

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO.950 OF 2021**

Asif Abdul Memon,  
Occu : Chicken Business,  
Age 26 years,  
Add : Room No.78, Hanuman Nagar,  
S.V.Road, Borivali (E),  
Mumbai - 400 066  
(presently in judicial custody at  
Mumbai Central Prison )

... Applicant

versus

The State of Maharashtra  
(Panvel Taluka Police Station vide  
C.R.No.115 of 2021 dated 26<sup>th</sup> March, 2021)

... Respondent

Mr. Azaz Khan i/by Ms. Zehra Charania, for Applicant.  
Mr. H.J.Dedhia, APP, for State.

**CORAM: N.J.JAMADAR, J.**

**RESERVED ON : 4<sup>th</sup> MAY, 2022  
PRONOUNCED ON : 9<sup>th</sup> JUNE, 2022**

**ORDER :**

1. The Applicant who is arraigned in C.R.No.115 of 2021 registered with New Panvel Police Station for the offences punishable under Sections 20(C) read with 8(c) and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act), has preferred this Application under Section 482 of the Code of Criminal Procedure, 1973 (the Code), assailing the legality,

propriety and correctness of the Order dated 17<sup>th</sup> September, 2021 passed by the learned Special Judge, Panvel-Raigad, granting two months extension to complete the investigation in the said crime.

2. On 25<sup>th</sup> March, 2021, pursuant to an information, a raid was conducted on Pune-Mumbai Highway in front of JNK Lifters Pvt. Ltd., wherein a Innova Car bearing Registration No.MH-04/CJ-9363, which was on its way to Mumbai from Pune, was intercepted. The Applicant and the Accused No.1 were found in the said car. During the course of the search, in the presence of the public witnesses, 10 gunny bags containing 200 kgs ganja were found. The contraband articles were seized. Samples were collected. The Applicant and the Accused No.1 were apprehended. Crime was registered at C.R.No.115 of 2021 with New Panvel Police Station for the offences punishable under Sections 20(C) read with 8(c) and 29 of the NDPS Act.

3. The Applicant along with the co-accused were produced before the learned Magistrate on 26<sup>th</sup> March, 2021. They were initially remanded to police custody and later on to judicial custody. The period of 180 days, for which detention is permissible under Section 36-A of the NDPS Act, was to expire on 21<sup>st</sup> September, 2021.

4. On 15<sup>th</sup> September, 2021, a report was filed by the learned Public Prosecutor, Alibag-Raigad, seeking extension of 60 days to complete the investigation. It was, inter alia, averred that the samples of the contraband have been sent for analysis to Forensic Science Laboratory (FSL) and, despite reminders, the report of the analysis was awaited. The offences had wide ramifications and other persons, whose complicity was revealed during the course of the investigation, were yet to be arrested. Therefore, the learned Public Prosecutor sought extension of time by invoking the proviso to sub-Section (4) of Section 36-A of the Act.

5. By the impugned order, the learned Special Judge, after giving an opportunity of hearing to the Applicant, was persuaded to grant two months extension to complete the investigation. The observations in paragraph 5 of the impugned order spell out the reasons which weighed with the learned Special Judge to exercise the power to extend the period of detention by invoking the proviso to sub-Section (4) of Section 36-A of the Act. Para No.5 is thus, extracted below :

“5. Now the application has been file by the Ld. PP with submissions of the investigation officer in the background of circumstances prevailed in lockdown situation is not in a position to file the analysis report of the contraband from the

laboratory. On perusal of application, it appears that the investigation officer has forwarded the request letter as well as memorandum letter to the laboratory almost seven times however, due to pandemic circumstances and due to pendency of analysis of other matters, the concerned laboratory has not issued C.A.Report so far. Admittedly, the present circumstances, are not under the control of the investigation officer. No doubt the investigation officer has updated the court for his efforts for securing the C.A.Report in order to file charge sheet so also it has been pointed out that some other accused persons are yet to be arrested as reflected in the remand report. Under such circumstances, there are valid grounds for extending the period for filing chargesheet for further two months. Hence, order.

6. Mr. Khan, the learned Counsel for the Applicant, submitted that the impugned order is legally unsustainable. A two-fold submission was canvassed by the learned Counsel. First, the report of the learned PP was not supported by the report of the Investigating Officer, indicating the progress of the investigation. Second, the non-availability of the report of the Chemical Analyser has been consistently held to be not a justifiable reason for not filing the charge sheet within the stipulated period. The report of the learned PP, thus, suffers from clear non-application of mind. Consequently, the impugned order granting extension of time to complete investigation for non-availability of the Chemical

Analysers' report, also suffers from the vice of non-application of mind.

