

"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G. ARUN

TUESDAY, THE 14<sup>TH</sup> DAY OF MARCH 2023 / 23RD PHALGUNA, 1944

CRL.MC NO. 1904 OF 2023

CRMP 506/2023 OF IST ADDITIONAL SESSIONS COURT, THRISSUR

PETITIONER/S:

DAYAL  
AGED 27 YEARS  
S/O PREMAN, PARAPPUPARAMBIL HOUSE, KECHERI  
DESOM, ERANELLUR, THRISSUR DISTRICT, PIN -  
680501

BY ADVS.  
P.MOHAMED SABAH  
LIBIN STANLEY  
SAIPOOJA  
SADIK ISMAYIL  
R.GAYATHRI  
M.MAHIN HAMZA  
SRINATH C.V.  
ALWIN JOSEPH

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM, PIN - 682031
- 2 STATION HOUSE OFFICER  
THRISSUR EAST POLICE STATION, THRISSUR  
DISTRICT,, PIN - 680005  
BY ADV PUBLIC PROSECUTOR

OTHER PRESENT:

SR.PP.RENJITH GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
10.03.2023, THE COURT ON 14.03.2023 PASSED THE FOLLOWING:

**"CR"**

**ORDER**

Dated this the 14<sup>th</sup> day of March, 2023

The petitioner is the first accused in Crime No.1568 of 2022 of Thrissur Town East Police Station, registered for offences punishable under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The prosecution allegation is that, on 10.08.2022, based on the secret information that contraband articles procured from other States are kept for retail sale, the Sub Inspector of Police and party raided the suspected location near to the guardroom of the KSRTC bus stand, Thrissur. Upon such raid, 97 grams of Methamphetamine was recovered and the accused arrested. During interrogation, the accused revealed that the contraband articles were received from New Delhi

through DTDC courier. Thereupon, the DTDC Hub at Ernakulam was inspected and 400 grams of Methamphetamine was seized. As the investigation could not be completed within the 180 days of petitioner's arrest, the Public Prosecutor filed Annexure 2 petition under Section 36A(4) of the NDPS Act, seeking extension of the period for completing the investigation by two months. By Annexure 3 order dated 09.02.2023, the Sessions Court allowed the petition and extended the time for completing the investigation by two months. This Crl.M.C is filed seeking to quash Annexure 3 order and for a direction to release the petitioner on statutory bail.

2. Learned Counsel for the petitioner assailed Annexure 3 on three grounds; (i) Annexure 2 petition does not satisfy the requirements of Section 36A(4), (ii) The Public Prosecutor acted as a mere post office by submitting the report prepared by the

investigating officer after converting it as a petition under Section 36A(4). (iii) The court below committed gross illegality in mechanically ordering extension of period for completing investigation, in spite of the prosecution having failed to indicate the progress of investigation and to provide specific reasons for detaining the accused beyond the period of 180 days.

3. In elaboration of the contention, reference was made to the statements in Annexure 2, it is contended that, rather than indicating the progress of investigation, the petition reveals the failure of investigation. It is argued that , failure of the investigating agency to identify the source of contraband articles and to find out the whereabouts of an African citizen, who is alleged to be the kingpin, cannot result in the petitioner's valuable right to liberty being curtailed. Moreover, instead of specifying the reason for continuing the

petitioner's detention beyond 180 days, only a general statement that trade of contraband articles may harm normal well being of the society and release of the accused on completion of statutory remand period will adversely affect the progress of investigation, is made. In order to buttress the challenge against the impugned order, reliance is placed on the decision in **Ubaid A.M v State of Kerala [2022 SCC OnLine Ker.5793]**.

4. Learned Public Prosecutor submitted that, Annexure 2 read as a whole, shows that the requirements under 36A(4) are satisfactorily met. The attempt of the Counsel for the petitioner is to pick stray sentences from Annexure 2 and make it appear that the progress of investigation is not being indicated and reasons for continuing the detention, not specifically stated.

