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**(2020) 06 RAJ CK 0002**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous Bail Application No. 16572 Of 2019

Gokulram Vishnoi and Ors

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

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**Date of Decision :** 15-06-2020

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 57, 167(2), 167(2)(A), 439  
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 36A(4)

**Citation :** (2020) 06 RAJ CK 0002

**Hon'ble Judges :** Sanjeev Prakash Sharma, J

**Bench :** Single Bench

**Advocate :** Anil Kumar Upman, Tej Prakash Sharma

**Final Decision :** Dismissed

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## **Judgement**

Sanjeev Prakash Sharma, J

1. The petitioners have preferred the present bail application claiming benefit of Section 167(2) Cr.P.C.

2. Learned counsel appearing for the petitioners submits that the petitioners had been arrested on 24.5.2019 and was remanded by the trial Court on

25.5.2019 after being produced before the Special Court. As per the provisions of Section 36A(4) of the Narcotic Drugs and Psychotropic Substances

Act, 1985 (hereinafter referred to as "the Act of 1985"), the challan has to be filed within a period of 180 days. The challan was filed on 24.11.2019

evening and an application was filed under Section 167(2) Cr.P.C. on 21st morning itself seeking benefit thereof, the petitioners ought to have been

released as 180 days period was over when the challan has been filed subsequently. Learned counsel submits that the learned Special Judge (NDPS

Cases) has further wrongfully rejected his application on 21.11.2019, which goes

contrary to the judgment passed by this Court in the case of Basram

Meena Versus State of Rajasthan: 2018 (3) Cr.L.R. (Raj.) 1332 and thus, the day of remand ought to have been included.

3. Learned counsel submits that the Court has failed to take notice of Basram Meena's case (supra) and has not counted the day of remand for

counting 180 days. Learned counsel also relies on the judgment passed by another Coordinate Bench of this Court, at Principal Seat, Jodhpur, dated

1.2.2019 in the case of Suresh Kumar Versus State of Rajasthan: S.B. Criminal Misc. Bail No. 1000/2019, wherein judgment passed in the case of

Basram Meena (supra) was followed. Learned counsel has also relied on the judgment of the High Court of Chhattisgarh, Bilaspur in Smt. Shalini

Verma & Anr. Versus State of Chhattisgarh: Criminal Misc. Petition No. 2551/2018 and connected petition decided on 13.3.2019 wherein a similar

view has been taken.

4. Learned counsel has also relied upon the judgment passed by the Supreme Court in the case of Chaganti Satyanarayana Versus State of Andhra

Pradesh: AIR 1986 SC 2130 wherein the Apex Court held that the period of ninety days or sixty days as the case may be and it will run from the date

of order of remand and not from the date of arrest.

5. Learned counsel for the petitioner further relied upon the judgment in the case of Rakesh Kumar Paul Versus State of Assam: (2017) 15 SCC 67

where the bail was granted in default of not putting up the charge-sheet within the statutory period of 60 days as required therein.

6. Per contra; learned counsel appearing for the respondent has submitted his written submissions and pointed out that the accused was arrested on

24.5.2019 on account of recovery of contraband of 866.05 kg poppy drug, which is more than commercial quantity. The same was recovered from

conscious possession of the accused and therefore, he was sent for judicial custody on 25.5.2019. After completion of the investigation, the

Investigating Officer filed the charge-sheet on 21.11.2019 and the challan was, therefore, filed within a period of 180 days after excluding the day of

remand as per the limitation as laid down under Section 36A(4) of the Act of 1985. Learned counsel has relied on the judgment passed by the

Supreme Court in the case of Ravi Prakash Singh @ Arvind Singh Versus State of Bihar: 2015 (2) RCR (Criminal) 89. Learned counsel also relies on

the law laid down by the Supreme Court in the case of State of M.P. Versus Rustam & Ors.: 1995 (3) SCC 221 to submit that the day on which the

accused petitioners were remanded in the judicial custody should be excluded.

