

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 29.06.2021****Pronounced on 09.7-2021****CRMP No. 465 of 2021**

1. Vinay Dubey S/o Late Ramesh Dubey Aged About 32 Years R/o Near Ramsagar Taalab, Pahanda Road, District Baloda Bazar-Bhatapara Chhattisgarh
2. Amit Dubey S/o Late Ramesh Dubey Aged About 33 Years R/o Near Ramsagar Taalab, Pahanda Road, District Baloda Bazar-Bhatapara Chhattisgarh

---- Petitioners**Versus**

- State of Chhattisgarh through the Station House Officer, Police Station City Kotwali, District Baloda Bazar-Bhatapara Chhattisgarh

---- Respondent

For Petitioners	: Shri Shailendra Dubey, Advocate
For State	: Shri Rakesh Sahu, Dy. Government Advocate

Hon'ble Shri Justice Narendra Kumar Vyas**C.A.V. ORDER**

1. The petitioners have filed present Cr.M.P. for quashing of the order dated 12.04.2021 passed by learned Additional Sessions Judge and Special Judge (NDPS), Balodabazar-Bhatapara in connection with Crime No. 110/2021 whereby an application filed by the petitioners under Section 167(2) of Cr.P.C. for grant of default bail was rejected on the count that charge-sheet has not been filed within 60 days.
2. The petitioners were charged for offence punishable under Section 22(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'). It is the case of prosecution is that from possession of petitioner No.1, 145 strips of Spasmo Proxyvon Plus total 1160 capsules and from the possession of petitioner No.2, 90 strips total 720 capsules of Spasmo Proxyvon

Plus prohibited psychotropic drugs were seized. The seized quantity of the psychotropic drugs was higher than minimum quantity but less than commercial quantity.

3. The facts projected by the petitioners, in brief, are that the petitioners are arrested on 09.02.2021 in connection with crime No. 110/2021 by police Station City Kotwali, Balodabazar for the offence punishable under Section 22(B) of the NDPS Act. On 10.02.2021, they were produced before court for remand and since then they are in judicial custody. It was essential for the prosecution to file charge-sheet within 60 days i.e. on or before 10th April, 2021 but charge-sheet has been filed on 12.04.2021 i.e. after 60 days, therefore, petitioners have made an application under Sections 167(2) Cr.P.C. on 12.04.2021 seeking bail on the ground of non-filing of charge-sheet within 60 days from the date of police custody of accused.
4. The petitioners on above factual matrix filed their bail application under Section 167(2) Cr.P.C on 12.04.2021 before the Special Judge (NDPS), Balodabazar-Bhatapara. The prosecution objected the same. Learned Trial Court vide impugned order dated 12.04.2021 rejected the application holding that 10th April 2021 and 11th April, 2021 were Government Holidays though 60 days statutory period has been completed on 11.04.2021, on the first working day challan has been filed, as such, there is no substance in the submission made by the petitioners, accordingly the bail application was rejected. This order is being challenged by the petitioners before this Court.
5. I have heard learned counsel for the applicants as well as learned counsel for the State and perused the case diary.
6. Learned counsel for State opposing the bail application would submit

that for submission of charge-sheet time period is 180 days as per NDPS Act 1985 and he would refer to Section 36A of NDPS Act, 1985. The charge-sheet has been filed within time period, therefore, present application is liable to be dismissed by this Court.

7. From perusal of the material and pleading of the party following points emerge for determination by this Court :_

(i) Whether grant of bail as provided under Section 167(2) of the Cr.P.C. indefeasible right of the accused and prosecution can defeat the same by filing final report after expiry of maximum period prescribed under the provisions. ?

(ii) Whether the holidays will be accountable in computing the period of 60 days for granting benefit of bail and from which date the maximum period for filing of charge sheet is countable ?

Findings on Point No.1

8. Before advertent to submissions of the learned counsel for the petitioners as well as submission of learned counsel for State, it is apt to examine provisions of Section 167(2) of Cr.P.C. and section 36A of NDPS Act 1985 which is extracted below:-

“Section 167(2) in The Code Of Criminal Procedure, 1973 -

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for

life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.”

