

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CRR-1168-2023

Amit Petitioner

Vs.

State of Haryana Respondent

2. CRWP-4904-2023

Vikram Petitioner

Vs.

State of Haryana Respondent

Date of Decision: 07.07.2023

CORAM: HON’BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Vikas Bishnoi, Advocate,
for the petitioner (in CRR-1168-2023)

Mr. Priyanshu Kamra, Advocate,
for the petitioner (in CRWP-4904-2023)

. Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

This order shall dispose of two petitions tilted above, as both of them have arisen out of the same proceedings arising out of FIR No.385 dated 13.10.2022 registered at Police Station, Uklana, District Hisar under Section 20B (ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [for short ‘the NDPS Act’].

2. The two petitioners are aggrieved by the order dated 06.04.2023 passed by Ld. Special Judge, Hisar, whereby time was extended for presentation of the final report under Section 173 Cr.P.C.; and also by the separate orders dated 20.04.2023 qua the two petitioners, whereby

default bail petitions filed by them under Section 167(2) Cr.P.C. were rejected.

3. As it emerges from the paper book, 18 kg 900 gram of contraband was recovered from the possession of accused Vikram (petitioner in CRWP-4904-2023) on 13.10.2022, which was taken into possession after making all the statutory compliances. In his disclosure statement (Annexure R1) accused Vikram named Amit Kumar to be complicit in the crime and so, said Amit (petitioner in CRR-1168-2023) was arrested on 14.10.2022, who suffered disclosure statement (Annexure R2). In fresh disclosure statement, accused Vikram also named Kapil and Parveen to be involved in the crime. Sample drawn from the contraband was sent to RFSL, Hisar on 17.10.2022. Since 180 days time is prescribed for completion of investigation in case of recovery of contraband of the commercial quantity, as in this case, so challan qua accused Vikram was liable to be filed up to 10.04.2023; whereas qua accused Amit, it was liable to be filed up to 12.04.2023. However, on 31.03.2023 i.e. before the completion of 180 days, an application (Annexure R3) was moved by the Investigating Officer under Section 36A(4) of the NDPS Act for extension of time to complete the investigation. The application was accompanied by the report of the Public Prosecutor. After issuing notice to both the accused and taking their reply, the application was allowed vide one of the impugned orders dated 06.04.2023 and time was extended by two months for filing of the challan.

4. Both the accused, thereafter, filed separate applications seeking default bail under Section 167(2) Cr.P.C. on 13.04.2023, but the same were rejected vide separate orders dated 20.04.2023. It is the

aforesaid orders i.e. dated 06.04.2023 extending the time for completion of investigation; and dated 20.04.2023 dismissing the applications for default bail, which have been assailed in these petitions.

5. It is contended by learned counsel for the petitioner Amit that no reasoning was given by Public Prosecutor for detaining the petitioner beyond the period of 180 days as giving of the compelling circumstances by the Public Prosecutor to detain the accused in further custody is mandatory. Learned counsel has referred to a decision rendered by Hon'ble Supreme Court in *Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau and another* 2009(17) SCC 631, in order to contend that stringent conditions specified therein were not complied with before extending the time for completion of investigation under Section 36A(4) of the NDPS Act. It is further contended that even the notice of the application was not served upon the petitioner. Once the period of 180 days had expired, an indefensible right had accrued in favour of the petitioner to be released on default bail. It is further the contention that report of the investigating agency did not reflect the steps taken for obtaining the FSL report and so, there was no justifiable reasons for extending the time for completion of the investigation.

6. Taking almost the same pleas, it is contended by learned counsel on behalf of the petitioner Vikram that Public Prosecutor merely forwarded the application of the investigating officer for extension of time to complete the investigation, without due application of mind and that there were no compelling reasons to deny the statutory bail to the petitioners. Learned counsel has referred to a decision dated 11.02.2022 rendered by Coordinate Bench of this Court in *CRM-M-48705-2021* titled

as *Joginder Singh Vs. State of Haryana* so as to contend that Public Prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting his report to the Court.

7. In separate replies filed on behalf of the respondent-State, the impugned orders have been defended.

8. I have considered submissions of both the sides and have perused the record.

9. It is not in dispute that in view of the arrest of the petitioner Vikram on 13.10.2022 and that of petitioner Amit on 14.10.2022, the investigation was liable to be completed within 180 days i.e. up to 10.04.2023 and 12.04.2023 respectively. However, before the expiry of these dates, application was moved on 31.03.2023 under Section 36A(4) of the NDPS Act for extension of time to complete the investigation.

10. Section 36A(4) of the NDPS Act, in so far as it is relevant to this case, reads as under: -

(1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-*

(a) XXXX

(b) XXXX

(c) XXXX

(d) XXXX

(2) xxxx

(3) xxxx

(4) *In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A 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 eighty days.”

11. It is, thus, clear that the maximum period of 90 days fixed by Section 167(2) of the Cr.PC has been increased to 180 days for several category of offences under the NDPS Act including the case when recovery of contraband of the commercial quantity has been effected, but the proviso to Section 36A(4) of the NDPS Act authorizes further period of detention which may in total go up to one year. However, it is subject to the condition that conditions as provided therein are satisfied and complied with.

12. In *Hitendra Vishnu Thakur Vs. State of Maharashtra 1994 (3) RCR (Criminal) 156*, Hon’ble Supreme Court observed that though in proviso to (b) and (bb) of sub-section (4) of Section 20 of the Terrorist and Disruptive Prevention Act, 1987, it was specifically provided for the issuance of a notice, but issuance of such notice must be read in these provisions both in the interest of the accused and the prosecution as well for doing complete justice between the parties.

