

**HIGH COURT OF TRIPURA**  
**A G A R T A L A**

**WP(Crl.) No.01 of 2025**

**Jabbar Ali,**  
Son of Lt. Sona Miya, Resident of Vill Dhanpur, P.O Dhanpur, P.S.  
Sonamura, Sub-Div Kathalia, Dist Sepahijala Tripura, 799131.  
**..... Petitioner(s)**

On behalf of  
**Anowar Hossain,**  
Son of Jabbar Ali, Resident of Dhanpur, Majidabari, P.S.  
Sonamura, P.O Dhanpur, Sepahijala, Tripura  
**..... Accused Person(s)**

**- V e r s u s -**

- 1. The State of Tripura**  
Represented by the Principal Secretary (Home) to the  
Government of Tripura.
- 2. The Investigating Officer,**  
Of Lefunga PS Case No.30/2023, Tripura(W)  
**.....Respondent(s)**

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**HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**  
**JUDGMENT & ORDER**

Heard Mr. D. Biswas, learned counsel appearing for the  
petitioner. Also heard Mr. Rajib Saha, learned Addl. P.P. appearing  
for the respondents.

**[2]** This writ petition is submitted by one Jabbar Ali on behalf of his son Anowar Hossain challenging the orders dated 11.11.2024 and 12.11.2024 passed by learned Special Judge (NDPS), Court No.2, West Tripura, Agartala.

**[3]** An FIR was lodged by Sub-Inspector of Police namely, Sanjoy Debbarma of Lefunga PS on 06.05.2023 alleging, inter alia, that on the basis of a secret information, he along with SDPO, Mohanpur and OC of Lefunga PS with a police team raided the house of one Ratan Deb @ Mona and on search recovered 6(six) Nos. of cartons containing total 960 Nos. of "Phensedyl" cough syrup from the said house complex and seized the same and also found one Maruti Suzuki "Zen Esteilo" vehicle bearing No.TR-01 AK 0273 parked in the garage of said Ratan Deb and on further search they also found one person namely, Md. Eusuf Miah was hiding on the back seat of said vehicle along with 2(two) Nos. of cartons and from said cartons further total 320 Nos. of "Eskuf" syrup were also recovered. Said Md. Eusuf Miah, according to the informant, also disclosed that he and his business partner namely, Anowar Hossain came there to purchase said contraband syrups from said Ratan Deb and bought 500 Nos. of bottles of cough syrups for Rs.1,50,000/- and when they were about to depart from that place, meanwhile the police arrived and they could not shift all the cough syrup bottles in their car and also could not manage to flee away, though his business partner namely, Anowar Hossain managed to flee away from that place along with Ratan Deb and the owner of

the said vehicle was Anowar Hossain. Said vehicle along with those recovered cough syrups were seized by police and the FIR was lodged against three persons namely, Ratan Deb @ Mona, Md. Eusuf Miah and said Anowar Hossain. The FIR was lodged on 06.05.2023 but police arrested Anowar Hossain on 15.05.2024 i.e. after more than 1 year from Bamutia, Rangutia and was produced before the Court on 16.05.2024 and it is submitted that since then he is in custody.

**[4]** During his incarceration in the custody and before completion of 180 days of his detention period, on 08.11.2024, a petition was filed by learned Addl. Public Prosecutor under Section 36-A(4) of NDPS Act praying for extension of time for investigation period for one year and for detention of the accused person in judicial custody or till the investigation of the case was complete. Learned Special Judge on that day directed the prosecution to furnish copy of the said application to the accused and fixed the date on 10.11.2024 for hearing. Learned Special Judge also directed the Investigating Officer to produce the case diary on that day.

**[5]** On 10.11.2024, the matter came up before learned Judicial Magistrate, First Class who fixed the next date on 11.11.2024. On 11.11.2024, the regular Presiding Judge was not available and matter was taken up by the In-Charge Special Judge. On that day, Mr. M.K. Biswas, learned counsel of the accused submitted one bail application on behalf of the accused and also

submitted another petition seeking adjournment on the ground that Mr. P.K. Biswas, learned senior counsel was ill and therefore, was unable to participate in bail hearing and urged for fixing the matter on 12.11.2024. As it appears, the learned Special Judge granted time enabling the learned counsel of the accused to participate in the hearing remanding the accused till 12.11.2024 and fixing the next date for hearing on 12.11.2024 itself. Simultaneously, said learned In-Charge Special Judge also observed that he found justified grounds for authorizing detention of the accused Anowar Hossain beyond the period of 180 days as provided under proviso to sub-section (4) of Section 36-A of the NDPS Act.

