

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(274-1)

1. CRR-1357-2022
Gurmej SinghPetitioner

Vs.

State of HaryanaRespondent

2. CRR-1356-2022
Gurmej SinghPetitioner

Vs.

State of HaryanaRespondent

Date of decision: - 19.09.2022

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Ms. Kanika Ahuja, Advocate,
Ms. Kirti Ahuja, Advocate, and
Ms. Mahima Dogra, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This order shall dispose of two criminal revision petitions filed by the same petitioner Gurmej Singh. In the first Criminal Revision No.1357-2022 challenge is to the order dated 18.06.2022, passed by the Additional Sessions Judge, Kurukshetra, vide which, the application dated 15.06.2022 (Annexure P-2) filed by the public prosecutor under Section 36A(4) of the NDPS Act, for extension of time for filing the final

report under Section 173 Cr.P.C. has been allowed and in the second Criminal Revision No.1356-2022 challenge is to the order dated 22.06.2022 (Annexure P-4), vide which, the Special Court, Kurukshetra has dismissed the application filed by the petitioner under Section 167(2) read with Section 173(5) of the Cr.P.C. for “default bail”. With the consent of the parties, CRR-1357-2022 is being taken up as the lead case.

2. Learned counsel for the petitioner has submitted that in the present case, the petitioner was arrested on 21.12.2021 and was produced before the Court on 22.12.2021 and the public prosecutor, on 15.06.2022, had moved an application under Section 36A(4) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'the NDPS Act') for extension of time for filing the challan without stating any specific reasons as to why the detention of the petitioner, beyond the stipulated period of 180 days, was necessary. It is submitted that the public prosecutor had not applied his independent mind and had merely forwarded what the investigating officer had stated in his application for seeking extension of time for presentation of the challan. It is further submitted that the impugned order dated 18.06.2022 granting the said extension has been passed without even considering the above vital aspect of requiring to give specific reasons as to why the custody of the petitioner is required beyond the stipulated period of 180 days. Reference has been made to the impugned order to state that only two reasons have been given in the impugned order for seeking the said extension of time and it is only on the basis of the said reasons that the time period for filing the final report under Section 173 Cr.P.C. has been extended by three

months. The said two reasons given therein are firstly, that the FSL report has not been received and secondly, that the arrest of the co-accused Raju @ Diwan Aacharya is still pending. It is submitted that neither of the said two reasons could have been stated to be sufficient reasons for seeking further custody of the present petitioner. In support of her contentions, reliance has been placed upon various judgments of Co-ordinate Benches of this Court on the said aspect. The first judgment which has been relied upon is judgment of a Co-ordinate Bench of this Court in ***CRM-M-14269-2014*** titled as "***Hargobind Singh Vs. State of Punjab***", ***decided on 14.05.2014***. The second judgment is dated 11.02.2022 passed by a Co-ordinate Bench of this Court in ***CRM-M-48705-2021*** titled as "***Joginder Singh Vs. State of Haryana and other connected matter***". It is further submitted that till date, neither the FSL report has been received, nor the aforesaid co-accused has been arrested. Additionally, it is argued that in the present case, the FIR was got registered on 21.12.2021, but the sample was deposited with the FSL Madhuban on 31.12.2021, although the said sample should have reached the chemical examiner within a period of 72 hours, thus, there was a delay on the part of the prosecution on the said aspect. It is thus, submitted that both the impugned orders deserve to be set aside and the petitioner deserves to be released on bail.

3. Learned State counsel, on the other hand, has opposed both the present criminal revision petitions and has submitted that the application filed by the public prosecutor was filed in accordance with law and it comprised of all the necessary details as are required to be provided under the law and even the order dated 18.06.2022, which has

been passed by the Additional Sessions Judge, Kurukshetra, had taken into consideration the provisions of under Section 36A(4) of the NDPS Act and the observations made by the Court were as per the parameters laid down under Section 36A(4) of the NDPS Act. It is submitted that the recovery effected in the present case was of 210 kgs of poppy husk i.e., commercial quantity of contraband and thus, the Court was justified in extending the time for awaiting the FSL report as well as for enabling the prosecution to arrest the said co-accused. It is also submitted that the extension of time has been rightly granted, thus, the question of granting 'default bail' to the petitioner would not arise.

