APHC010306832026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3521]
(Special Original Jurisdiction)

FRIDAY,THE NINETEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL REVISION CASE NO: 601/2026

Between:

.KASIMAYAN KUMAR, S/O. KASIMAYAN, AGED ABOUT 42 YEARS, RESIDENTOF D.NO.34, EAST STREET, ERUMARPATTI KARAMPATTI, USILAMPATTI TALUK,ERUMARPATT, MADURAI, TAMIL NADU-625527, AADHRA NO.956285429466

...PETITIONER

AND

THE STATE OF ANDHRA PRADESH, , Rep by its Public Prosecutor, thru SHO Kasimkota Police Station, Anakapalli District, High Court of Andhra Pradesh at Amaravathi

...RESPONDENT

Counsel for the Petitioner:

KAKUMANU JOJI AMRUTHA RAJU

Counsel for the Respondent:

PUBLIC PROSECUTOR

The Court made the following:

ORDER:

Criminal Revision Case has been filed challenging the order dated 05.05.2026 passed by the learned X Additional District and Sessions Judge, Anakapalli, in Crl.M.P.Nos.56 of 2026 in Crime No.264 of 2025 of Kasimkota Police Station, whereby the petition filed by the prosecution under Section 36A(4) of the Narcotic Drugs And Psychotropic Substances, Act, 1985 (for brevity 'the NDPS Act') was allowed, extending the remand period of the Petitioner/Accused No.1, and other accused beyond 180 days.

2. Heard the learned counsel for the Petitioner and the learned Assistant Public Prosecutor. Perused the record.

3. The learned Counsel for the Petitioner has relied upon the judgment in **Hitendra Vishnu Thakur v. State of Maharashtra**[1], wherein, at paragraphs Nos.23, 24 and 31 it is held as under:

> *"23... We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply*

[1] 1994 AIR 2623

his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "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" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release him on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the justification, from the report of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes indefeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier part of this judgment. We are unable to agree with Mr Madhava Reddy or the Additional Solicitor General Mr Tulsi that even if the public prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the report of the public prosecutor. There is no scope for such a construction

when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution of any expression in it. We have already dealt with the importance of the report of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (bb) of sub-section (4) of Section 20. Since the law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid report fails in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether the public prosecutor labels his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (bb) (supra). Even the mere reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report to seek extension of time. In the absence of an appropriate report the Designated Court would have no jurisdiction to deny to an accused his indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. Moreover, no extension can be granted to keep an accused in custody beyond the prescribed period except to enable the investigation to be completed and as already stated before any extension is granted under clause (bb), the accused must be put on notice and permitted to have his say so as to be able to object to the grant of extension.

24. We shall now consider whether the amendment brought about by Act 43 of 1993 would apply to the pending cases i.e. the cases which were pending investigation on the date when the amendment came into force and in which the charge-sheet or challan had not been filed till 22-5-1993.

31. Having answered the questions posed by us in the opening part of the judgment, we shall now take up individual cases."

4. By relying on the judgment in **Hitendra Vishnu Thakur** 1st *supra*, the Hon'ble Apex Court, in **Sanjay Kumar Kedia @ Sanjay Kedia v. Intelligence Officer, Narcotic Control Bureau**[2], has held, at paragraph No. 11, as under:

"11... Mr. Lalit, has further contended that the two applications for extension of time could not, by any stretch of imagination, be said to be reports of the public prosecutor as envisaged under Section 36A (4) and has again referred us to the case ibidem:

[2] 2010 (1) SCR 555

A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given
by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with this request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "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" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor.

5. As seen from the impugned order passed by the learned Trial Court extending the remand period beyond 180 days, the learned Public Prosecutor has not applied his independent mind while filing the application. The learned Public Prosecutor has not filed any report as envisaged under Section 36A(4) proviso of ‘the NDPS Act’. The petition filed by the learned Public Prosecutor does not disclose whether he was satisfied with the progress of the investigation or whether he had considered the entire material of investigation for grant of further time to complete the investigation. However, the learned

Trial Court has also not followed the judgment of the Hon'ble Apex Court in **Jigar @ Jimmy Pravinchandra Adatiya v. State of Gujarat**[3] and failed to inform the accused of the extension of the remand period beyond 180 days either through virtual mode or physically.

6. In **Hitendra Vishnu Thakur** 1st *supra*, the Hon'ble Apex Court, in categorical terms, held that the Public Prosecutor concerned, or the Prosecutor in charge of the case, ought to have considered the request of the Investigating Officer and, upon independent application of mind, filed a report along with the application seeking extension of time. In the present case, there is no averment in the petition filed by the Public Prosecutor to show that he had applied his mind or that he was satisfied that the progress of the investigation was at a crucial stage and that the grant of further time to complete the investigation was necessary. Further, more importantly, the learned Trial Court failed to assign any special reasons for the detention of the Accused/Petitioner beyond the period of 180 days.

7. This Court, by order dated 16.06.2026 in Criminal Revision Case No.562 of 2026, enlarged the Accused No.2 on bail with some stringent conditions. The present Petitioner/Accused No.1 is also standing on a similar footing as the other Accused.

8. Following the judgments of the Hon'ble Apex Court in **Hitendra Vishnu Thakur** 1st *supra* and **Sanjay Kumar Kedia @ Sanjay Kedia** 2nd *supra*, the

[3]2022 Supreme (SC) 973

impugned order dated 05.05.2026 passed in Crl.M.P.No.56 of 2026 is liable to be set aside.

9. The Criminal Revision Case is allowed with the following conditions:

i. The Petitioner/Accused No.1 shall be enlarged on bail subject to his executing a bond for a sum of Rs.1,00,000/- (Rupees One Lakh Only) with two sureties for the like sum each to the satisfaction of the learned X Additional District and Sessions Judge, Anakapalli.

ii. The Petitioner/Accused No.1 shall appear before the Station House Officer, Kasimkota Police Station, Anakapalli District, on every Saturday in between 10:00 am and 05:00 pm, till cognizance is taken by the learned the Trial Court.

iii. The Petitioner/Accused No.1 shall not leave the limits of the District without prior permission from the Station House Officer concerned.

iv. The Petitioner/Accused No.1 shall not commit or indulge in commission of any offence in future.

v. The Petitioner/Accused No.1 shall cooperate with the investigating officer in further investigation of the case and shall make himself available for interrogation by the investigating officer as and when required.

vi. The Petitioner/Accused No.1 shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court.

vii. The Petitioner/Accused No.1 shall surrender his passport, if any, to the investigating officer. If he claims that he does not have a passport, he shall submit an affidavit to that effect to the Investigating Officer.

10. With the above observations and directions, this Criminal Revision Case is allowed. There shall be no order as to costs.

As a sequel, interlocutory applications, if any pending, shall stand closed.

_____

Dr. Y. LAKSHMANA RAO, J

Dated: 19.06.2026
RSI

19

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL REVISION CASE NO: 601 of 2026

Dated: 19.06.2026

RSI