

N.D.P.S. Case No. 88 of 2024

Present: Smt Moon Chakraborty
(J.O. Code: WB00835),
Judge, Special Court (under NDPS Act),
Berhampore, Murshidabad.
(In-charge)

Order No. 28 dated 22.05.2025.

Today is fixed for hearing of the petition for extension of time for investigation by the Investigating Agency, dated 21.05.2025 in presence of Ld. Defence Counsel.

Ld. Advocates for the three accused persons in custody, namely Abdul Hakim @ Bhola, Md. Khabiruddin Sk. @ Pukon and Nursad Ali @ Nursad Sk. @ Bishu, file and move a petition stating their objection against the prayer of the Investigating Officer for extension of time for another sixty (60) days, for completion of investigation. It is further stated that the seizure was made from one of the accused persons and the first chemical examination report, sent by CFSL, Kolkata, with regard to the suspected contraband seized, measuring 485 grams of Heroin, has come in the negative, and for which, it is clear that the petitioners are innocent and have been falsely implicated in this case, for which the prayer of the I.O. needs to be rejected outright.

Ld. Advocates appearing for the three accused persons also submit that there is no reflection of the progress in investigation during the period of extension that was granted vide order No. 21 dated 26.03.2025, passed by this Court. They further submit that the sample, marked as 'E1' had been sent to CFSL, Kolkata and therein the Director, CFSL, Kolkata had opined that sample 'E1' does not contain any narcotic substance and thereafter on 18.03.2025 sample 'E2' had been sent by the I.O. to the CFSL, Kolkata for chemical examination and the same has not been received, even after extension was granted by this court for sixty (60) days, which shall expire tomorrow, i.e. 23.05.2025.

It is submitted further that at this stage, the I.O. has come up with a fresh prayer for allowing extension of time limit of investigation for another two months u/S. 36(A) of the NDPS Act. It is further submitted by the Ld. Defence Counsels that there is no report from the Ld. Public Prosecutor in-charge regarding the progress of investigation during the period of extension granted and there is no mention as to why the further detention of these accused persons in custody is required in connection with this case. Ld. Advocates for the accused persons have further pointed out that earlier when the order of extension was granted on 26.03.2025, the ratio of the decision of the Hon'ble Apex Court

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in **Sanjay Kr. Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotics Control Bureau and Anr. [reported in (2009) 17 SCC 631]** had been relied upon and they have once again drawn the attention of this court to the aforesaid decision of the Hon'ble Apex Court.

Per Contra, Ld. P.P. in-charge submits that along with the I.O.'s prayer for extension of time limit for investigation, he has on 21.05.2025 submitted his reasoned report regarding the progress made in investigation after perusing the case diary and he submits that in the instant case 485 grams of Heroin powder, which falls within the category of commercial quantity, had been seized from accused Nursad Ali @ Nursad Sk. @ Bishu under proper videography and the inventory process of the seized contraband had been done on 30.11.2024 before the Ld. Judicial Magistrate, Lalbagh, Murshidabad and samples had been collected and the first one, i.e. 'E1', had been sent to the Central Forensic Science Laboratory, Kolkata for examination and opinion of expert and the I.O. had collected the same and it transpires that in that report dated 06.03.2025 the sample 'E1' did not contain Heroin. He further submits that this necessitated the prayer of I.O. for permission to send the second sample, which was marked as 'E2', for examination by the expert authority and the same had been sent promptly after obtaining permission of this court. He also submits that the I.O. has been diligent enough to pursue the matter with the concerned authority and he had written to the concerned authority for obtaining the chemical examination report very recently on 16.05.2025 as it appears in the case diary and the authority concerned had assured him verbally that the report would be ready very shortly. The Ld. P.P. in-charge produces the CD showing the communication referred to by him and submits that there is no negligence or inaction by the Investigating Agency.

Perused the case record and the case diary.

It is revealed from perusal of the case diary that one of the three samples collected by the Investigating Agency and sent to CFSL, Kolkata on 25.09.2024, specifically the sample marked 'C1' had been examined and the chemical examination report of sample marked 'C1' had tested positive with Morphine and Codeine which are narcotic substance, coming under the purview of NDPS Act. It is also expedient to note that from the report of Ld. P.P. in-charge and the CD, produced by the I.O., that there is no serious laches or willful delay or inaction in obtaining the report from the concerned authority regarding the sample 'E2' sent for chemical examination by the I.O. It is fact that without collection of the chemical examination report, the investigation of this case

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cannot be concluded by the Investigating Officer and since no delay in sending the sample or pursuing the matter after having sent the sample ['E2'] can be found from perusal of the CD, taking into consideration the statutory provision as enshrined in u/S. 36 (A)(4) of the NDPS Act and balancing the need of effective investigation with that of the rights of accused, there appears to be no cogent reason as to why the period of extension for obtaining the chemical examination report of sample marked 'E2' should not be allowed to the Investigating Officer of this case. As far as the FIR is concerned, perusal of the same reveals the involvement of these accused persons in the offence alleged and considering the same together with the fact that sample 'C1' has already been tested positive with Morphine and Codeine which are narcotic substance under the NDPS Act, the detention of these accused persons in custody pending the investigation of this case appears to be essential and there is no great injustice involved in the matter if a further period of extension is granted, for which the prayer of the I.O. for extension of time to obtain the report from the Director, State Drugs Control & Research Laboratory, 2 No. Convent Lane, Kolkata – 15, in order to enable him to complete the investigation and submit final report is allowed to the extent of sixty (60) days and the I.O. is directed to submit his investigation report after collection of all necessary documents by 21.07.2025 (i.e. for sixty days from 23.05.2025) and he shall file his final report by 21.07.2025.

It is also pertinent to note that no petition for bail has been filed on behalf of the accused persons today.

Return CD.

To date, i.e. 05.06.2025, for production & appearance of the accused persons and submission of final report.

Copy of this order be made available to the I.O. for taking necessary action.

Dictated & corrected
by me,

Judge.
(In-charge)

ADJ, 2nd Court, Cum,
Judge, Special Court, Under N.D.P.S. Act,
Berhampore, Murshidabad.
(In-charge)