7. The learned APP, on the contrary, urged that the fact that the report of the Public Prosecutor (PP) was not accompanied by the report of the Investigating Officer, is not of material significance. The PP had submitted the report on the instructions of the Investigating Officer. The learned APP further submitted that the investigating agency has made an endeavour to obtain the CA report by addressing as many as 7 reminders. Thus, having regard to the accusation against, and the quantity of the contraband seized from, the Applicant, the extension of time to complete the investigation cannot be faulted at.

8. The learned APP further submitted that even if the case of the Applicant is taken at par, yet there is no material to indicate that after completion of 180 days, the Applicant had filed an Application to "avail" default bail, before lodging the charge sheet. Thus, the Applicant is not entitled to be released on bail.

9. I have carefully perused the report (Exhibit 14) filed by the learned PP. The submission on behalf of the Applicant that the singular reason for seeking extension of time to complete the investigation and lodge the charge sheet beyond the period of 180

days, was the non-availability of the CA report, is borne out by the said report. It was categorically asserted in the report of the PP that on 26<sup>th</sup> March, 2021, the seized samples were sent for analysis and, despite seven reminders, the CA report was awaited. It is true that, in the passing, it was asserted that the crime had wide ramifications and the other persons, who were found to be involved in the crime, were yet to be arrested. However, the fact remains that the non-availability of the CA report constituted the substratum of the case for extension of time to complete the investigation.

10. Mr. Khan, learned Counsel for the Applicant, strenuously submitted that the non-availability of the CA report is not a ground which could sustain the prayer for extension of time to carry out the investigation. Indeed, according to Mr. Khan, charge sheet could have been lawfully filed without annexing the report of the chemical analyser. In such a situation, the investigation can be said to have been complete for all intent and purpose. Therefore, the report of the learned PP, betrayed complete non-application of mind. Resultantly, the impugned order whereby the time to carry out the investigation was mechanically extended deserves to be quashed and set aside, urged Mr. Khan.

11. To lend support to this submission, Mr. Khan placed

reliance on a number of orders releasing the accused on default bail and a judgment of a Division Bench of this Court in the case of

Manas Krishna T K V/s. State, the Police Inspector, Goa<sup>1</sup>

12. The aforesaid submission of Mr. Khan appears well meritted. In the case of Junaid Hussain Shaikh V/s. State of Maharashtra<sup>2</sup> in an identical fact-situation, where the charge sheet could not be filed for want of CA report and time to carry out investigation was extended on the said count, the learned Single Judge of this Court held that the charge sheet which was complete in terms of Section 173(2) of the Code, cannot be considered or held as “inconclusive” merely because the CA reports were not available though sought for. It was further observed that the report seeking extension of time on the said count, therefore, did not demonstrate that the PP had applied his mind, but only suggested that the investigation was over but charge sheet was not filed for want of CA report.

13. In the case of Rajesh Tulsidas Joshi V/s. The State of Maharashtra<sup>3</sup> another learned Single Judge of this Court, after adverting to the judgments of the Supreme Court in the cases of

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1 Cri. Misc. Application (Bail) No.88 of 2021 (F)

2 Bail Application No.259 of 2020 dt. 27<sup>th</sup> July, 2020

3 LD/VC/OCR/187/2020 dated 31<sup>st</sup> July, 2022

Sanjay Kumar Kedia V/s. Narcotics Control Bureau<sup>4</sup> and Hitendra Vishnu Thakur and Ors. V/s. State of Maharashtra and Ors.<sup>5</sup> did not approve of the stand of the prosecution that the extension of time to carry out the investigation was necessary as the CA report was awaited. Noting that the investigation was complete in all other aspects and the charge sheet was not filed only for the reason of non-availability of the CA report, the learned Single Judge held that the statutory right of the Applicant - accused therein to be released on bail for failure to file the charge sheet within the stipulated period of 180 days could not have been defeated by grant of extension for the reason that the charge sheet could not be filed for want of CA report.

