

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

280

2024:PHHC:043671

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| 1. | Criminal Revision No.2487 of 2023 |
| 2. | Criminal Revision No.2502 of 2023 |
| 3. | Criminal Revision No.2505 of 2023 |

Date of decision: April 1st, 2024

Bharat Bhushan

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vibhor Bansal, Advocate
for the petitioner.

Mr. Rahul Mohan, Senior Deputy Advocate General, Haryana.

MANJARI NEHRU KAUL, J.

This order shall dispose of the above-mentioned petitions as they arise out of same FIR i.e. FIR No.168 dated 05.03.2023 registered under Section 21 (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, 17, 17(a), 17(b), 18 A, 18 (a) (i), 18 (c), 27(b) (ii), 27 (c), 28 of the Drugs and Cosmetics Act, 1940 and Sections 420, 467, 468, 471 of the IPC at Police Station Camp Palwal.

2. Prayer in CRR No.2487 of 2023 is for setting aside the order dated 03.10.2023 passed by the learned Additional Sessions Judge, Palwal, whereby application filed by the petitioner for releasing him on default bail under Section 167 (2) of the Cr.P.C. in the above-mentioned FIR has been dismissed and prayer in CRR Nos.2502 and 2505 of 2023 is for setting aside the orders dated 27.09.2023 and 31.08.2023 respectively passed by the learned Additional Sessions Judge, Palwal, whereby applications filed by the prosecution for extension of time to submit challan/final report were allowed.

3. Learned counsel for the petitioner submits that the petitioner was arrested on 07.03.2023 in the FIR in question annexed as Annexure P-1 and thus, the statutory period of 180 days for completion of investigation was due to expire on 03.09.2023. However, the investigating agency failed to present the challan within this period as investigation was still incomplete. Consequently, an application seeking extension of time for completion of investigation was moved by the investigating agency before the trial Court; the trial Court vide order dated 31.08.2023 (Annexure P-2) granted the investigating agency an additional time of 30 days to complete the investigation. Despite this extension, the investigating agency did not complete the investigation and moved another application before the trial Court for extension of time. Vide order dated 27.09.2023 (Annexure P-4), the trial Court granted another extension of 180 days to the investigating agency to complete the investigation. It has been argued by the learned counsel for the petitioner that since the investigation had not been completed by the investigating agency within the statutory period, the petitioner moved an application under Section 167 (2) of the Cr.P.C. for grant of default bail. However, the trial Court erroneously dismissed the application citing extension granted on 27.09.2023 to the investigating agency to complete the investigation.

4. It has been vehemently argued that it was incumbent upon the trial Court to ensure compliance with the provisions of Section 36A(4) of the NDPS Act before granting repeated extensions for conclusion of investigation. Learned counsel submits that the extension granted to the prosecution on 31.08.2023 was contrary to the law

established by Hon'ble the Supreme Court in *Hitendra Vishnu Thakur and others Versus State of Maharashtra and others, 1994 (3) R.C.R. (Criminal) 156* as no report under Section 36A(4) of the NDPS Act was submitted by the learned Public Prosecutor. In support, learned counsel has drawn the attention of this Court to Annexure P-3. Furthermore, it has been asserted that the additional extension of 180 days which was granted by the learned trial Court on 27.08.2023 was against all canons of law as Section 36A(4) of the NDPS Act clearly stipulates that an accused can be detained for a maximum period of only 365 days, whereas in the instant case, the petitioner had been detained for 390 days. A prayer has, therefore, been made for setting aside the impugned orders vide which extension of time had been granted by the trial Court, more so since the investigation remained incomplete even after the expiry of the statutory period. In support learned counsel has placed reliance upon judgments of Hon'ble the Supreme Court passed in *Sanjay Kumar Kedia @ Sanjay Kedia Versus Intelligence Officer, Narcotic Control Bureau and Anr. 2010 (1) SCR 555* and *Uday Mohanlal Acharya Versus State of Maharashtra, 2001 (2) R.C.R. (Criminal) 452*.

5. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite has contended that no right under Section 167 (2) of the Cr.P.C. had accrued to the petitioner as the trial Court had extended the time for investigation up to 180 days on 27.09.2023. This extended period of 180 days had not yet expired when the petitioner filed application under Section 167 (2) of the Cr.P.C. The report of learned Public Prosecutor under Section 36A(4) of the

NDPS Act had also been submitted before the Court on the basis of which extension was granted. In support, learned State counsel has drawn the attention of this Court to Annexure R-3.

6. However, the learned State counsel has not been able to dispute that the total period of detention of the petitioner exceeded 365 days, which was beyond the maximum period stipulated under Section 36A(4) of the NDPS act

7. I have heard learned counsel for the parties and perused the relevant material on record.

8. Before proceeding further, it would be apposite to reproduce Section 167 (2) of the Cr.P.C. and Section 36A(4) of the NDPS Act, which read as under:-

“167 (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding— (i) ninety days, where the investigation relates to an offence punishable with

death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.”