Section 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 authorized 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 authorized 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.]

9. From perusal of Section 167(2) Cr.P.C. it is quite clear that if challan on the specified period is not submitted, accused is entitled to be enlarged on bail. As per the provisions of Section 167(2) of Cr.P.C., default bail is the right of accused. The object of the provisions of Section 167(2) of Cr.P.C. is that State authority should not take any malafide belated action against accused persons. Right of the accused is the integral part of personal liberty, as per the provisions, and are indefeasible link to safeguard under Article 21 of the Constitution of India. Hon'ble Supreme court in its very recent Judgment in case of **M. Ravindran vs Intelligence Officer, Directorate of Revenue Intelligence**¹ has held in para 17, 24, 24.2 and 25.2 as under :-

¹ (2021) 2 SCC 485

Section 167(2) and the Fundamental Right to Life and Personal Liberty

17. Before we proceed to expand upon the parameters of the right to default bail under Section 167(2) as interpreted by various decisions of this Court, we find it pertinent to note the observations made by this Court in *Uday Mohanlal Acharya*² on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows: (SCC p. 472, para 13)

“13. ... Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution.”

17.1. Article 21 of the Constitution of India provides that “*no person shall be deprived of his life or personal liberty except according to procedure established by law*”. It has been settled by a Constitution Bench of this Court in *Maneka Gandhi v. Union of India*⁹, that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2) CrPC and the safeguard of “default bail” contained in the proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law.

17.2. Under Section 167 of the Code of Criminal Procedure, 1898 (“the 1898 Code”) which was in force prior to the enactment of the CrPC, the maximum period for which an accused could be remanded to custody, either police or judicial, was 15 days. However, since it was often unworkable to conclude complicated investigations within 15 days, a practice arose wherein investigating officers would file “preliminary charge-sheets” after the expiry of 503 the remand period. The State would then request the Magistrate to postpone commencement of the trial and authorise further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final charge-sheet was filed. The Law Commission of India in Report No. 14 on *Reforms of the Judicial Administration* (Vol. II, 1948, pp. 758-760)

pointed out that in many cases the accused were languishing for several months in custody without any final report being filed before the courts. It was also pointed out that there was conflict in judicial opinion as to whether the Magistrate to postpone commencement of the trial and authorise further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final charge-sheet was filed. The Law Commission of India in Report No. 14 on *Reforms of the Judicial Administration* (Vol. II, 1948, pp. 758-760) pointed out that in many cases the accused were languishing for several months in custody without any final report being filed before the courts. It was also pointed out that there was conflict in judicial opinion as to whether the Magistrate was bound to release the accused if the police report was not filed within 15 days.

17.3. Hence the Law Commission in Report No. 14 recommended the need for an appropriate provision specifically providing for continued remand after the expiry of 15 days, in a manner that “*while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual*”. Further, that the legislature should prescribe a maximum time period beyond which no accused could be detained without filing of the police report before the Magistrate. It was pointed out that in England, even a person accused of grave offences such as treason could not be indefinitely detained in prison till commencement of the trial.

17.4. The suggestion made in Report No. 14 was reiterated by the Law Commission in Report No. 41 on *The Code of Criminal Procedure, 1898* (Vol. I, 1969, pp. 76-77). The Law Commission re-emphasised the need to guard against the misuse of Section 344 of the 1898 Code by filing “preliminary reports” for remanding the accused beyond the statutory period prescribed under Section 167. It was pointed out that this could lead to serious abuse wherein “*the arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner*”. Hence the Commission recommended fixing of a maximum time-limit of 60 days for remand. The Commission considered the reservation expressed earlier in Report No. 37 that such an extension may result in the 60-day period becoming a matter of routine. However, faith was expressed that proper supervision by the superior courts would help circumvent the same.