**[6]** On 12.11.2024, when the regular Presiding Judge joined and took up the matter for hearing, it was observed by him that learned In-Charge vide order dated 11.11.2024 already allowed the petition of the IO and learned Special PP indicating the progress of investigation and specific reason for detention and therefore, nothing was left further by learned In-Charge, Court No.2 for consideration of the petition of learned Special P.P. It was also observed by learned Special Judge that since the learned advocate for accused Anowar Hossain was absent, further agitation of the matter would cause miscarriage of justice. In the order dated 12.11.2024, it is also mentioned that on that day, none appeared for said accused Anowar Hossain.

**[7]** During hearing, Mr. D. Biswas, learned counsel challenged both the orders dated 11.11.2024 and 12.11.2024 on

the grounds that there was no independent application of mind by learned Special P.P. while submitting the petition under Section 36-A(4) of NDPS Act and twin conditions as enumerated in said provision of Section 36-A(4) regarding reporting by the Prosecutor about the progress of the investigation and mentioning of specific reasons justifying application for further detention of the accused beyond 180 days, were not satisfied. The next point of argument of Mr. Biswas, learned counsel was that contradictory findings were rendered by the learned Special Judge by above said both the orders inasmuch as the learned In-Charge Special Judge though deferred the matter of hearing of the petition submitted by learned Special PP on 08.11.2024 but on 11.11.2024 itself, he himself observed that there were grounds for further detention of the accused under Section 36-A(4) of the Act which otherwise, means that the petition itself was indirectly allowed by learned In-Charge Special Judge. Simultaneously, when again date was fixed on 12.11.2024 for hearing of the said petition of learned Prosecutor, Mr. Biswas, learned counsel submits, it was incumbent upon the learned Trial Court to take a fresh decision on the said petition after hearing the parties. Therefore, according to Mr. Biswas, learned counsel, both the orders were self contradictory and self condemning. Mr. Biswas, learned counsel also argues that the order for further detention was passed when detention period of 180 days was already over and moreso, the prosecution did not file said petition within 14 days prior to the completion of 180 days of the

detention. Mr. Biswas, learned counsel also relies on following decisions:

(i) ***Jigar @ Jimmy Pravinchandra Adatiya vs. State of Gujarat, 2022 LiveLaw (SC) 794.***

(ii) ***Sanjay Kumar Kedia alias Sanjay Kedia vs. Intelligence Officer, Narcotics Control Bureau and another, (2009) 17 SCC 631.***

(iii) ***Sanjay Dubey vs. The State of Madhya Pradesh and another, 2023 LiveLaw (SC) 435.***

(iv) ***Arnab Manoranjan Goswami vs. The State of Maharashtra and others, (Criminal Appeal No.742 of 2020 arising out of SLP(Crl) No.5598 of 2020).***

(v) ***Mohamed Asaruthin vs. The State of Tamil Nadu, (Crl.R.C. No.1847 of 2024).***

[8] Mr. Rajib Saha, learned Addl. P.P., on the other hand, submitted that the 180 days detention period of the said accused expired on 10.11.2024 whereas learned Special PP filed the petition under Section 36-A(4) of the Act on 08.11.2024. According to Mr. Saha, learned Addl. P.P., the accused was absconding for a long period and even more than one year and somehow after exhaustion of much toil, the police could be able to apprehend him and till date another accused person is absconding. Learned Addl. P.P. also relies on the following decisions:

(i) ***Subhas Yadav vs. State of West Bengal, 2023 SCC OnLine Cal 313.***

(ii) ***M. Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence, (2021) 2 SCC 485.***

**[9]** For effectively dealing with the issues raised by the petitioner, the relevant portion of the orders dated 11.11.2024 and 12.11.2024 are reproduced hereunder:

**Order dated 11.11.2024**

“.....The proviso to sub-section 4 of Section 36-A of the NDPS Act provides that if it is not possible to complete the investigation within the 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.

It is pertinent, at this juncture, to refer to the decision of the Hon'ble Punjab & Haryana High Court in the case of *Ajay Jain Vs. State of Punjab* (CRM M-24715 of 2014) wherein the High Court held as follows:-

“..... The accused has a statutory right to be released on bail in case the challan is not presented within a period of 180 days in case of recovery of commercial quantity in cases under NDPS Act. The said absolute and indefeasible right can be defeated by the prosecution agency by moving an application under Section 36-A(4) of the NDPS Act prior to the expiry of 180 days. The statutory right is defeated on moving an application under Section 36-A(4) of the NDPS Act within a period of 180 days.....”