14. The aforesaid orders have been followed in the cases of Dr. Reza Borhani Shidani V/s. State of Maharashtra<sup>6</sup> and Maduabuchi Cosmos Igwe V/s. Narcotics Control Bureau and Anr.<sup>7</sup>

15. In the case of Manas (Supra), the Division Bench of this Court at Goa, considered the following question, on a reference :

“Whether in a case under the NDPS Act, the investigation can be said to be complete within the period prescribed under

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4 (2009) 17 SCC 631

5 (1994) 4 SCC 602

6 LD/VC/OCR No.212 of 2020 dated 14<sup>th</sup> August, 2020

7 LD/VC/OCR/257 of 2020 dated 14<sup>th</sup> September, 2020

Section 167(2) of the Criminal Procedure Code (Cr.P.C.) when a police report under Section 173(2) is filed before the Special Court without any CA/FSL report along.”

16. After an elaborate analysis, the Division Bench answered the aforesaid question as under :

“Question No.(i) is answered by holding that even in an NDPS case a police report containing the details prescribed under Section 173(3) Cr.P.C., is a complete police report or a charge sheet or a challan even if it is unaccompanied by a CA/FSL report. If such police report is filed within the period stipulated under Section 167(2) Cr.P.C. read with Section 36-A(4) of the NDPS Act, the accused cannot insist upon a default bail.”

17. The aforesaid enunciation indicates that this Court has consistently held that, in a case under the NDPS Act, 1985 the non-availability of the CA report does not constitute a justifiable ground to seek an extension of time to complete the investigation and the consequent detention of the accused. Nor can the charge sheet submitted by the Investigating agency sans the CA/FSL report be said to be incomplete or inconclusive. It is imperative to note that having regard to the nature of the offences and particularly the wide ramifications and deleterious consequences of the offences on the

society, sub-Section (4) of Section 36-A extends the period of detention from 90 days, prescribed under Section 167 of the Code, to 180 days. The proviso further empowers the Special Court to authorise the detention upto one year on the report of the Public Prosecutor. The Special Court is, however, enjoined to satisfy itself about the necessity of detention of the accused beyond the said period of 180 days on the basis of the report of the Public Prosecutor, which indicates the progress of the investigation and the specific reasons for such detention beyond 180 days. These conditions are required to be strictly satisfied before the period of detention is extended as the exercise of the power impinges upon the personal liberty of the accused. The period of detention can neither be extended as a matter of course. Nor for the mere asking. The Special Court must be satisfied that the Public Prosecutor has applied his mind and, in turn, be further satisfied with the progress of the investigation and genuineness of the reasons for grant of extension for detention of the accused beyond 180 days.

18. Reverting to the facts of the case, in the light of the aforesaid exposition of law, it becomes abundantly clear that what was mentioned in the report of the Public Prosecutor and weighed with the learned Special Judge, was the non-availability of the CA

report. The learned Special Judge, it seems, misdirected himself in granting extension of the period of detention merely for non-availability of the CA report. The impugned order granting extension, therefore, deserves to be quashed and set aside.

19. As the learned APP submitted that the Applicant has not availed default bail, by filing an Application, the Applicant was directed to place certified copy of the such Application, if any. The Applicant placed on record the certified copy of the Application (Exhibit 17), which was preferred on 23<sup>rd</sup> September, 2021 seeking default bail under Section 167(2) read with Section 36-A of the Act. Thus, it cannot be said that the Applicant had not availed the default bail.

20. The conspectus of aforesaid consideration is that the impugned order dated 17<sup>th</sup> September, 2021 deserves to be quashed and set aside and, consequently, the Applicant is entitled to be released on bail. Hence, the following order :

#### ORDER

- (i) The Application stands allowed.
- (ii) The impugned Order dated 17<sup>th</sup> September, 2021 extending the period of investigation and detention of the accused by two months stands quashed and set aside.

(iii) The Applicant - Asif Abdul Memon who is arraigned in C.R.No.115 of 2021 registered with New Panvel Police Station for the offences punishable under Section Sections 20(C) read with 8(c), and Section 29 of the Act, be released on bail, upon furnishing a PR bond in the sum of Rs.50,000/- and one or two sureties in the like amount to the satisfaction of the learned Special Judge.

(iv) The Applicant shall furnish his permanent residential address and other details, including cell phone number, to the Investigating Officer within 7 days of his release.

(v) The Applicant shall not tamper with the prosecution evidence and shall not give threat or inducement to any of the prosecution witness/es.

(vi) The Applicant shall deposit his passport, if any, with the Investigating Officer within a week from the date of his release.

(vi) The Applicant shall not leave India without the prior permission of the Special Court.

**( N.J.JAMADAR, J. )**