17.5. The suggestions made in Report No. 41 were taken note of and incorporated by the Central Government while drafting the Code of Criminal Procedure Bill in 1970. Ultimately, the 1898 Code was replaced by the present CrPC. The Statement of Objects and

Reasons of the CrPC provides that the Government took the following important considerations into account while evaluating the recommendations of the Law Commission:

“3. The recommendations of the Commission were examined carefully by the Government, keeping in view, among others, the following basic considerations:

- (i) an accused person should get a fair trial in accordance with the accepted principles of natural justice
- (ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and
- (iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community.”

17.6. It was in this backdrop that Section 167(2) was enacted within the present day CrPC, providing for time-limits on the period of remand of the accused, proportionate to the seriousness of the offence committed, failing which the accused acquires the indefeasible right to bail. As is evident from the recommendations of the Law Commission mentioned supra, the intent of the legislature was to balance the need for sufficient time-limits to complete the investigation with the need to protect the civil liberties of the accused. Section 167(2) provides for a clear mandate that the investigative agency must collect the required evidence within the prescribed time period, failing which the accused can no longer be detained. This ensures that the investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This also ensures that the court takes cognizance of the case without any undue delay from the date of giving information of the offence, so that society at large does not lose faith and develop cynicism towards the criminal justice system.

17.7. Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three-Judge Bench of this Court in *Rakesh Kumar Paul v. State of Assam*¹⁰, which laid down certain seminal principles as to the interpretation of Section 167(2) CrPC though the questions of law involved were somewhat different from the present case. The questions before the three-Judge Bench in *Rakesh Kumar Paul*¹⁰ were whether, firstly, the 90-day remand extension under Section 167(2)(a) (i) would be applicable in respect of offences where the maximum period of imprisonment was 10 years,

though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under Section 167(2) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90-day limit is only available in respect of offences where a *minimum* ten year' imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in lieu of a written application. This was based on the reasoning that the court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows: (SCC pp. 95-96 & 99, paras 29, 32 & 41)

"29. Notwithstanding this, the basic legislative intent of completing investigations within twenty-four hours and also within an otherwise time-bound period remains unchanged, even though that period has been 505 extended over the years. This is an indication that in addition to giving adequate time to complete investigations, *the legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a prolonged or indefinite period. It is for this reason and also to hold the investigating agency accountable that time-limits have been laid down by the legislature.*

...

* * *

32. ... Such views and opinions over a prolonged period have prompted the legislature for more than a century to ensure expeditious conclusion of investigations so that an accused person is not unnecessarily deprived of his or her personal liberty by remaining in prolonged custody for an offence that he or she might not even have committed. *In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned counsel for the State.*

41. *We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical.* The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court."

(emphasis supplied)

Therefore, the courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21.

17.8. We may also refer with benefit to the recent judgment of this Court in *S. Kasi v. State*¹¹, wherein it was observed that the inderfeasible right to default bail under Section 167(2) is an integral part of the right to personal liberty under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasised that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge-sheet.

17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

17.10. With respect to the CrPC particularly, the Statement of Objects and Reasons (supra) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature, namely, ensuring a fair trial, expeditious investigation and trial, and  setting down a rationalised procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21.

17.11. Hence, it is from the perspective of upholding the fundamental right to life and personal liberty under Article 21 that we shall clarify and reconcile the various judicial interpretations of Section 167(2) for the purpose of resolving the dilemma that has arisen in the present case.

“24.In the present case, admittedly the Appellant-accused had exercised his option to obtain bail by filing the application at 10:30 a.m. on the 181st day of his arrest, i.e., immediately after the court opened, on 01.02.2019. It is not in dispute that the Public Prosecutor had not filed any application seeking extension of time to investigate into the crime prior to 31.01.2019 or prior to 10:30 a.m. on 01.02.2019. The Public Prosecutor participated in the arguments on the bail application till 4:25 p.m. on the day it was filed. It was only thereafter that the additional complaint came to be lodged against the Appellant.

Therefore, applying the aforementioned principles, the Appellant-accused was deemed to have availed of his indefeasible right to bail, the moment he filed an application for being released on bail and offered to abide by the terms and conditions of the bail order, i.e. at 10:30 a.m. on 01.02.2019. He was entitled to be released on bail notwithstanding the subsequent filing of an additional complaint.

..

