249 **2024:PHHC:052963**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-324-2024 (O&M)
Date of Decision : 18.04.2024

ANIL KUMAR .....Petitioner

VERSUS

STATE OF HARYANA .....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Akshay Jain, Advocate,
for the petitioner.

Mr. Abhinash Jain, DAG, Haryana.

KULDEEP TIWARI. J.(Oral)

1. The revision petition is directed against the order dated 03.02.2024, passed by the learned Judge, Special Court, Faridabad, constituted under under the Narcotic Drugs Psychotropic Substance Act, 1985 (herein referred as “NDPS Act”), whereby, the application as preferred by the prosecution for extension of time in filing the final report beyond 180 days was allowed.

2. The question which arises for consideration in the instant revision petition, as to whether, the application for extension of time filed by the investigating officer, and cross-signed by the public prosecutor, seeking an extension of time beyond 180 days, met the necessary twin conditions envisaged under Section 36-A(4) of the NDPS Act.

3. Before this Court would embarks upon the factual aspect, as well as the legality of the impugned order, it is apt to read the relevant

provision, i.e. Section 36-A(4) of the Act, which is as under:-

> "**36A. Offences triable by Special Courts.—**
> 1. XXX XXX XXX XXX XXX XXX XXX
> 2. XXX XXX XXX XXX XXX XXX XXX
> 3. XXX XXX XXX XXX XXX XXX XXX
> 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."
> 5. XXX XXX XXX XXX XXX XXX XXX

4. The proviso as attached to the above section says that the extension can only be granted, in case the twin conditions, i.e. *(a) the public prosecutor would make a report indicating the progress in the investigation; (b) the specific reason for retention of accused beyond the prescribed period of 180 days, be also mentioned in the application.*

5. This issue has been considered by the Hon'ble Apex Court, in **Hitendra Vishnu Thakur and others vs. State of Maharashtra and others**, **(1994) 4 SCC 602**, while dealing with the proviso inserted as (bb) in sub-section 4 of Section 20 of Terrorist and Disruptive Activities (Prevention) Act, 1987, which is *parimateria* with the proviso to sub-clause (4) of Section 36-A of the NDPS Act. Thereafter, it was held that for seeking extension of time the public prosecutor, after the independent application of his mind, to the request of the investigating agency is required to make a report to the court concerned, 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.

6. The Hon'ble Apex Court, also held that the public prosecutor may attach the request of the investigating officer, alongwith, his request or application and report, with that report must disclose on the face of it that he has applied his mind, and has satisfied himself with the progress of the investigation, and considered over the grant of extension of time to complete the investigation as necessary. The relevant extract of the aforesaid judgment reads as under:-

> "23. 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 him 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 sub-section (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 '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 fails 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."

7. Above ratio of law was further followed by the Hon'ble Supreme Court in "**Sanjay Kumar Kedia alias Sanjay Kedia vs. Investigating Officer, Narcotics Control Bureau and another: (2009) 17 SCC 631**, wherein, it was observed, reads as under:-

> "13. The question to be noticed at this stage is as to whether the two applications for extension that had been filed by the Public Prosecutor seeking an extension beyond 180 days met the necessary conditions. We lind that the matter need not detain us as it is no longer res integra and is completely covered by the judgment of this Court in Hitendra Vishnu case- In this case, the Bench was dealing with the proviso inserted as clause (bb) in sub-section (4) of Section 20 of TADA, which is in pari materia with the proviso to sub-section (4) of Section 36-A of the Act. This Court accepted the argument of the accused that an extension beyond 180 days could be granted but laid a rider that it could be so after certain conditions were satisfied.

> 16. The Court further went on to say that even if the application tor extension of time was either routed through the Public Prosecutor or supported by him would not make the said application a report of the Public Prosecutor. Mr Bhattacharjee has, however, pointed out that the applications for extension filed by the Public Prosecutor under Section 36-A(4) of the Act did satisfy the aforesaid conditions and merely because an independent report had not been tendered would not change the nature of the application."

8. A co-ordinate Bench of this Court, has also in the case of "**Ravinder alias Bhola vs. State of Haryana", (CRR-2100-2023 and connected petition, decided on 03.11.2023)**, relying upon the judgments (*supra*) passed by the Hon'ble Apex Court, has held that the twin condition as prescribed with the proviso attached to the sub-clause (4) of Section 36-A of the NDPS Act, are essential conditions and are in co-existence, and non-satisfaction of even one condition will not give any entitlement to prosecution for seeking an extension of 180 days. The relevant extract of the judgment reads as under:-

> "10. .....These two conditions are co-existant and non-satisfaction of even one condition will not give any entitlement to the prosecution for seeking an extension of 180 days. The language used in the proviso is absolutely unambiguous and clear and has to be given a literal construction. Otherwise also the grant or non-grant of a default bail is on a different pedestal as compared to grant or non-grant of regular bail under Section 439 of the Code of Criminal Procedure. The grant of bail under Section 167(2) Cr.P.C is a statutory and indefeasible right. The present is a case falling under the NDPS Act and therefore the period of 90 days envisaged under Section 167(2) Cr.P.C has to be read alongwith Section 36A of the NDPS Act and for the purpose of the present case the period of 180 days can be extended by virtue of sub-section (4) of Section 36A of the NDPS Act for a further period of one year but subject to the conditions specified under the proviso which are contained in the proviso to sub-section (4) of Section 36A of the NDPS Act."