“36A (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.”

9. Upon a thorough examination of the statutory provisions delineated in Section 167 (2) of the Cr.P.C. and Section 36A(4) of the NDPS Act, it is apparent that the legislature has bestowed considerable

emphasis on the culmination of investigations. The term ‘investigation’ inherently encompasses all proceedings conducted by the investigating agency subsequent to the registration of the FIR, aimed at gathering pertinent material and evidence to aid the Court in determining whether an offence has been committed or not. Should the investigation agency fail to conclude investigation within the stipulated statutory period, an indefeasible right under Section 167(2) of the Cr.P.C. accrues to the accused. However, the provisions of Section 36A(4) of the NDPS Act permits an extension of the investigation period, provided that the prerequisites mandated by the statute have been diligently adhered to, including the submission of a report under Section 36A(4) of the NDPS Act by the Public Prosecutor.

10. Adverting to the instant case, the petitioner was arrested on 07.03.2023; prior to the expiry of the statutory period, an application requesting for extension of time was filed by the prosecution, which was allowed by the trial Court vide order dated 31.08.2023. The petitioner has challenged this extension on account of the absence of a report by the Public Prosecutor as mandated under Section 36A(4) of the NDPS Act. A perusal of the application dated 28.08.2023 (Annexure P-2) for the first extension reveals that it was prepared by the Investigating Officer and forwarded by the Public Prosecutor, with no report submitted by the Public Prosecutor as per the mandate of Section 36A(4) of the NDPS Act. The legislative intent behind Section 36A(4) is evident, as it explicitly stipulates that the Court may grant an extension only upon receipt of a report from the Public Prosecutor. The authority to seek an extension of time is thus, not vested solely in the

investigating agency. In this regard, it would be relevant to refer to the observations made by Hon'ble the Supreme Court in *Hitendra Vishnu Thakur's case (supra)*, which are as under:-

“22. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. 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 his 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. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release hi on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the Justification, from the report of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes indefeasible and cannot be defeated by reasons other than those contemplated by subsection (4) of Section 20 as discussed in the earlier part of this judgment. We are unable to agree with Mr Madhava Reddy or the Additional Solicitor General

Mr Tulsi that even if the public prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the report of the public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution of any expression in it. We have already dealt with the importance of the report of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (bb) of sub-section (4) of Section 20. Since the law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner.

A Designated Court which overlooks and ignores the requirements of a valid report falls in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether the public prosecutor labels his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (bb) (supra). Even the mere reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report to seek extension of time. In the absence of an appropriate report the Designated Court would have no jurisdiction to deny to an accused his Indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. Moreover, no extension can be granted to keep an accused in custody beyond the prescribed period except to enable the investigation to be completed and as already stated before any extension is granted under clause (bb), the accused must be put on notice and

permitted to have his say so as to be able to object to the grant of extension.”

11. Without doubt, it is evident that there has thus, been a failure to adhere to the requirements outlined in section 36A(4) of the NDPS Act in the present case, and the order of the trial Court granting extension of time to the investigating agency for completing investigation was erroneous. Consequently, the impugned order dated 31.08.2023 is set aside.

12. Proceeding further, the petitioner has also challenged the second order of extension passed by the trial Court on 27.09.2023 by arguing that the trial Court had exceeded the permissible detention period of 365 days. No doubt, as per the submissions made by the learned State counsel as well as a perusal of Annexure P-3, the Public Prosecutor had submitted his report as mandated under Section 36A(4) of the NDPS Act, however, this Court finds merit in the submissions made by the counsel for the petitioner and as also not disputed by the State counsel that the total period of detention of the petitioner was 390 days, blatantly violating the provisions of Section 364(A) of the NDPS Act. In this regard, it would be most relevant to refer to the observations of Hon’ble the Supreme Court in *Sanjay Kumar Kedia’s case (supra)*, which are as under:-

“12. 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 authorises 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.”*

13. This Court, therefore, has no hesitation in holding that the trial Court erred while passing the impugned order dated 27.09.2023, granting extension of another 180 days to the investigating agency to complete the investigation. Consequently, the impugned order dated 27.09.2023 is set aside.

14. As a sequel to the above, since the investigation remained incomplete on the day application under Section 167(2) of the Cr.P.C. was filed by the petitioner, he deserves to be enlarged on default bail. Accordingly, the petition is allowed and the petitioner is ordered to be admitted to bail in terms of Section 167(2) Cr.P.C. to the satisfaction of the trial Court/Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

April 1st, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No