24.2. We also find that the High Court has wrongly entered into merits of the matter while coming to the conclusion. The reasons assigned and the conclusions arrived at by the High Court are unacceptable.

...

25.2. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.”

10. Thus, from the above stated provisions of law, it is abundantly clear that the default bail is indefensible right of the petitioners. The same cannot be defeated by prosecution by subsequent filing of charge-sheet.

Findings on Point No.2

11. Learned counsel for petitioners would submit that maximum punishment for the offence under Section 22(B) of the NDPS Act is up to 10 years and no life imprisonment has been prescribed, therefore, maximum period for filing of charge-sheet is 60 days. On the other hand Ld. State Counsel would submit that maximum period for filing charge-sheet is 180 days under NDPS Act therefore the order by trial Court is justified warranting no interference by this Court.

12. To decide the controversy raised in this case it is necessary to have

a look to provision of Section 22(B) of NDPS Act 1985 which is extracted below.

"22(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

13. From perusal of case diary it is reflected that offence under Section 22(B) of the NDPS Act, 1985 has been alleged against applicants and the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then section 167(2) (a) (ii) the Act will apply and the accused will be entitled to grant of default bail after 60 days in case charge-sheet is not filed. The Hon'ble Supreme Court in case of **Rakesh Kumar Paul Vs. State of Assam** reported in 2017(15) SCC67 has examined the issue and held as under :

"83. This Court in a large number of judgments has held that the right to legal aid is also a fundamental right. Legal aid has to be competent legal aid and, therefore, it is the duty of the counsel representing the accused whether they are paid counsel or legal aid counsel to inform the accused that on the expiry of the statutory period of 60/90 days, they are entitled to 'default bail'. In my view, the magistrate should also not encourage wrongful detention and must inform the accused of his right. In case the accused still does not want to exercise his right then he shall remain in custody but if he chooses to exercise his right and is willing to furnish bail he must be enlarged on bail.

84. In view of the above discussion, my findings are as follows:

84.1. I agree with both my learned brothers that the amendment made to the [Prevention of Corruption Act, 1988](#) by the Lokpal and Lokayuktas Act, 2013 applies to all accused charged with offences under this Act irrespective of the fact whether the action is initiated under the Lokpal and Lokayuktas Act, 2013, or any other law;

84.2 [Section 167\(2\)\(a\)\(i\)](#) of the Code is applicable only in cases where the accused is charged with (i) offences punishable with death and any lower sentence; (ii) offences punishable with life imprisonment and any lower sentence and (iii) offences punishable with minimum sentence of 10 years;

84.3. In all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then [Section 167\(2\) \(a\)\(ii\)](#) will apply and the accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed.

84.4. The right to get this bail is an indefeasible right and this right must be exercised by the accused by offering to furnish bail"

14. Now with regard to counting of holidays for counting 60 days when 10th April, 2021 and 11th April, 2021 were Government Holidays, it is submitted that holidays will be counted for calculating 60 days as provisions of Section 10 of General Clauses Act are not attracted . . This issue has been examined by the Hon'ble Supreme Court in the matter of **Chaganti Satyanarayana Vs. State of A.P.**, reported in 1986(3) SCC 141 has observed as under:

"32. As the terms of proviso (a) with reference to the total periods of detention can be interpreted on the plain language of the proviso itself we do not think it is necessary to invoke the provisions of the [General Clauses Act](#) or seek guidance from the [Limitation Act](#) to construe the terms of the proviso".

15. Hon'ble Supreme Court in the case of **Central Bureau of Investigation vs. Nazir Ahmed Sheikh**, reported in AIR 1996 (83) SC 2980 has held that period for filing of charge sheet would begin to run and be counted from the next date of arrest of the accused. However, the date of accused being sent on remand would be

excluded but the date on which charge-sheet was filed is to be included. The Hon'ble Supreme Court has held in para 3 and relevant portion thereof reads as under:

