

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.652 of 2022

(In the matter of an application under Section 482 of the Code of Criminal Procedure)

Manoranjan Das

....

Petitioner

-versus-

State of Orissa

....

Opposite Party

Advocate(s) appeared in this case:-

For Petitioner : Mr. S.K. Bhanjadeo, Advocate

For Opposite Party : Ms. Samapika Mishra,
Additional Standing Counsel

**CORAM:
JUSTICE B. P. ROURTRAY**

**JUDGMENT
25.04.2022**

B.P. Routray, J

1. The short point involved in the present application is whether the date of remand to be included in counting the statutory period of 180 days under Section 167(2) of the Cr.P.C. read with Section 36-A(4) of the NDPS Act.

2. Law is no more *res integra* on this issue. Recently in the case of *M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence, (2021) 2 SCC 485* the Hon'ble Supreme Court has reiterated the law that the date on which the accused was remanded to judicial custody has to be excluded from calculation of statutory period of 180 days. It was observed at paragraph 8 of the said decision that:-

“This Court in a catena of judgments including Ravi Prakash Singh v. State of Bihar, (2015) 8 SCC 340, has ruled that while computing the period under Section 167(2), the day on which accused was remanded to judicial custody has to be excluded and the day on which challan / charge-sheet is filed in the court has to be included.”

3. Now switching to the facts of the case at hand, the Petitioner, who is an accused of transporting and possessing 1 kg. 34 grams of brown sugar (heroine), was arrested and remanded to custody on 4th September, 2021 in connection with STF P.S. Case No.31 dated 3rd September, 2021. The alleged offences are under Section 21(c)/29 of the NDPS Act. Since then the Petitioner is inside custody in connection with the aforesaid police case corresponding to T.R. Case No.126 of 2021 on the file of learned 1st Additional Sessions Judge-cum-Special, Judge, Khorda.

4. On 3rd March, 2022 the accused – Petitioner through his lawyer filed an application to release him on default bail in terms of Section 36-A(4) of the NDPS Act read with Section 167(2) of the Cr.P.C. On the same day prosecution also filed a petition praying for extension of the period of investigation for a further period of three months in terms of the proviso to Section 36-A(4) Cr.P.C. The Petitioner though his lawyer objected such prayer of extension sought by the prosecution. The learned Special Judge, after hearing both sides allowed the prayer for extension and granted further period of three months to complete the investigation mainly on the ground of spread of COVID-19 infection and consequent restricted lockdown situation. However,

this court is not entering into that aspect of the order of the learned Sessions Judge since no challenge is advanced on the same.

5. Learned counsel for the Petitioner challenges before this Court the further remand of the Petitioner into custody by contending that since the statutory period of 180 days to complete the investigation has ended on 2nd March, 2022 and the prayer to extend the period of investigation was made on 181st day of the initial remand only after the prayer for default bail was raised, the rejection of his prayer by the learned Special Judge is illegal.

6. Admittedly, it is not the case of the Petitioner that he was not given any opportunity of hearing before granting extension of investigation period and such extension was granted after hearing the Petitioner and considering his objections.

7. As stated above, the day of initial remand is excluded from the statutory period as held in several case laws. By excluding 4th September, 2021 from counting, 180 days completes on 3rd March, 2022 when the prayer for extension was allowed by the learned Special Judge. It goes without saying that unless statutory period of 180 days is completed, no right of default bail accrues in favour of the accused. As such in the given facts of the case, no merit is seen in the prayer of the Petitioner to release him on default bail.

8. Accordingly, the CRLMC is dismissed.

(B.P. Routray)
Judge