5. In order to consider whether Annexure 2

satisfies the requirements of Section 36A(4), it is also essential to understand the scheme of Section 167 Cr.P.C, the relevant portion of which is extracted below;

**"167. Procedure when investigation cannot be completed in twenty-four hours.-**

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(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, for 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 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 so released under the provisions of Chapter XXXIII for the purposes of that Chapter;*

*(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;*

*(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.*

*Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.*

*Explanation II.—If any question arises whether an accused person was produced before the*



*Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.*

*Provided further that in case of woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution."*

6. A close reading of the provision shows that the thrust is on ensuring that the investigation is completed at the earliest. Ideally, the investigation should be completed within the first 24 hours fixed by Section 57 of Cr.P.C. If the investigation is not completed within 24 hours, the officer concerned should transmit the entries in the diary relating to the case to the jurisdictional Magistrate and simultaneously forward the accused to such Magistrate. Thereupon, the Magistrate should

consider the materials available and decide whether the accused should be remanded to custody or not. If the Magistrate decides to remand the accused, that can only be for a maximum period of 15 days at a stretch. As per Sub-section (2) of 167, the period of custody, even if extended from time to time, cannot exceed 60 days or 90 days as the case may be. On expiry of the period of 60 or 90 days, the accused shall be released on bail, if the investigation is not completed and final report submitted in court by then.

7. As per Section 36A(c) of the NDPS Act, the Special Court can exercise the same power which a Magistrate having jurisdiction to try a case exercises under Section 167 of the Code. By virtue of sub-section 4 of Section 36A, in respect of persons accused of offences punishable under Sections 19, 24, or 27A, or offences involving commercial quantity, the reference in sub-section 2 of Section 167 shall be construed

as 180 days. Thus, the right to default bail of an accused in custody for the offences mentioned in Section 36A(4) would arise if the investigation is not concluded and final report not filed within 180 days. Unlike the Code, which does not contain a provision for extending the statutory time limit of 60 or 90 days, the proviso to Section 36A(4) confers the Special Court with the power to extend the period of 180 days up to one year. For granting such extension, the Public Prosecutor should submit an application, indicating the progress of investigation and specifying the reasons for seeking detention of the accused beyond 180 days.

8. In this context, it is pertinent to note the distinction between the terminology used while setting out the twin requirements under Section 36A(4), based on which alone, the time limit of 180 days for completing investigation can be extended. For convenience, Section 36A(4)

is extracted hereunder;

*"36A. Offences triable by Special Courts. -*

*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. Even on a plain reading of the above provision, it is clear that, while the Public Prosecutor need only indicate about the progress of investigation, he should specifically state

the reason for extending the period of detention of the accused beyond 180 days. Therefore, the Public Prosecutor is not expected to state every minute details of the investigation for the purpose of satisfying the court about the progress of investigation. In the case at hand, the progress of investigation has been indicated in Annexure 2, as revealed from the paragraphs extracted below;

*"The gist of the case is that on 10.08.2022, based on the secret information that some contraband articles are procured from other states and kept in possession for retail sale, team lead by Sub Inspector of Police, Town East raided the suspected location which were near to the Guard Room of KSRTC Bus Stand, Thrissur. Upon the raid, the respondents were seized with 97gm of Methamphetamine and subsequently on 10.08.2022 itself, arrest were done by the Police Force and both accused were remanded to Judicial Custody.*

*During interrogation by the Police, accused have informed that the contraband articles were received by them through DTDC Courier from New Delhi, and based on their*

*deposition DTDC Hub of Kerala State at Ernakulam were inspected by the Police Force and seized 400gm of Methamphetamine and the substance were produced before the Hon'ble Court. Even though Police Squad have done subsequent inspections at premises of the Accused and in New Delhi for finding the source of illegal drugs, so far there is no progress. During investigation it is found that the accused has collected money for purchase of contraband articles through HDFC Bank Account bearing SB A/c No 50100294125451 and collected amount were transferred to another HDFC Bank Account bearing SB A/C No 5020053506418 in New Delhi and drugs were collected and transported to Kerala State for retail sale. The transactions were done by using UPI Payments.*

*During investigation it is also revealed that the source of contraband articles are from an African Citizen and whereabouts of the individual are not available by the Police at the moment and investigation has to be conducted about the African Citizen who is k dealer of the articles seized from the accused.*