“ In view of the fact that the charge-sheet contains a charge that the murder of the officer was committed liable to conviction under [Section 302](#) IPC. Clause (b) of [Section 167](#) would apply. It says that with reference to sub-section (2) of [Section 167](#) for the words 15 days, 90 days and 6 months where-ever occurs shall be construed with reference to one year and one year respectively as envisaged under sub-section (4) of Section 20 of the Act. It is seen that when the accused has been arrested on March 8, 1991, the Investigating Officer is enjoined to produce him before the Magistrate having jurisdiction within 24 hours from the date of the arrest. Consequently, the limitation of one year would begin to run and be counted from next date of the arrest, namely, March 9, 1991. Since the charge-sheet has been filed on March 6, 1992, the Designated Court was not justified in holding that the charge-sheet was not filed within the limitation prescribed under sub-section (4) of Section 20 of the Act, i.e., one year. The later amendment to the Act seeking permission of the Court for extension of the time or filing the necessary material to show the grounds on which the investigation could not be completed within the period has no application since the arrest was made prior to the amendment of the Act”.

16. Learned counsel for State would submit that as per section 36A of the NDPS Act the extended period of filing of final report is 180 days

as such application filed by the applicants has rightly been rejected by the learned trial Court. *Per contra*, learned counsel for applicants would submit that the period of 180 days for invoking the provision of Section 167(2) Cr.P.C is applicable for offence punishable under Section 19 or Section 24 or Section 27 A or for offence involving commercial quantity, whereas present case is related to an offence under Section 22(B) of the Act and quantity seized from the applicants is less than commercial, as such contention raised by the learned State counsel is liable to be rejected.

17. From the provision of Sections 22 (B) & 36-A of NDPS Act and considering facts of the case that quantity seized from the Applicants is less than commercial as such provision of Section 36 A(4) is not attracted. Therefore contention of State counsel in this regard is liable to be rejected and accordingly it has been rejected.

18. From the above examination of the facts and legal proposition examined in this case following settled position of law is emerged:-

(i). Period of filing of the charge-sheet will run from the date of order of remand and will be completed on the next date of remand, therefore, first date of remand will be excluded and last date of remand will be included.

(ii). Last day Sunday or holiday will be included in computing 60 days.

19. Now coming to the facts of this case the petitioners were arrested on 09.02.2021 and were produced before the concerned Court on 10.02.2021 and on the same date they were remanded to judicial custody. After excluding the first day of remand and including day of filing of challan i.e. 12.04.2021, the calculation of days as per the

Gregorian calender will be as below:-

Feb, 2021 (from 11.02.2021)	18 days
March, 2021	31 days
April, 2021	12 days

	<u>61 days.</u>

20. Therefore, it can be said that charge-sheet was filed on 61th day. On the same day i.e. on 12.04.2021 petitioners have filed application for default bail during court hours. The right of default bail under Section 167(2) of the Cr.P.C. cannot be defeated by subsequent filing of the charge-sheet on the same day. In the present case, application was filed on 12.04.2021, challan was filed in the Court hours on the same day. Hence, it is crystal clear that charge-sheet was not filed within the maximum period of 60 days. As per the law laid down by the Hon'ble Supreme Court right of the accused to get default bail is accrued and it is indefeasible right of the accused which cannot be defeated by the prosecution after completion period as per provisions of Section 167(2) Cr.PC.

21. Thus, I am of the firm view that the trial Court is not justified in dismissing the aforesaid application by saying that 10.04.2021 and 11.04.2021 were holidays, therefore, charge-sheet on 12.04.2021 is filed within 60 days and by subsequent filing of charge-sheet the right of the accused was forfeited.

22. Accordingly, the Cr.M.P. is allowed. The impugned order passed by the learned Additional Sessions Judge and Special Judge(NDPS), Balodabazar-Bhatapara dated 12.04.2021 in Criminal case No. 110/2021 is set aside. It is directed that petitioners be released on

bail on each of them furnishing a personal bond in the sum of Rs. 50,000/- along with one local surety for the like amount to the satisfaction of the concerned trial Court with the condition that they will appear before the concerned Court as and when directed till trial and they would cooperate during the trial.

23. Certified copy as per rules.

**Sd/-
(Narendra Kumar Vyas)
Judge**

Kishore/Raju