

Special Case No. 86 of 2022

Present : Sri Arun Singha
Judge, Special Court,
3rd Court, Malda.

Order No. 23 dated 14-02-2023

Today is fixed for hearing of the petition under Section 36A(4) of NDPS Act along with report of Ld District P P for further extension of time.

Two bail petitions are also filed on behalf of the accused persons. Copies served.

I.O. is present with CD.

Ld. Spl. P.P. is also present.

The petition under Section 36A(4) of NDPS Act together with the report of Ld District P P and the bail petitions are taken up for hearing.

Ld. Spl. P.P. submits that copy of the petition under Section 36A(4) of NDPS Act along with report of ld. Dist. P.P. in the form of opinion for further extension of 03 months time has been served upon ld. Advocate for the accused persons on 10.02.2023. It is also submitted that report by the ld. Dist. P.P. for further extension of 03 months time has been submitted within time on 10.02.2023 when after hearing both sides time was extended till 14.02.2023 for hearing and order on the instant further extension petition on the ground that the petition with report of ld. Dist. P.P. was submitted before the Court and during course of the day copy was served and it is total 241 days including today. It is further submitted that the case involves recovery of 2 kg 622 gms brown sugar for which statutory period for investigation is 180 days. It is also his submission that vide order dated 15.12.2022 two months time was extended considering the petition under Section 36A(4) of NDPS Act and the report of ld. Dist. P.P. It is submitted that the present petition and the report are sufficient to consider the prayer for further 03 months extension of time. It is his submission that CFSL report is awaiting and it is also submitted that there is chance for further recovery and several raids have been conducted to arrest other accused persons. Accordingly, he prays for further extension of 03 months time as prayed in the report of ld. District P.P.

It is submitted on behalf of the accused persons that the accused persons Md. Irsad Ali @ SP, Md Waker Yunus and Arif Sk. were arrested on 17.06.2022 and produced before the Court on 18.06.2022 and since then they are in custody and today is total 241 days. It is also submitted that the petition under Section 36A(4) of NDPS Act of the I.O. is defective and it does not disclose progress in the investigation. It is further submitted that already vide order dated 15.12.2022, 02 months time was extended and today is 241 days and the petition has been filed on 10.02.2023 and so it cannot be entertained. It is his submission that the petition and the report of ld. Dist. P.P. do not disclose reasons for detention of the accused persons and also progress in the investigation. In support of his submissions, he relied on the decisions of the Hon'ble Punjab & Haryana High Court passed in CRR 1357 of 2022 with CRR 1356 of 2022 dated 19.09.2022 and also one decision of Kerala High Court passed in CRM. MC No. 6559 of 2022 dated 10.11.2022. Accordingly, he prays to release the accused persons on bail on any condition and to dismiss the petition under Section 36A(4) of NDPS Act along with the report of Ld District P P.

I.O. is heard in person.

Perused the case record and CD including the report of ld. Dist. P.P. as well as the petition under Section 36A(4) of NDPS Act.

It appears that copy of report of ld. Dist. P.P. and the petition under Section 36A(4) of NDPS Act have been served upon the ld. Advocate for the accused persons on 10.02.2023.

On perusal of the report and petition under Section 36A(4) of NDPS Act it appears that the reasons for further extension of time are mainly for the report awaiting from CFSL

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together with the statement regarding chance of further recovery and to nab the other accused persons. Whereas, from the CD it appears that several raids were conducted by the I.O. and lastly on 10.01.2023 and 11.01.2023 prior to his prayer before the Court while steps have been taken regarding CFSL report lastly on 18.01.2023 and 08.02.2023.

In view of the aforesaid circumstances, on perusal of the CD it appears that till 11.01.2023 several raids were conducted to arrest the other accused persons named in the CD.

After going through the petition of the I.O. and the report of Id. Dist. P.P. and also comparing the same with the materials on CD and case record, as a whole, it appears that prayer for further extension of 03 months time was also made for the report awaiting from CFSL and lastly one information dated 09.02.2023 received from CFSL, Kolkata from one messenger sent for CFSL report and it appears that after CFSL report being ready, intimation will be sent from their end for collection of CFSL report.

I have minutely gone through the decisions relied by the Id. Advocate for the accused persons and it is understood that Section 36A(4) of NDPS Act must be based on two aspects - (i) Specific reason for detention of the accused beyond statutory period and (ii) progress of investigation.

In the circumstances, on perusal of the CD and case record and in the light of the provision under Section 36A(4) of NDPS Act, this Court is of the view that prayer for further extension of time can only be considered if there is progress in the investigation and the reasons found from the materials in the CD regarding detention of the accused and the investigation is in motion.

It is also found that the report and the petition under Section 36A(4) of NDPS Act has been submitted by Id. Dist. P.P. to this Court within the time of statutory period.

In the aforesaid facts and circumstances, for the interest of justice and considering all aspects after perusal of the case record and CD, prayer for further extension of time is considered and allowed in part and simultaneously bail prayers of the accused persons are considered and rejected.

Accordingly, 04 weeks time is hereby extended on and from today as extension of time for investigation.

To date, i.e., 16-02-2023 for production and I.O.'s report.

Return CD.

I.O. is discharged.

Dictated and Corrected by me

Judge Special 3rd Court, Malda
Under N.D.P.S. Act.

Judge Special 3rd Court, Malda
Under N.D.P.S. Act.