

05.06.2023.
05.
Ct.No.28
as
(Rejected)

C.R.M. (NDPS) 988 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection NDPS Case No.06 of 2021 arising out of Kaliachak P.S. Case No.30 of 2021 dated 07.01.2021 under Sections 21(c)/29 of the NDPS Act read with Sections 18(b)/27 of the Drugs & Cosmetics Act.

In the matter of : Ataur Miya.

... Petitioner.

Mr. M. Mukherjee,
Mr. A. Patra,
Mr. D. Kundu.

...for the Petitioner.

Mr. Madhusudan Sur, Id. A.P.P.,
Mr. Dipankar Paramanick.

...for the State.

Report filed on behalf of the State be kept on record.

Order dated 07.07.2021 extending the period of detention in terms of proviso to Section 36A(4) of the NDPS Act is the subject matter of challenge.

Learned Public Prosecutor sought extension of period of detention on 03.07.2021 since the statutory period of detention was to expire on 06.07.2021. On 07.07.21 by the impugned order, the period of detention was extended by 90 days. In the meantime, charge sheet came to be filed.

Learned Advocate for the petitioner contends that the extension was granted primarily on the ground that restrictions imposed due to Covid pandemic were prevailing. He refers to **S. Kasi Vs. State through**

Inspector of Police, Samaynallur Police Station, Madurai District¹ to emphasize that Covid lock down cannot be a ground to deny statutory bail.

We have considered the materials on record including the impugned order. Petitioner was arrested on 07.01.2021 with 550 bottles of phensedyl syrup containing codeine phosphate. He was produced before the Special Court on 08.01.2021 and remanded to custody. In course of investigation, complicity of co-accused transpired. On 09.06.2021, learned Public Prosecutor submitted report praying extension of the statutory period of detention which came to be dismissed on the ground that it was pre-mature. Subsequently, on 03.07.2021, another prayer as made by the Public Prosecutor to extend the period of detention which came to be allowed on 07.07.2021. Such order of extension was granted on three counts:-

- i) Report from chemical examiner's report with regard to seized contraband is awaited;
- ii) Co-accused were absconding and further detention for their apprehension and progress of investigation was necessary and
- iii) Restrictions due to Covid pandemic had hindered investigation.

In *S. Kasi* (Supra), the Hon'ble Apex Court, inter alia, held that the directions of the Court in "**Cognizance for Extension of Limitation, In Re**"² wherein it was directed

¹2020 SCC OnLine SC 529

² (2020) 19 SCC 10

period of limitation for institution of legal proceedings shall remain suspended does not apply to submission of charge sheet within statutory period and an accused is entitled to bail under section 167(2) of the Code of Criminal Procedure in case charge sheet is not filed. Perusal of the impugned order would show period of detention was not extended due to Covid-19 pandemic alone. The Court had merely referred to the restrictions prevailing during the pandemic and noted such restrictions had hindered investigation. In addition thereto, necessity of continued detention for progress of investigation i.e. apprehension of absconding co-accused was taken into consideration to justify further detention.

Under such circumstances, we are of the considered view the ratio in **S. Kasi** (Supra) is of no help to the petitioner.

We have also adverted to the decision of the Special Bench in **Subhas Yadav Vs. State of West Bengal**³. Needless to mention the extension granted in the present case was not on the ground of non-submission of chemical report alone but was prompted by relevant consideration i.e. continued detention for progress of investigation e.g. apprehension of co-accused.

Hence, we are of the considered view the order of extension is a well reasoned one and satisfies the requirements of proviso to Section 36A (4) of the NDPS Act

³ 2023 SCC Online Cal 313

i.e. necessity of further detention for progress in investigation.

The application for bail on this score is not allowed.

On merits, we note that the matter is fixed for recording evidence.

Keeping in mind the period of detention suffered by the petitioner i.e. over two years, we request the trial court to conduct the trial by fixing schedules at short intervals and to conclude the same at an early date preferably within one year from the next date fixed for recording evidence without granting unnecessary delay.

Accordingly, the prayer for bail of the petitioner is rejected.

Parties shall communicate this order to the trial court for due compliance.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)