. For convenience of ready reference 36-A(4) of the NDPS Act, is quoted hereunder;

36-A (1) x x x x x

(2) x x x x x

(3) x x x x x

(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 (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 eight days.

9. The impugned order dated 17.02.2021 (part of annexure-4) is to be examined on the touchstone of the judgments relied on by the petitioner.
10. On a bare perusal of the said order it is manifestly clear that learned special judge took note of the submission of the learned Special P.P's submission in his petition for grant of time for a further period of 180 days and also of the I.O. And, considered the objection of the Defence.
11. It is not disputed at the bar that Investigating Officer as well as the Special Public Prosecutor filed separate petitions seeking extension of time on 15.02.2021 and 17.02.2021 which have been annexed at page 26 and 27 of the brief.
12. Admittedly, there is endorsement of the defence counsel on such petition filed by the Special Public Prosecutor.
13. It has been specifically stated by the learned Special P.P. that due to lock down/shut down period for Covid-19, the I.O. could not complete his investigation within the stipulated period.
14. And on consideration, instead of the time prayed for, the learned Special Judge extended the period by 30 days.
15. The learned counsel for the petitioner relies on the judgment of the Apex Court in the case of ***Hitendra Vishnu Thakur (Supra)*** which has been extensively quoted in the judgment of this Court on which reliance is placed by the

learned counsel for the petitioner that is ***Lambodar Bag (Supra)*** to canvas his submission that notice is mandatorily to be issued to the accused in person before an application for extension of the period for completion of investigation by the prosecution is taken up for consideration by the Court in terms of the statutory prescription envisaged under Section 36(A)(4) of the NDPS Act.

16. It is apt to state that in the Case of ***Hitendra Vishnu Thakur (Supra)*** the Apex Court was dealing with Section 20(4) of Tada Act which is parametria with the provision under Section 36-A(4) of the NDPS Act.
17. It is trite law that a judgment has to be read in the context in which it has been made. It cannot have universal application dehors the facts.
18. In this context reference can be made to the judgment of Apex Court in the case of ***Haryana Financial Corporation V. Jagdamba Oil Mills*** reported in ***(2002) 3 SCC 496***.

And, on the principle of interpretation of judgments as decided in the aforesaid case decisions relied upon by the learned counsel for the petitioner is to be scrutinized.

19. In ***Hitendra Vishnu Thakur (Supra)*** the Apex Court has laid down the salutary principle of striking a balance between right of an accused and societal interest which in the system of dispensation of justice is represented by the prosecution.
20. The observation of the Apex Court which is relevant for disposal of the present lis is quoted hereunder;

x x x x “Similarly, when a report is submitted by the public prosecutor to the Designated Court for grant of extension under Cl.(bb), its notice should be issued to the accused before granting such an extension so that an accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him.” x x x x

This Court in the case of *Lambodar Bag (Supra)* reiterated the same.

21. There cannot be any cavil regarding the proposition enumerated above regarding opportunity to be given to the accused before a decision is taken relating to his indefeasible right of bail.
22. On a close scrutiny of the judgment of the Apex Court it is evident that it has never been envisaged that notice to be given to the **accused in person** as is being submitted by the learned counsel for the petitioner. In as much as, when an accused is represented through a counsel and a copy of petition seeking extension is served on him through counsel and he participates in the proceeding relating to extension of time and opposes the same as in the present case, it cannot be said that there has been violation of natural justice in terms of the direction of the Apex Court in the case of *Hitendra Vishnu Thakur (Supra)*.

23. On factual matrix the case of *Lambodar Bag (Supra)* is clearly distinguishable in as much as it can be seen that in *Lambodar Bag (Supra)* what impelled this Court to exercise its discretion in favour of the accused in coming to a conclusion that his indefeasible right under Section 167(2) Cr.P.C. has been infringed since “no notice was issued to the petitioners on such petition to have their say in the matter”.

23(A). Even the filing of the petition was not brought to the notice of the counsel representing the petitioners. It was also further observed “even the trial judge has not brought filing of such a petition to the notice of the counsel representing the petitioners in view of the law laid down in the case of *Hitendra Vishnu Thakur (Supra)*”

23(B). On a bare perusal of the order passed by this Court in the case of *Lambodar Bag (Supra)* it is evident that this Court took exception and with utmost respect it is stated, very rightly, that no notice was given to the counsel representing the petitioner. Which was in clear terms violation of the law laid down in the case of *Hitendra Vishnu Thakur (Supra)* vis-à-vis principles of natural justice.

24. It bears repetition that in the case at hand admittedly the petition seeking extension was served on the learned counsel for the defence as noted in the impugned order;

x x x x x “The case record is put up today
on receipt of the prayer of the I.O.
regarding extension of time to submit

charge sheet. Learned Spl P.P. has also filed a petition to grant time for a period of 180 days to submit charge sheet on the ground stated there in. Copy served.

Heard.” x x x x x

25. The impugned order clearly indicates that the accused opposed such prayer in as much as it is stated thus; **“Learned Defence Counsel objected such prayer”**.

And, on consideration of the petitions filed by the Special P.P. and the I.O. who sought extension of 180 days, granted 30 days beyond the stipulated period. Therefore, it is factually incorrect to say that accused was not given an opportunity of hearing before the impugned order was passed.

26. Insistence on issuance of personal notice to the accused even when he is represented by a counsel and the counsel has participated in the proceeding relating to consideration of a petition under Section 36-A(4) of NDPS Act would amount to legislation and rewriting the provisions contained in Section 36-A(4) of NDPS Act which is beyond the powers of this Court. It is settled principle of law, which stood the test of time that Courts cannot legislate or interpret the provisions of statute so as to render the intention of legislature otiose.
27. On a conspectus of materials on record, this Court is of the considered opinion that there has been no infraction of the

right of the accused as guaranteed under Section 167(2) of the Cr.P.C. read with Section 36-A(4) of the NDPS Act.

- 28.** CRLMC is accordingly dismissed being devoid of merit.
There shall be no order as to cost.

(V.Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the 13th of May, 2022/Santoshi