13. In the case of *Sanjay Kumar Kedia @ Sanjay Kedia (Supra)*, Hon’ble Supreme Court enumerated the stringent conditions to be complied with, which reads as under:-

“The maximum period of 90 days fixed under Section 167 (2) of the Code has been increased to 180 days for several categories of

offences under the Act but the proviso authorizes a yet further period of detention which may in total go up to one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:

- (1) a report of the public prosecutor,*
- (2) which indicates the progress of the investigation, and*
- (3) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and*
- (4) after notice to the accused.”*

14. It is rightly contended by learned counsels for both the petitioners that Public Prosecutor being an important officer of the State is required to independently apply his mind and submit his report on the application moved by the investigating agency, seeking extension of time for completion of investigation. Reference can be made to the case of ***Hitendra Vishnu Thakur and others (Supra)***, wherein it had been held as under:

“A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make

a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with this request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "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" as occurring in clause (bb) in sub- section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor."

15. In view of the legal position as above enunciated by the Hon'ble Supreme Court, there is no doubt that Public Prosecutor being an independent statutory authority is expected to independently apply his mind to the request of investigating agency before submitting report to the Court for extension of time for completion of the investigation.

16. In the present case, application dated 31.03.2023 (Annexure R3) moved by the Investigating Officer seeking extension of time would reveal that all the necessary details were given regarding progress of the investigation right from the recovery of the contraband, disclosure statements suffered by the accused, arrest of the different accused from time

to time, sending sample parcel to RFSL for necessary analysis and taking into possession of the call details records of the mobiles of the accused etc. It was further mentioned in the said application that investigation was pending as the report of the RFSL had not been received. It was specifically mentioned that on the request made by the Deputy Superintendent of Police, Hisar to RFSL, Hisar made on 23.03.2023, it had been reported by the RFSL authority that report shall be submitted by 30.05.2023.

17. On the aforesaid application made by the investigating agency, learned Public Prosecutor submitted his report as under: -

“Application perused.

Serious efforts have been made to procure the FSL report as is mentioned in the application of the IO. I am satisfied with the progress of the investigation. Therefore, it is humbly prayed that time be extended.”

18. The impugned order dated 06.04.2023 passed by the learned Special Court reveal that notice of the application moved by the SHO concerned under Section 36A(4) of the NDPS Act was given to both the accused-petitioners. Both of them filed separate replies and were heard through their respective counsels. In view of the same, the contention of the counsels for the petitioners that notice of the application was not served upon the petitioners is factually incorrect.

19. Impugned order dated 06.04.2023 further reveals that after going through the contents of the application, which was supported by the report of the Public Prosecutor indicating the status of investigation besides the letter dated 23.03.2023 sent by DSP, Hisar to RFSL, Hisar seeking the expert report which had not been received, the learned Court allowed the

application, granting two months time to the investigating agency to complete the investigation along with the FSL report.

20. Thus, all the four conditions as mentioned in the case of ***Sanjay Kumar Kedia @ Sanjay Kedia (Supra)*** i.e. (i) a report of the public prosecutor, (ii) indicating the progress of the investigation, (iii) specifying the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and (iv) after notice to the accused, were duly fulfilled and then the application under Section 36A(4) of the NDPS Act was allowed.

21. The contention of the learned counsel for the petitioners that Public Prosecutor did not independently apply his mind has no merit. The report of the Public Prosecutor, as reproduced above, clearly indicates that it is after perusing the report of the investigating agency that he was satisfied with the progress of the investigation and only then he recommended the extension of time for completion of investigation. Merely because the report of the Public Prosecutor is not detailed one, cannot be a reason to come to the conclusion that he did not apply his mind so as to indicate the compelling circumstances for seeking detention of the accused beyond 180 days.

22. Another contention raised by learned counsel for the petitioners is that non-receipt of the FSL report cannot be a ground to extend the time for completion of investigation as per Section 36A(4) of the NDPS Act.

23. However, this Court is of the view that investigating agency cannot be faulted for not filing the challan due to non-completion of investigation for want of FSL report. The FSL authority is quite

independent to that of the investigating agency. As the application dated 31.03.2023 and the reply of the respondent-State would reveal that efforts were made by the investigating agency by writing a letter through the DSP concerned to the RFSL authorities to submit the FSL report well within time. However, it is due to the non submitting of the FSL report by the authorities concerned that investigation could not be completed. Once all the necessary steps had been taken by the investigating agency, it was certainly a compelling reason for them for not filing the challan within 180 days, as investigation was complete due to non-receipt of the FSL report.

24. Therefore, learned Special Court did not commit any error in allowing the application under Section 36A(4) of the NDPS Act and extending the time to complete the investigation by a further period of two months. As such impugned order dated 06.04.2023 is upheld and petitions against the same are hereby dismissed.

25. Since the time for completion of investigation had been extended by the Court concerned by way of order dated 06.04.2023, therefore, petitioners were rightly declined default bail. As such, impugned orders dated 20.04.2023 rejecting the application of the petitioners for releasing them on default bail are also upheld.

26. Both the petitions are accordingly dismissed.

27. Pending application(s), if any, shall also stands disposed of.

(DEEPAK GUPTA)
JUDGE

07.07.2023

Vivek

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No