

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 22.03.2022

Pronounced on: 28.03.2022

Crl R. No.19/2021

AMIR HASSAN MIR

...PETITIONER(S)

Through: M/S: M. Assim ud din and Rabinder Singh,
Advocates.

Vs.

UT OF J&K & ANR

....RESPONDENT(S)

Through: Mr. Sajad Ashraf, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. Petitioner has challenged order dated 28.08.2021 passed by learned Principal Sessions Judge, Srinagar, whereby the petitioner's application for grant of default bail has been dismissed.

2. It appears from the record that on 04.02.2021, a police party intercepted petitioner and co-accused on National Highway at JVC, Bemina. During the search of the petitioner, 1008 capsules of Spasmoproxyvon plus were recovered from him which he had kept in an orange coloured bag. FIR No.14/2021 for commission offences

under Section 8/21 of NDPS Act came to be registered at Police Station, Parimpora, and investigation of the case was set into motion.

3. The petitioner moved an application for grant of default bail before the learned Principal Sessions Judge, Srinagar, on 04.08.2021, contending therein that the investigating agency has failed to produce the charge sheet against him despite lapse of 180 days and, as such, he is entitled to compulsive bail. The learned Sessions Judge, after considering the matter came to the conclusion that even though the charge sheet was not produced by the investigating agency within the stipulated period of 180 days from the date of arrest of the petitioner, yet because the petitioner was on interim bail with effect from 24.05.2021 to 08.07.2021, as such, after excluding the said period, the petitioner has been in custody only for 140 days, thus, he is not entitled to grant of default bail.

4. It is the contention of the petitioner that the period during which he was released on interim bail should be treated as period under custody for the purpose of counting the total period for which the petitioner has been in custody, whereafter his plea for grant of default bail should be considered. According to the petitioner, the learned Sessions Judge has fallen into an error by excluding the period during which the petitioner was released on interim bail.

5. I have heard learned counsel for the parties and perused the impugned order and the material on record.

6. The short question which is required to be determined in this revision petition is as to whether the period during which the petitioner was enlarged on temporary bail is required to be excluded while determining the total period during which he has been in custody in the subject FIR.

7. As per 36A(4) of the NDPS Act, 1985, Section 167 of the Code of Criminal Procedure, which deals with the matters relating to remand and default bail, has its modified application in respect of persons accused of offences punishable under Sections 19, 24 or Section 27A or for offences involving commercial quantity, inasmuch as maximum period of remand has been provided as 180 days instead of 90 days.

8. It is not in dispute that the petitioner was found allegedly in possession of commercial quantity of the contraband drug. It is also not in dispute that investigating agency had not sought extension in period of custody of accused/petitioner beyond 180 days in terms of proviso to sub-section (4) of Section 36A of the NDPS Act. It is also admitted that the investigating agency did not file the charge sheet within 180 days of date of initial arrest of the petitioner. It is admitted case of the parties that the petitioner was released on temporary bail with effect from 24.05.2021 to 08.07.2021.

9. Learned counsel for the petitioner has contended that the grant of temporary bail in favour of the petitioner would not alter the situation as according to him, the interim bail granted to the petitioner was subject to certain conditions and his release was not unfettered. It is

being contended that custody of an accused released on bail is deemed to be the custody of the Court and, as such, the whole period, without excluding the period during which the petitioner was on interim bail has to be taken into account while considering his application for grant of default bail. To support his contention, learned counsel for the petitioner has relied on the judgment of the Supreme Court in **Niranjan Singh & anr. Vs. Prabhakar Rajaram Kharote & ors., AIR 1980 SC 785.**

10. The contention of learned counsel for the petitioner that an accused released on conditional interim bail is deemed to be in the custody of the Court, is preposterous, so far as its application to determination of the matter relating to computation of total period of custody for the purpose of granting of default bail, is concerned.

11. In **Gautam Navlakha vs. National Investigation Agency, 2021 SCC Online SC 382**, the judgment relied upon by the learned Sessions Judge, it has been clearly laid down that broken periods of custody have to be counted while computing the total period of custody undergone by an accused for the purpose of considering his default bail plea, which in other words means that the period during which an accused has not been in custody or has been enlarged on bail cannot be computed while calculating the period of custody for the purposes of considering the default bail plea.

12. A Court while exercising the discretion of granting bail even for a limited period imposes conditions under Section 439(1)(a), then an

accused is released from custody on execution of bonds but imposition of such conditions cannot by any stretch of imagination be construed to mean that accused person is in custody. By imposition of such conditions, the physical custody of the accused does not vest with the Court as his movement is not in any way restricted. It cannot be stated that he was in physical custody of the Court so as to claim the computation of such period in reckoning the period of 180 days of detention to acquire the statutory right under proviso to sub-section (2) of Section 167 Cr. P. C read with Section 36A(4) of the NDPS Act.

13. In view of the foregoing discussion, the petitioner in the instant case cannot be treated to be in detention or custody for the period he was released on temporary bail. The contention of learned counsel for the petitioner that the period during which the petitioner was released on temporary bail should be computed for the purposes of reckoning the period of 180 days is without any merit and deserves to be rejected. The impugned order passed by the learned Sessions Judge is well reasoned and the same does not call for any interference.

14. For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed.

(Sanjay Dhar)
Judge

Srinagar,
22.03.2022
“Bhat Altaf, PS”

Whether the order is speaking: *Yes/No*
Whether the order is reportable: *Yes/No*