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Court : Mumbai Goa

Decided On : Oct-15-2012

Judge : A.P. Lavande

Appeal No. : Criminal Revision Application No.35 of 2012

Appellant : Sunil Gudlar

Respondent : Central Bureau of Investigation Anti-corruption Branch and Another

Judgement :

Oral Judgment:

Heard Mr. Lotlikar, learned Senior Counsel for the petitioner and Mr. Vaz, learned Special Public Prosecutor for the respondents.

2. Rule. By consent, heard forthwith.

3. By this revision application, the petitioner challenges the order dated 01/09/2012 passed by the Special Judge, N.D.P.S. Court, Mapusa in Special Criminal Miscellaneous Application No.28/12 extending time by 90 days to file chargesheet in terms of Section 36-A(4) of the N.D.P.S.Act ('the Act' for short).

4. The petitioner was arrested on 06/03/2012 in Case No.RC3(A)/2011/CBI/ACB/Goa pursuant to handing over of the investigation by State of Goa to CBI in connection with Crime No.5/2010 registered at Anti Narcotic Cell Police Station, Goa. On 23/08/2012, the Investigating Officer filed an application purporting to be under Section 36-A(4) of the Act seeking time to file chargesheet. Thereafter, on 01/09/2012, learned Public Prosecutor filed report in terms of Section 36-A(4) of the Act and after hearing the petitioner and the respondent, learned Special Judge by the impugned order dated 01/09/2012 granted extension of time of 90 days to file chargesheet.

5. Mr. Lotlikar, learned Senior Counsel for the petitioner at the outset invited my attention to paragraph 15 of the impugned order in which reference has been made to paragraph 19 of the order dated 21/08/2012 passed by learned Single Judge in Criminal Application (Bail)no.111/2012 by which the bail application filed by the petitioner, was rejected. Mr. Lotlikar also invited my attention to paragraph 22 of the order dated 21/08/2012 passed by learned Single Judge in which learned Judge has specifically observed that the findings in the bail application have been arrived at prima facie only for the purpose of considering the bail application and the same should not influence in deciding any issues in further proceedings in the case. According to Mr. Lotlikar, in view of paragraph 15 of the impugned order, learned Special Judge ought not to have relied upon the observations made by learned Judge of this Court while disposing of the bail application and ought to have decided the application seeking extension of time on its own merits, in accordance with law.

6. Mr. Vaz, learned Special Public Prosecutor appearing for the respondents submitted that he would have no objection if the matter is remanded to learned Special Judge to decide the application on its own merits, in accordance with law.

7. Having considered the rival submissions and having perused the record, I am of the considered opinion that the impugned order is liable to be set aside solely on the ground that learned Special Judge ought not to have relied upon the observations made by learned Single Judge of this Court while disposing of the bail application, more particularly having regard to paragraph 22 of the order dated

21/08/2012 passed by learned Single Judge of this Court. On this ground alone, I am inclined to set aside the impugned order.

8. It is made clear that I have not expressed any opinion on the rival claims of the parties and all the contentions of the parties are kept open.

9. Learned Special Judge shall decide the application under Section 36-A(4) of the Act on its own merits, in accordance with law uninfluenced by the observations made by learned Single Judge in the order dated 21/08/2012. However, although the order is set aside, I am not inclined to release the applicant on bail for not filing the chargesheet within the extended time and the petitioner shall continue to be in custody till the disposal of the application under Section 36-A(4) of the Act, subject to the order that learned Special Judge would pass on the said application.

10. Considering the urgency in the matter, learned Special Judge to decide the application for extension of time expeditiously and in any case, within a period of one week from the date of appearance by parties before learned Special Judge. The petitioner through his advocate and learned Special Public Prosecutor before the Special Judge, shall appear before learned Special Judge on 19/10/2012 at 10.a.m. It is made clear that the application seeking extension, shall be disposed of only on the basis of materials available till 01/09/2012.

11. Revision Application stands disposed of.

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