

24.04.2023
Sl. No.10
akd
[Rejected]

C. R. M. (NDPS) 698 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 29.03.2023 in connection with NDPS Case No.2 of 2022 under Sections 21(c)/23(c)/25/29 of the NDPS Act.

And

In Re: ***Maharaj Singh & Anr.***

... .. Petitioners

Mr. Ayan Bhattacharjee
Mr. Sougata Banerjee
Ms. Ritu Das
Mr. Dhiraj Pandey
Ms. Sushmita Dey
Mr. Suman Majumder

... .. for the petitioners

Mr. Bhaskar Prasad Banerjee
Mr. Abhradip Maity

... .. for the Customs

It is submitted on behalf of the petitioners that the report seeking extension of the period of detention in terms of Section 36A(4) of the NDPS Act was not in accordance with law. Hence extension granted on such report was illegal. Accordingly, petitioners are entitled to statutory bail.

Learned Advocate for the Customs submits report seeking extension of the period of detention filed by the Public Prosecutor within 180 days. Report was served upon the petitioners and specific reasons have been stated therein. Upon consideration of the report the period of detention was extended. The order was not challenged by the petitioners. Complaint has been filed. At this belated stage petitioners have raised the plea that the extension of the period of detention was not in accordance with law and they are entitled to statutory bail.

We have considered the materials on record. Petitioners were arrested while transporting narcotics i.e. 14970 bottles of *phensedyl*

syrup containing *codeine phosphate* in 42 HDPE bags and 25 cartons in a truck bearing registration No. UP80ET2645. The manner and circumstances in which the drugs were transported prima facie show an organised crime racket was involved interstate transportation of drugs. Upon their arrest petitioners were interrogated and role of co-accused viz. Sonu Kumar @ Sonu Goyal transpired. The said co-accused was arrested. On the 179th day of their detention, report of the Investigating Officer seeking extension of detention in terms of proviso to Section 36A(4) of the NDPS Act was served upon them. On the next day, the application was filed and came to be allowed by order dated 08.07.2022. The petitioners did not assail the said order before a superior court. In conclusion of investigation, complaint was filed on 04.01.2023 and cognizance taken. Subsequently, petitioners have raised the issue that the extension was not in accordance with law and they ought to be granted statutory bail.

Relying on ***Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotics Control Bureau & Anr.***¹, learned Advocate strenuously argued that an illegal order of extension may be challenged even after filing of charge sheet.

In ***Sanjay Kumar Kedia @ Sanjay Kedia*** (supra), accused had sought statutory bail before the trial court prior to the submission of charge sheet. While the matter was pending consideration in the superior court, police report was filed.

In the present case, the petitioners did not assail the order extending the period of detention prior to the completion of investigation. Upon conclusion of investigation and submission of complaint, impugned order extending detention beyond 180 days no

¹ (2009) 17 SCC 631

longer survives after filing of charge sheet. A litigant cannot be permitted to assail an order at a time when it is no longer in existence.

In this regard, reference may be made to ***Qamar Ghani Usmani vs. State of Gujarat***² wherein the Apex Court, inter alia, held when an order of extension had not been assailed and had merged into a subsequent order, the earlier order of extension cannot be assailed.

However, to assuage our conscience, we have examined the report seeking extension of the period of detention filed by the Public Prosecutor. The report clearly spells out the role of the petitioners and the necessity for extending the period of detention beyond 180 days. It is averred in the report that the petitioners hail from a different State and there is possibility of their abscondence and tampering evidence which would hamper progress of investigation. This Court is not inclined to substitute the subjective satisfaction of the Public Prosecutor in this regard.

For the aforesaid reasons, we are of the opinion petitioners are not entitled to statutory bail.

Even on merits we note there are ample evidence which show involvement of the petitioners in transporting huge quantity of drugs containing *codeine phosphate* for non-medicinal use beyond the State of West Bengal.

Under such circumstances and in view of the statutory restrictions under Section 37 of the NDPS Act, we are not inclined to grant bail to the petitioners.

The application for bail is thus rejected.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

² 2023 SCC OnLine SC 380