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**(2019) 04 CAL CK 0060**  
**In the Calcutta High Court**

**Case No : Criminal Misc. Case (Bail Application) (CRM) No 3033 Of 2019**

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|-----------------------------------------|------------|
| Asraf Sk @ Firoz Sk @ Firoj Sk @ Methun | APPELLANT  |
| Vs                                      |            |
| State                                   | RESPONDENT |

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**Date of Decision :** 12-04-2019

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 167(2), 439  
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 19, 21(c), 24, 27A, 36A(4), 37(4)

**Citation :** (2019) 04 CAL CK 0060

**Hon'ble Judges :** Sanjib Banerjee, J;Suvra Ghosh, J

**Bench :** Division Bench

**Advocate :** Sekhar Bose, Arnab Saha, Abhimanyu Banerjee, Somopriya Choudhury

**Final Decision :** Allowed

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## Judgement

The facts are not much in dispute. The petitioner was arrested on May 31, 2018 and produced before the Magistrate on June 1, 2018. The period of 180 days, in accordance with Section 36A(4) of the Narcotic Drugs and Psychotropic Substances Act, 1985 expired, qua the petitioner, on or about November 28, 2018. It is the fair admission on the part of the State that the charge-sheet in this case was sought to be filed on December 1, 2018.

Section 37(4) of the Act extends the period recognised in Section 167(2) of the Code from 90 days to 180 days. The provision also contemplates the further extension of the time upto a year. However, such further extension is hedged with some stringent conditions. The extension may happen only upon the report of the public prosecutor indicating the progress of the investigation and, if the public prosecutor seeks the detention of the accused beyond the period of 180 days and during the period of extension, the report of the public prosecutor seeking the extension and indicating the specific reasons for detention must be filed prior to the expiry of the initial period of 180 days.

There are two limbs to the proviso to Section 36A(4) of the Act. It may do well to notice the provision in the language of the statute:

"(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said 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."

Apparently, there is nothing in the proviso to indicate that the report of the public prosecutor seeking an extension of the period beyond 180 days should be made within the original period of 180 days itself. However, the two distinct limbs of the conditions pertain to the extended period for the filing of the charge-sheet and the continued detention of the accused. In so far as the continued detention of the accused is concerned, a right accrues to the accused upon the expiry of the period of 180 days and unless the report of the Public Prosecutor seeking the extension is filed prior to the expiry of 180 days and such report indicates the special reasons for the further detention of the accused beyond the period of 180 days, the further detention of the accused is not called for. Indeed, the court loses the jurisdiction to require the further detention of the accused.

However, if the report of the public prosecutor seeking the extension is not filed within the period of 180 days, it does not imply that the trial cannot proceed any further. On a meaningful reading of the provision, notwithstanding the right of the accused to obtain bail after the period of 180 days if the report of the public prosecutor seeking the extension and citing special reasons for the further detention of the accused is not filed within the period of 180 days, the application for the mere extension to file the charge-sheet without seeking the further detention of the accused can be made any time after the period of 180 days and within the maximum extendable period of one year.

It does not appear that the relevant provision makes it so strict for the prosecution or the public prosecutor that upon missing the deadline at the end of 180 days, the case fails against the accused or the accused has to be completely discharged. Although the right to have the accused in detention for the extended period is lost to the prosecution as an indefeasible right accrues to the accused upon the condition not being complied with; it does not wash away the charges or the accusation altogether.

In the present case, the charge-sheet was filed beyond the period of 180 days, on December 1, 2018, through the office of the public prosecutor. Clearly, this could not have been done. The provision requires the application of the

independent mind of the public prosecutor on an explanation of the public prosecutor as to the time taken for the completion of the investigation. The second limb is stricter. The reasonableness of the explanation for the delay is a factor that goes into the specific reasons that are indicated for the further detention of the accused beyond the period of 180 days.

Since there was no compliance with the requirement of the relevant provision in this case, the State cannot oppose the prayer for bail. The delay on the part of the public prosecutor to file a report in terms of the relevant provision must be seen as a kind of a window. During the period that the window is open - that is to say, that the period of 180 days has expired but no report has been filed by the public prosecutor for an extension of the time to file a charge-sheet - the accused may slip out by demanding bail with little or no authority available to the court to deny the prayer. However, since the report of the Public Prosecutor may also be filed after the period of 180 days has expired but before the period of extension of one year has expired, whenever such report is filed and the prayer for extension is made the window closes. If the accused had not made a prayer at the time when the window was open, the accused may not have the advantage as provided in the provision and the special conditions cited by the public prosecutor can be considered by the trial court to decline bail to the accused. It is evident in the present case that the window is still open since there is no report by the public prosecutor for extending any time and it is merely the investigating officer who has forwarded the charge-sheet through the office of the public prosecutor. However, since the period of one year of extension that was available after November 28, 2018 has not yet expired, it is still open to the public prosecutor to file a report and to file the charge-sheet thereupon. By then the accused would have slipped out since the prayer of the accused is before the court and there is, in the eye of law, no report as of now for the extension of the time to file the charge-sheet.

The petitioner herein is entitled to bail.

The petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand only) each, with two sureties of like amount, to the satisfaction of the Chief Judicial Magistrate, Berhampore on the conditions that he shall not intimidate the witnesses or tamper with the evidence in any manner whatsoever and he shall appear before the trial court on every date of hearing.

In the event of violation of any of the conditions, the trial court will be at liberty to cancel the bail without reference to this Court.

The prayer for bail is allowed, subject to the conditions stated above.

Certified website copies of this order, if applied for, supplied to the parties upon compliance with all requisite formalities.