

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.529 OF 2021

Lalit Anil Patil ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr.Ayaz Khan for the Applicant.
Mr.R.M. Pethe, APP for the Respondent –State.

CORAM : C.V. BHADANG, J.

RESERVED ON : 3 JANUARY 2022

PRONOUNCED ON : 8 FEBRUARY 2022

P.C.

1. By this application, under section 482 of the Code of Criminal Procedure (CrPC) the applicant(Accused no 21) is challenging the order dated. 30 March 2021 passed by the learned Special Judge At Pune, thereby extending the period for investigation under Section 36 A(4) of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act for short) by 180 Days

2. The brief facts necessary for the disposal of the application may be stated thus:-

On 7 October 2020 at 12.55 Hrs. the accused nos 1 to 5 were found in possession of commercial quantity of

Mephedrone being carried in a blue Coloured Wolkwagon POLO car near Dashmesh Punjabi Dhaba on the Chakan Shikrapur Road. Accordingly an offence at Crime no 1089/2020 came to be registered with PS Higwadi Pimpri Chinchwad under section 8(C), 21(C), 22(C), 29 and section 31(A) of the NDPS Act and Section 120 B of the Indian Penal Code (IPC). During the course of investigation other accused came to be arrested. The present applicant was arrested on 10 December 2020 and is in Magisterial Custody Remand (MCR).

3. On 15 March 2021 the investigating Officer filed an application for extension of time to file the Chargesheet mainly on following grounds:-

- (i) To find out the source of the money recovered at the instance of the Applicant.
- (ii) To trace some of the wanted Accused who are either in Maharashtra or in other states.
- (iii) To find out in the past how much quantity of the contraband was sold to different persons and to trace them.
- (iv) To record the statement of the witnesses u/s 164 of Cr.P.C.
- (v) To conduct Test Identification Parade of the Accused.

(vi) Reports of forensic expert in respect to mobile handset though the CDR and SDR were already received.

4. It appears that notices were issued to the accused in the prison. The learned Special Judge has noted that a report was submitted by the concerned officer in the prison that the notices were read over to the accused and the contents were explained to them in vernacular. However the accused refused to receive the notices. No notice was given to the advocates who were on record. However advocate Vimal Za appeared on behalf of accused Tushar Kale, Rakesh Khaniwadekar, Kuldeep Indalkar and Rushikesh Mishra. It appears from the submissions recorded in the impugned order that the only contention raised on behalf of the accused named above was that section 173(8) of CrPC permits filing of a supplementary chargsheet on further investigation. It was thus contended that nothing prevented the Investigating officer to file a chargesheet on available material and to carry out further investigation, if any.

5. The learned Special Judge has found that the offence is very serious involving a syndicate of 22 persons engaged in production, distribution and sale of Mephedrin. The Investigating officer has succeeded in showing progress in the investigation. In that view of the matter the learned Special

Judge by the impugned order has allowed the application granting extension as prayed.

6. It is necessary to note that the present applicant and some other accused, were not represented and have not been heard before the order was passed.

7. I have heard the learned counsel for the applicant and the learned APP. Perused record.

8. It is submitted by the learned counsel for the applicant that the application for extension was prepared on 12 March 2021 that is 25 days before the expiry of the original period of 180 days. It is submitted that the investigation on the aspects on which extension was sought could have been carried out in these 25 days. It is submitted that the extension was granted on the 173rd day. It is submitted that the trial court has erred in granting extension of 180 days, without proper application of mind and without hearing the applicant and several other accused which is in breach of the principles of natural justice. It is submitted that the extension is sought and granted when the second bout of the pandemic was at its peak, when physical meetings with the advocate of the accused was not permissible. Thus although the learned counsel has denied that the notices were read over or that the applicant had refused to

receive the same it is submitted that even assuming that the notices were served on the applicant, the applicant was handicapped in instructing the advocate and defending the application. It is submitted that the grounds on which the extension is sought are all held to be not germane by this court in *Nayantara Gupta Vs State of Maharashtra*¹, *Madubuchi Cosmos Igwe Vs State of Maharashtra*², *Junaid Shaikh V/s. State of Maharashtra*³, *Rajesh T. Joshi V/s. State of Maharashtra*⁴ and *Reza Shidani V/s. State of Maharashtra*⁵.