7. I have considered the submissions as above and perused the judgments cited by the learned counsel for the parties.

8. The case of Chaganti Satyanarayana & Ors. (supra), has been noticed in Ravi Prakash Singh's case (supra) by the Supreme Court wherein the

issue involved was whether the period of 90 days is to be counted from the date of remand of the accused or from the date of his arrest under Section

57 of the Code. It was held as under:

25. Thus in any view of the matter i.e. construing proviso (a) either in conjunction with Sub-section (2) of Section 167 or as an independent

paragraph, we find that the total period of 90 days under Clause (i) and the total period of 60 days under Clause (ii) has to be calculated only from the

date of remand and not from the date of arrest.

9. In Basram Meena (supra), the Coordinate Bench has noticed the judgment passed in the case of Ravi Prakash Sharma (supra) and other judgments

as relied upon by the learned counsel for the petitioner whereafter the Coordinate Bench reached to the following conclusion:

14. ""Chaganti Satyanarayana & Ors. Vs. State of Andhra Pradesh"" (supra) happens to be the earlier view, wherein, Apex Court has held that period

of 90 days or 60 days as the case may be begins to run from date of order of remand. The Apex Court while dealing with the case ""State of M.P. Vs.

Rustam & Ors."" (supra) did not take note of ""Chaganti Satyanarayana & Ors."" (supra) and thus, in view of ""Sandeep Kumar Bafna Vs. State of

Maharashtra,"" (supra) the earlier view has to be accepted. Even otherwise, the Apex Court in ""Rakesh Kumar Paul Vs. State of Assam,"" (supra)

which is passed by Bench of three Judges, the date of remand was included in calculating the period of 90 days.

15. In the present case in hand, if we include the date of remand then period of 90 days expired on 04.02.2018 and application for default bail was

moved on 05.02.2018 and on the same day charge-sheet was also filed.

10. However, while this Court in Basram Meena's case (supra) had noticed the judgment passed in the case of Ravi Prakash Singh (supra), it did not

give its opinion for distinguishing with regard to the same. In Ravi Prakash Singh

(supra), the Supreme Court after noticing the judgments passed in

Chaganti Satyanarayana & Ors. and N. Nureya Reddy & Anr. and held as under:

12. In State of M.P. v. Rustam and others, this Court has laid down the law that while computing period of ninety days, the date on which the

accused was remanded to the judicial custody should be excluded, and the day on which challan is filed in the court, should be included. That being so,

in our opinion, in the present case, date 5.7.2013 is to be excluded and, as such, the charge sheet was filed on ninetieth day, i.e. 3.10.2013. Therefore,

there is no infringement of Section 167(2) of the Code.

Therefore, the view taken by the Coordinate Bench thus appears to be contrary to the law as has been taken in the case of Ravi Prakash Singh

(supra).

11. Keeping in view that if date of remand is excluded in view of the law laid down in the case of Ravi Prakash Singh (supra), the charge-sheet would

be treated to have been filed on 180th day and therefore, would be within the limitation as laid down under Section 36-A(4) of the Act of 1985.

According to the judgment of the Supreme Court, the following charge has been prepared for counting 180 days, which reads as under:

12. On merits also, this Court is satisfied that no case for grant of bail is made out as against the accused petitioners from whom there is a huge

quantity of contraband recovered, which is more than commercial quantity and the same remained unexplained.

13. This Court is of further view that the Act of 1985 is a complete code in itself and the provisions of Section 167(2) Cr.P.C. would have its

application as provided in the Act of 1985. Section 36A(4) of the Act of 1985 reads as under:

36A. Offences triable by Special Courts.--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court

constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them

as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or

sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in

such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the

whole where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers--

(i) when such person is forwarded to him as aforesaid;

or

(ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order

such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to

try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has

been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the

Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for

trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may,

under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of

Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that

section as if the reference to ""Magistrate"" in that section included also a reference to a ""Special Court"" constituted under section 36.

(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.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with

imprisonment for a term of not more than three years may be tried summarily.

Thus, the limitation laid down under Section 36-A(4) can only be stated to be as directory and the benefit cannot be given to the accused petitioners on

account of delay in filing of the charge-sheet. Moreso, as there is a proviso to Section 36A(4), which allows the Special Court to extend the

investigation beyond 180 days and thus, the strict limitation as is applicable to Section 167(2) Cr.P.C. would not have the same import in relation to

Section 36A(4).

14. In view thereof, this bail application filed by the accused petitioners is dismissed and further, in the opinion of this court, the judgment passed in

Basram Meena's case (supra) will have no application to the present case.