4. This Court has heard learned counsel for the parties and has gone through the paper-book.

5. The undisputed facts in the present case are being detailed hereinbelow: -

(i) 21.12.2021 (Annexure P-1) (Page 26 of the paperbook)

The petitioner was arrested in FIR No.459 dated 21.12.2021, registered under Section 15 of the NDPS Act, at Police Station Pehowa, District Kurukshetra.

(ii) 22.12.2021

The petitioner was produced before the Court.

(iii) 15.06.2022 (Annexure P-2) (Page 29 of the paperbook)

Application under Section 36A(4) of the NDPS Act for extension of time for filing the challan was filed by the public prosecutor, Kurukshetra on the ground that the FSL has not been received and the co-accused Diwan Acharya has not been arrested, but however no specific

reasons had been given as to why the detention of the petitioner beyond the stipulated period of 180 days, was required.

(iv) 18.06.2022 (impugned order) (Page 21 of the paperbook)

The said application was allowed by the Judge Special Court, Kurukshetra by taking into consideration the fact that the FSL report has not been received and co-accused Raju @ Diwan Aacharya has not been arrested and no specific reasons were specified as to why the detention of the petitioner, beyond the stipulated period of 180 days, is required.

(v) 21.06.2022

The petitioner filed an application under Section 167(2) read with Section 173(5) of the Cr.P.C. for grant of 'default bail'.

(vi) 22.06.2022 (Annexure P-4) (page 44 of the paper-book)

The Special Court, Kurukshetra dismissed the said application primarily on the ground that vide order dated 18.06.2022, a period of three months was extended by the Special Court, Kurukshetra for completion of investigation in terms of Section 36A(4) of the NDPS Act, thus, the application dated 21.06.2022 was found to be not maintainable.

6. The main issue which arises for determination in the present set of criminal revision petitions, is as to whether the reasons given for allowing the application under Section 36A(4) of the NDPS Act, to extend the time period by another three months for permitting the prosecution to complete the investigation and for presentation of the challan, and thus, in effect, defeating the right of the petitioner to grant of 'default bail', are valid and sufficient. For the said purpose, it would be

necessary to refer to the relevant portion of the impugned order dated 18.06.2022, which is reproduced hereinbelow :-

"I have gone through these case laws.

The arrest of co-accused Diwan Acharya, resident of Rajasthan who is allegedly the supplier of the commercial quantity of contraband i.e. 210 kilograms poppy husk, is yet to be effected and thereby, without joining him/arresting him in the present FIR, the charge-sheet cannot be filed. The FSL report has also not been received yet. The accused namely Gurmej and Gurvinder were produced before the Court on 22.12.2021 and thus, 179 days have almost expired today.

In the given circumstances of the case, the investigation cannot be completed within the period of 180 days as stipulated in Section 36A(4) and thereby, this Court deems appropriate to extend the said period by another three months after considering the progress of the investigation and the reasons furnished/submitted in the application moved by the Public Prosecutor.

The application stands disposed of accordingly. Papers be tagged with the remand papers and the same be sent back to Court concerned for 1.7.2022 and accused are directed to be produced before the court concerned through VC on the date fixed. Papers need not be put up on 29.6.2022, the date already fixed. Intimation in this regard be sent to the concerned Jail authorities. Copy of this order be also sent to the concerned SHO for compliance.

Date of order: 18.06.2022

(Dr. Amit Kumar Garg)

Addl. Sessions Judge-cum

Vacation Judge-cum-Judge

Special Court, Kurukshetra

(UID:HR0180)"

A perusal of the said order would show that two reasons had been given for allowing the said application i.e., (i) the co-accused Raju @ Diwan Acharya, who is stated to be the supplier of the contraband, is yet to be arrested and (ii) the FSL report has not been received yet.

7. Before this Court opines upon the question of legality of the

said impugned order, it would be relevant to refer to the judgments of the Co-ordinate Benches of this Court, which have been relied upon by learned counsel for the petitioner on the above-said aspect.