In the present case, as already stated, the accused Anuwar Hossain was forwarded before this court on 16.05.2024 and prior to completion of statutory period of 180 days the IO as well as Ld. Special PP, on 08.11.2024, filed application u/s.36-A(4) of the NDPS Act praying for extension of time for investigation for 1(one) year and for detention of the accused Anuwar Hossain in J/C till completion of investigation of this case citing specific reasons as aforementioned.

I have perused the CD.

**Considering the above-stated circumstances and after having perused the CD I find justified grounds for authorizing detention of the accused Anuwar Hossain beyond the period of 180 days as provided under proviso to sub-section 4 of Section 36-A of the NDPS Act.**

The bail petition, thus, stands rejected.

As stated herein-before Ld. Counsel Mr. M.K Biswas appearing for the accused had sought time by filing petition praying for fixing 12.11.2024 for hearing.

As far as hearing on the applications filed u/s.36-A(4) of the NDPS Act is concerned, I am of the opinion that defense side be given opportunity to confute the assertions made therein.

The accused Anuwar Hossain is remanded to J/C till 12.11.2024.

Return the CD to the IO.

Fix 12.11.2024 for production/further hearing."

### **Order dated 12.11.2024**

".....It appears that on 11.11.2024, the learned in charge(Court No.2) has passed a reasoned order allowing the petition of IO and learned Special P.P. recommending the accused person in J/C beyond 180 days for the purpose of investigation.

It appears that the accused Anuwar Hossain has already been apprised of the said petition filed by IO and learned Special P.P. and hearing was concluded in presence of the accused Anuwar Hossain.

However, learned in charge (Court No.2) gave an opportunity to learned Advocate of the accused Anuwar Hossain to complete the assertion made therein.

Proviso to Sub-section 4 of Section 36A is very much clear in regard to remanding the accused person in J/C beyond 180 days during investigation for the investigation purpose. The special court may extend the said period of 180 days up to one year on the report of the public prosecutor indicating the progress of the investigation and specific reason for the detention of the accused beyond the said period of one hundred and eighty days.

Learned in charge vide order dated 11.11.2024 allowed the petition of IO and learned Special P.P. indicating the progress of investigation and specific reason for detention.

Nothing has been left by learned in charge Court No.2 for further consideration in the matter which was held in presence of accused Anuwar Hossain.

Since the learned Advocate for accused Anuwar Hossain is absent further agitation of the matter will cause miscarriage of justice.

Accused Anuwar Hossain is further remanded to JC till 25-11-2024.

Fix 25-11-2024 for production of accused person and report."

**[10]** On plain reading of the order dated 11.11.2024, it gives the impression that learned In-Charge Special Judge was more anxious as to whether it was permissible at law to remand the accused person when already 180 days was expired without



deciding the petition under Section 36-A(4) of the Act and simultaneously was also of the mind that an adjournment should be granted to the accused enabling his engaged learned senior counsel to appear and participate in the hearing of the said petition and for that reason he fixed the next date on 12.11.2024 for hearing of said petition with specific observation that 'the accused person should be given opportunity to confute the assertions made in the petition' but to justify the remand till 12.11.2024 when already 180 days was over, learned In-Charge Special Judge observed that after taking into consideration of the circumstances and after having perused the CD, he found justified grounds for authorizing the detention of the accused Anowar Hossain beyond the period of 180 days as provided under proviso to sub section (4) of Section 36-A of the NDPS Act as underscored in the extracted portion of the said order dated 11.11.2024 earlier. It also appears that such mentioning of the words 'under proviso to sub section (4) of Section 36-A of the NDPS Act' created confusion in the mind of learned regular Special Judge that perhaps his predecessor had already disposed of the said petition and passed the order on 12.11.2024 in that line. But, nowhere in the impugned order dated 11.11.2024, learned In-Charge Special Judge mentioned that to justify remand till the next date fixed on 12.11.2024 he was allowing the petition submitted by learned Prosecutor under Section 36-A(4) of the Act. The Calcutta High Court (3-Judge Bench) in the case of **Subhas Yadav vs. State of West Bengal** reported in