9. It is submitted that a Division Bench of this Court at Goa in *Manas Krishna T.K. Vs State*⁶ has held that a chargesheet without a CA report is complete chargesheet. Thus it was not necessary for the IO to wait for the CA report and extension could not have been sought or granted on that count. Reliance is placed on the decision of this court in *Shaikh Moin Shaikh Mehmood Vs State of Maharashtra*⁷ and the decision of the Supreme Court in *Hitendra Vishnu Thakur Vs State of Maharashtra*⁸ in order to submit that the Public Prosecutor in addition to his report should also append the report of the Investigating Agency to bring out the grounds for such extension, which is not done in this case.

1 2020 SCC Online Bom 873

2 LD/VC/OCR/257 of 2020 decided on 14 September 2020

3 Bail Application No.259 of 2020 decided on 27 July 2020

4 (LD/VC/OCR/187/2020 decided on 31 July 2020

5 LD/VC/OCR No.212 of 2020

6 2021 SCC Online Bom 2955

7 2020 (4) BCR (Cr) 357

8 1994(4) SCC 602

10. The learned APP has supported the impugned order. It is submitted that the offence is serious, involving commercial quantity of the contraband. It is submitted that already 22 accused have been arrested and some are shown to be wanted and are yet to be arrested. It is submitted that the scope of the investigation is very vast extending to other states. It is submitted that the offence involves a deep conspiracy for manufacture, distribution and sale of the contraband including procurement and supply of the raw material and a supply chain. It is submitted that the notices were served. However the accused refused to receive the same and hence the trial court was justified in granting extension . It is submitted that there is no rule for the investigating officer to wait till the conclusion of the original period to seek extension.

11. I have considered the submissions made. I find that the application has to succeed on the ground that the applicant and some other accused were not heard. It is necessary to note that even as per the service report from the jail authority the notices were read over and explained to the accused in vernacular. However they refused to receive the same. Thus there is no acknowledgment of the service of the notice on the applicant. The applicant and the other accused were said to be represented by advocates on record. However notice was not served on the advocate. It is significant to note that the application was heard

in March 2021 when the second wave of the pandemic was at its peak and therefore the applicant ought to be handicapped in instructing his Advocate and properly defending the Application. It is significant to note that the extension of the period contemplated under Section 36(A)(4) of the NDPS Act is not an empty formality. Such extension and/or refusal has significant impact on the powers of the Investigating Officer to properly investigate the offence on one hand and also right of the accused to seek default bail. Thus, while considering the grounds of such extension the Court has to delicately balance the consideration of a proper investigation and at the same time has to keep in mind that the grant of such extension affects the valuable right of the accused to be released on default bail. Thus the need for proper consideration of such application, cannot be over stressed.

12. I have recorded the submissions on behalf of the Applicant in details to set out the extent of the grounds available in defence and which required consideration by the Special Court. It is true that these grounds were not raised before the learned Special Judge as according to the Applicant he was not served and in any event was handicapped in instructing his Advocate and properly defending the Application. However, that is besides the point I find that it is necessary for the learned Special Court to reconsider the Application and all such available grounds including the defence that may be put up by the

Applicant and the co-accused. It hardly, needs to be stressed that failure to comply with principles of natural justice in such a case, goes to the root of the matter thereby rendering the impugned order vulnerable to challenge.

13. As I am proposing to remitting the Application back to the Special Court, it is neither necessary to nor appropriate to express any opinion on the contentions raised which are left to be decided by the Special Court on their own merits and in accordance with law.

14. In such circumstances, the Application is partly allowed. The impugned order dated 30 March 2021 is hereby set aside.

15. The Application dated 15 March 2021 in CR No.1089 of 2020 of Chakan Police Station is remitted back to the learned Special Court for deciding it afresh in accordance with law.

16. The parties to remain present before the learned Special Court on 21 February 2022.

It will be open to the learned Special Judge to issue fresh notices to other accused through jail and/or to their advocates on record.

17. The learned Special Judge in his discretion can decide to seek production of the accused either physically or by virtual mode, in order to ensure that the accused/their advocates are informed about the Application, so that they may choose to defend the same if so advised. The learned Special Judge in his discretion can also consider appointing advocate on legal aid to represent the accused, who are otherwise unrepresented.

18. It is made clear that it is entirely left to the discretion of the learned Special Judge who shall ensure that the principles of natural justice are properly followed before the Application is taken up for consideration.

C.V. BHADANG, J.