8. A Co-ordinate Bench of this Court in **Hargobind Singh case** (**supra**) has held as under: -

2. *As per prosecution version, seven kgs. of heroin was allegedly recovered from co-accused Simratpal Singh on 14.8.2013. Present petitioner Hargobind Singh @ Sodhi and Surjit Singh @ Baba were alleged to have escaped from the spot at that point of time. The petitioner is stated to have been arrested subsequently on 22.8.2013.*

3. *Under Section 167 of the Code of Criminal Procedure and under its various sub-sections, the maximum period beyond which a person cannot be detained while investigation is under way has been provided and the same varies between 60 to 90 days keeping in view the gravity of offence. If the investigation is not completed within such stipulated period, the accused is entitled to bail under Section 167(2) of the Code of Criminal Procedure if he makes an application for such purpose. However, under the Act, the maximum period of 90 days fixed under Section 167(2) of the Code of Criminal Procedure has been increased to 180 days for several categories of offences under the Act. Under Section 36-A of the Act, the period of detention may go on to a total of one year subject to satisfaction and compliance of the stringent conditions provided therein i.e. (i) upon a report of the Public Prosecutor; (ii) which in turn indicates the progress of the investigation; (iii) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days; and (iv) after notice to the accused.*

4. *The Hon'ble Supreme Court in Hitendra Vishnu Thaku Hitendra Vishnu Thakur v. State of Maharashtra, 1994(3) RCR (Criminal) 156 whi v. State of Maharashtra, 1994(3) RCR (Criminal) 156 le dealing with the proviso inserted as clause (bb) in sub-section (4) of Section 20 of TADA which is parimateria with the proviso to sub-Section (4) of Section 36-A of the Act had categorically held that even though the proviso does not specifically mandate the issuance of a notice to the accused while seeking extension yet the issuance of a*

notice has to be read into the provision which would be, both, in the interest of the accused, as also the prosecution as well as for doing complete justice between the parties. Such requirement was held to be in consonance with the principles of natural justice.

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7. *Having heard learned counsel for the parties at length, this Court is of the considered view that the petitioner is entitled to the benefit of bail.*

8. *In the first instance, it may be recorded that there has been a non-compliance of the provisions contained in Section 36-A of the Act. The provision mandates a report of the Public Prosecutor indicating the progress of the investigation as also the specific and compelling reasons for seeking the detention of the accused beyond a period of 180 days. A perusal of the application preferred by the prosecution seeking extension of time under Section 36-A of the Act at Annexure P2 would reveal that the basis for seeking extension was two-fold, i.e. (i) the investigation has to cover various parts of India as also Pakistan, England and Canada and (ii) the Chemical examination report of Forensic Science Laboratory, Chandigarh is yet awaited. On such application, the trial Court granted the extension of 30 days vide order dated 11.2.2014 at Annexure P4 by merely re-producing the bald averments made at the hands of the prosecution in the application seeking extension. This Court would have no hesitation in observing that the order dated 11.2.2014 passed by the trial Court granting extension of 30 days for completion of investigation was done in a routine and mechanical fashion.*

9. *That apart, even though the final report was submitted by the police on 6.3.2014 at 12.50 P.M., but the same would not defeat the accrued right of the petitioner inasmuch as he had already moved an application under Section 167(2) of the Code of Criminal Procedure prior in point of time.*

10. *For the reasons recorded above, the petition is allowed. The petitioner be enlarged on bail subject to the satisfaction of trial Court.*

11. *Petition disposed of."*

A perusal of the above-said judgment would show that the

said case involved a contraband of seven kgs. of heroin and thus, the case

pertained to commercial quantity. The provisions of Section 167(2) of Cr.P.C. and Section 36A(4) of the NDPS Act were considered by the Co-ordinate Bench and it was observed that under Section 167(2) Cr.P.C. and under its various sub-sections, the maximum period beyond which a person cannot be detained while investigation is under way has been provided and the same varies between 60 to 90 days, keeping in view the gravity of offence and that, in case the investigation is not completed within such stipulated period, the accused is entitled to bail under Section 167(2) of the Code of Criminal Procedure if he moves an application for such purpose. The said maximum period of 90 days fixed under Section 167(2) of the Code of Criminal Procedure has been increased to 180 days for several categories of offences under the NDPS Act and it was observed that under Section 36-A of the NDPS Act, the period of detention could be extended up to one year upon a report of the Public Prosecutor in case the report stringently indicates (i) the progress of the investigation and (ii) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days. Reliance in the above-said judgment has been placed upon the Hon'ble Supreme Court in case titled as 'Hitendra Vishnu Thakur v. State of Maharashtra, 1994(3) RCR (Criminal) 156', in which, while dealing with the proviso inserted as clause (bb) in sub-section (4) of Section 20 of TADA which is paramateria with the proviso to sub-Section (4) of Section 36-A of the NDPS Act, it was held that even though the proviso does not specifically mandate the issuance of a notice to the accused while seeking extension, yet the issuance of a notice has to be read into the provision which would