**2023 SCC OnLine Cal 313** as relied on by learned Special P.P. held that the right to statutory benefits stands extinguished once the report of the Public Prosecutor seeking extension is filed and hence, remand of the accused till the prayer of the prosecutor is disposed of is traceable to section 167(2) Cr.P.C. read with section 36-A(4) of the NDPS Act. It was also further observed that in the event, the application for extension is dismissed or an order extending the detention is set aside by a superior court right to statutory bail revives in favour of the accused. The entire relevant paragraph 31 of the judgment is extracted hereunder:

**"31. In light of the aforesaid discussion, the issues are answered as follows:-**

- 1. Right of an accused to statutory bail upon expiry of the period of detention prescribed under section 36A(4) of NDPS Act is an inchoate one till he avails of his right by seeking statutory bail either by way of an application or even orally. Hence, he cannot be released automatically on statutory bail on the mere expiry of 180 days even if the prosecutor has failed to submit report seeking extension of detention in terms of the proviso to section 36A(4) of the Act before expiry of the said period;**
- 2. Order extending the period of detention under proviso to section 36A(4) of NDPS Act on a report of the Public Prosecutor submitted after expiry of 180 days but prior to the accused availing of his right does not envisage retrospective operation but the total period of detention under the aforesaid provision cannot exceed one year in the whole;**
- 3. As per Para 25.3 of M. Ravindran (supra) the right to statutory bail stands extinguished once the report of the Public Prosecutor seeking extension is filed. Hence, remand of the accused till the prayer of the prosecutor is disposed of is traceable to section 167 (2) Cr.P.C. read with section 36A(4) of the NDPS Act. In the event, the application for extension is dismissed or an order extending detention is set aside by a superior court right to statutory bail revives in favour of the accused;**
- 4. Upon expiry of 180 days of detention, Special Court as a cautionary measure ought to inform the accused (particularly if he is from an underprivileged section of society and in unrepresented by a counsel) of his right to statutory bail. However, failure to intimate the accused of his right by itself would not entitle him to statutory bail unless he avails of such relief;**
- 5. Prayer for extension of period of detention must be on the basis of a report of Public Prosecutor which must record progress of investigation and spell out specific**

*reasons to justify further detention beyond 180 days pending investigation;*

- 6. Special Court on the basis of the report of Public Prosecutor and materials in support of such plea must be satisfied of the twin requirements, i.e., (a) there is appreciable progress in the investigation and (b) there are specific/compelling reasons to justify further detention pending investigation. Each case has to be decided on its own merits. For example, failure to complete investigation solely on the score of non-submission of FSL report of the samples drawn from the contraband is an institutional shortcoming. This by itself may not justify further detention pending completion of investigation. But if the aforesaid fact situation is coupled with compelling circumstances like complexities in investigation in an organized crime racket or inter-state/trans-border trafficking, criminal antecedents of the accused giving rise to possibility of recidivism, abscondence of co-accused, etc., constituting 'specific reason' justifying further detention, the Court may be inclined to extend the period of detention and deny liberty;**
- 7. Prayer for extension of period of detention must be decided at the earliest without undue delay preferably within 7 days from making such application. Reasons for adjournment must be specifically stated;**
- 8. No written notice or copy of report of Public Prosecutor requires to be served upon the accused or his counsel but the accused or his counsel must be present personally or through video linkage at the time of consideration of the application. Accused and/or his counsel must be aware of such consideration and may raise objection, if any, with regard to compliance of mandatory requirements of law."**

**[11]** In view of above, the order dated 12.11.2024 is required to be set aside to the extent of refusal by learned Special Judge in deciding the petition submitted by learned Special P.P. under Section 36-A(4) of the Act which is hereby done accordingly. Learned Special Judge will hear the parties and decide the petition submitted by learned Special P.P under Section 36-A(4) of the NDPS Act finally. Needless to say, while deciding the petition submitted by learned Special Judge, said Court will keep in mind the established principles of law with regard to Section 36-A(4) of the Act and will examine whether such twin conditions as enumerated in Section 36-A(4) of the Act are satisfied or not.

**[12]** The case references as made by both the parties in this Court are not being discussed in details herein as this Court is not entering into the merits of the petition submitted by learned Public Prosecutor as the said petition is practically still pending before the learned Special Judge without any final decision. Parties will be at liberty to argue on all points on the merit of the petition filed by learned Special P.P. under Section 36-A(4) of the Act which were raised before this Court.

**[13]** The Trial Court will make all endeavour to dispose of the said petition of learned Special P.P. within 7(seven) days of receipt of the copy of this order after hearing the parties.

Return the Trial Court record immediately.

The writ petition is accordingly disposed of.

Pending application(s), if any, shall also stand disposed of.

**JUDGE**