9. On the touchstone of the above settled principle of law, this Court has also tested the legality of the impugned order.

10. The brief facts of the case are that the present petitioner was

arrested on dated 09.08.2023, with 58 packets of PYEEVON SPAS PLUS, and 80 packets of SPESMO PROXYVON PLUS capsules. Since he could not produce any license or permit for keeping the same, therefore, the instant FIR, under Section 22C of the NDPS Act, was registered. During the investigation, his disclosure statement was recorded, that he bought the capsules from one Satish Kathuria, of Bhagirath Place, Chandni Chowk, Delhi, and thereafter, he was produced before the learned JMIC, Faridabad, and the prosecution was granted one day police remand of the petitioner on dated 10.08.2023. During police remand, he suffered a supplementary disclosure statement on dated 11.08.2023, to an extent that he got the capsules from Satish Kathuria, son of Om Parkash, resident of Krishna Nagar, East, Delhi, and thereupon, after completion of police remand he was sent to the police custody. Thereafter, the prosecution agency carried out further investigation, and notices were sent to the concerned companies by mail. On dated 29.08.2023, co-accused-Satish Kathuria, was made join in the investigation, wherein, he stated that he did not sell those capsules to Anil Kumar. He also produced certain records in compliance to the notice issued under Section 91 of the Cr.P.C.

11. Thereafter, on transfer of investigating officer, further investigation was carried out by SI Kamal Chand, and he obtained record from various companies in order to trace the source of the capsules.

12. Since the prosecution could not complete the investigation, within 180 days, therefore, investigating officer filed an application for

extension of the period for one month for filing the report before the learned Sessions Court concerned. In the application, the details of stages of investigation was mentioned and finally, sought time to complete the further investigation to reach to the origin of the said contraband (intoxicant capsules).

13. The application was opposed by the accused (petitioner herein) by filing reply. However, the learned trial Court concerned, vide the impugned order (*supra*) allowed the application.

14. Learned counsel for the petitioner submits that the application was filed by the investigating officer, therefore, none of the twin conditions as prescribed in the proviso attached to Section 36-A(4) was fulfilled. So, the order passed by the learned trial court concerned is totally illegal and is required to be set aside.

15. On the other hand, learned State counsel submits that the application in fact was forwarded by the public prosecutor, therefore, for all intents and purposes that application is to be considered as filed by the public prosecutor, instead of the investigating officer. Thus, both the conditions are duly fulfilled, and the learned trial Court concerned has rightly granted the extension of time of 15 days.

16. He further submits that within the extended time, the final report was filed, therefore, no cause of action survives.

17. This Court has examined the facts of the case, and submissions made by learned counsel for both the parties concerned, and can safely conclude that the impugned order is required to be set aside, as

the same has not qualified the law as laid down by the Hon'ble Apex Court in judgements in **Hitendra Vishnu's** case (*supra*) and **Ravinder's** case (*supra*).

18. On perusal of the application, it clearly reflects that the application was filed by the investigating officer, and not by the public prosecutor. The public prosecutor just appended cross-signature at the end of the said application, by putting remarks i.e. “forwarded.” Merely by appending the cross-signature, and writing a word “forwarded,” would not satisfy the twin conditions as discussed above.

19. In the instant application, neither the public prosecutor has recorded his independent satisfaction that he satisfied about the progress of the investigation, and nor he has furnished any reasons for seeking further custody of the accused/petitioner.

20. Merely, the application has been rooted through the public prosecutor, or at the best can consider that it has been supported by him, would not make the said application, a report of public prosecutor. This aspect has been totally overlooked by the learned A.S.J., Special Court, concerned, which warrants the interference of this Court.

21. In view of the above detailed discussion, the impugned order (*supra*) is not legally sustainable, which requires to be set aside. Consequently, the instant revision petition is **allowed**, with the impugned order (*supra*), granting the extension of time beyond 180 days to the prosecution for filing the final report in the instant FIR, is hereby set aside, and the final report so filed, shall be considered to be filed after

180 days, for all intents and purposes.

22. The petitioner is at liberty to file appropriate motion before the appropriate court, for seeking default bail in instant FIR, if he is entitled to, and in case such bail application is preferred, the court concerned shall decide the same on its own merits.

All pending application(s), if any, also stands disposed of.

(KULDEEP TIWARI)
JUDGE

April 18, 2024
dharamvir

Whether speaking/reasoned. : Yes
Whether Reportable. : Yes