*As per the information collected during investigation it is found that all the illegal money dealings by the accused were through various banks using UPI Payments like Google Pay, PAYTM, IMPS etc and as such details of all such transactions are to be*

*collected as part of investigation and to ascertain the source of money of the accused.*

*As the investigation of the case is not completed, and nature of the case reveals that such illegal trade of Government banned contraband articles in society may harm normal well being of Society, releasing the accused on completion of statutory remand period will adversely affect the progress of investigation.*

*Based of the contentions laid above, humbly request to kindly consider the averments and pass orders to extend 2 months time for filing the final report of the case."*

It is stated in the petition that inspection was conducted at the premises of the accused in New Delhi. It is also stated that the accused were found to have conducted illegal money dealings through various banks using UPI payments like Google Pay, PAYTM, IMPS etc. The investigation also revealed that the source of contraband articles is an African citizen, whose whereabouts are not available.

10. The next question is whether the

specific reason for extending the detention of the accused beyond 180 days is stated in Annexure 2.

11. The said requirement is incorporated to ensure that the accused's valuable right to statutory bail, is not defeated in a casual manner. Here, the right to liberty of a citizen which is sacrosanct and the well settled principles that bail is a right and jail, an exception comes into play. Unfortunately, in Annexure 2, except for a general statement that, releasing the accused will adversely affect the progress of investigation, no reason, let alone in specific reason, is stated, so as to convince the court about the necessity of continuing the petitioner's detention beyond 180 days. Surprisingly, this crucial defect was not taken note of by the court below. Hence, I am left with no alternative but to set aside Annexure 3. It is seen that as per Annexure 4 order, the



petition for statutory bail filed by the petitioner was dismissed for the reason that the petition for extension of period for completing investigation was allowed as per Annexure 3. As Annexure 3 is quashed, Annexure 4 is also liable to be set aside. I do so.

In the result, the CrI.M.C is allowed and Annexure 3 order is quashed. Consequently, the Sessions Court is directed to release the petitioner on bail subject to the petitioner satisfying the following conditions;

(i) The petitioner shall execute a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties for the like amount to the satisfaction of the Sessions Judge.

(ii) The petitioner shall surrender his passport, if any, before the Sessions Court on the date of execution of bond, or within a period of three days thereafter, after getting exemption in this regard from the Sessions Court. If the

petitioner does not have a passport, he shall file an affidavit stating so on the date of execution of bond or within three days' thereafter.

(iii) The petitioner shall co-operate with the investigation and shall make himself available for interrogation by the investigating officer as and when required.

(iv) The petitioner shall not commit any offence during currency of the bail.

Sitting in this jurisdiction I have come across a few cases, where laxity on the part of the investigating officers and the Public Prosecutors in properly framing and submitting petitions under Section 36A(4) has resulted in the accused being benefited. The necessity of clearly setting out the twin requirements for seeking extension of detention of accused beyond 180 days cannot be overlooked or dealt with in a

casual manner under any circumstance. This is an aspect that should engage the attention of the Director General of Prosecution and the Director General of Police. Requisite training and refresher courses on the above aspect ought to be imparted to the investigating officers and the Public Prosecutors. The Registry shall forward a copy of this order to the Director General of Prosecution and the Director General of Police for appropriate action.

Sd/-

**V.G.ARUN**  
**JUDGE**

Scl/

**APPENDIX OF CRL.MC 1904/2023**

PETITIONER ANNEXURES

- Annexure 1 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 1568/2022 OF THRISSUR TOWN EAST POLICE STATION
- Annexure 2 TRUE COPY OF THE PETITION DATED 03.02.2023, LATER NUMBERED AS CRLMP NO.506/2023 FILED BY THE PUBLIC PROSECUTOR BEFORE THE HONOURABLE ADDL. SESSIONS COURT, THRISSUR
- Annexure 3 CERTIFIED COPY OF THE ORDER DATED 09.02.2023 IN CRLMP NO.506/2023 PASSED BY THE HONOURABLE ADDL. SESSIONS COURT, THRISSUR
- Annexure 4 TRUE COPY OF THE ORDER DATED 21.02.2023 IN CRLMP NO. 650/2023 PASSED BY THE HON'BLE COURT OF SESSIONS, THRISSUR