be, both, in the interest of the accused, as also the prosecution as well as for doing complete justice between the parties. The Co-ordinate Bench after considering the law laid down in the said judgment, had observed that the reasons given by the prosecution therein for seeking extension of time under Section 36A(4) of the NDPS Act were two fold i.e., (i) the investigation was to cover various parts of India as also Pakistan, England and Canada and (ii) the Chemical examination report of Forensic Science Laboratory, Chandigarh was awaited. It was observed that the extension of 30 days had been granted vide order dated 11.02.2014 therein on the said two counts and it was held that the said reasons were not valid reasons for granting extension and accordingly, the order granting extension was set aside and the petitioner therein was released under Section 167(2) Cr.P.C. The facts of the said case are very similar to the facts of the present case and thus, the law laid down in the above-said judgment would also apply in the present case.

9. Another Co-ordinate Bench of this Court in **Joginder Singh case (supra)** has held as under: -

"This judgment shall dispose of aforementioned two petitions as they arise out of same FIR and involve similar facts and questions of law.

Criminal Revision No.1314 of 2021 has been preferred by the petitioner challenging order dated 25.10.2021 passed by the trial court whereby application filed by him for grant of default bail under Section 167 (2) Cr.P.C. read with Section 36(A)(4) has been dismissed, citing the reasons recorded in order dated 02.07.2021 which has been impugned in connected petition viz. Criminal Miscellaneous No.M-48705 of 2021 whereby an application moved by the prosecution for extension of time for filing challan was allowed on the ground that co-accused Pawan son of Shankar, was yet to be

arrested and report of FSL had not been received.

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A Public Prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is an independent statutory authority. The Public Prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for investigation. He is not merely a post office or a forwarding agency. A Public Prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner o that there has been unnecessary, deliberate or avoidable delay in completing the investigation. Thus, for seeking extension of time, the Public Prosecutor after an independent application of mind to the request of the investigating agency, is required to make a report to the court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The Public Prosecutor may attach the request of the investigating officer alongwith his request on application and report, but his report must disclose on the face of it, that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation. The report of the Public Prosecutor, therefore, is not merely a formality but a very vital report because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements of Section 36A(4) of the NDPS Act. The contents of the report to be submitted by the Public Prosecutor, after proper application of his mind, are designed to assist the court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the court must be satisfied for the justification, from the report of the Public Prosecutor, to grant extension of time to complete the investigation.

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A Public Prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and

may find that the investigation had not progressed in the proper manner so that there has been unnecessary, deliberate or avoidable delay in completing the investigation. Thus, for CRR-1314-2021 & CRM-M-48705-2021 [5] seeking extension of time, the Public Prosecutor after an independent application of mind to the request of the investigating agency, is required to make a report to the court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The Public Prosecutor may attach the request of the investigating officer alongwith his request on application and report, but his report must disclose on the face of it, that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation. The report of the Public Prosecutor, therefore, is not merely a formality but a very vital report because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements of Section 36A(4) of the NDPS Act. The contents of the report to be submitted by the Public Prosecutor, after proper application of his mind, are designed to assist the court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the court must be satisfied for the justification, from the report of the Public Prosecutor, to grant extension of time to complete the investigation.

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In similar circumstances, the Hon^{ble} Supreme Court in the case of Sanjay Kumar Kedia (supra) held as under:-

“10. The maximum period of 90 days fixed under Section 167(2) of the Code has been increased to 180 days for several categories of offence under the Act but the proviso authorizes a yet further period of detention which may in total go upto one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are :

- (1) a report of the public prosecutor,*
- (2) which indicates the progress of the investigation, and*
- (3) specified the compelling reasons for seeking the*

detention of the accused beyond the period of 180 days, and

(4) after notice to the accused. xx xx xx xx

14. A bare perusal of the application shows that it has been filed by the investigating officer of respondent No.1 and does not indicate even remotely any application of mind on the part of the public prosecutor. It further does not indicate the progress of the investigation, nor the compelling reasons which required an extension of custody beyond 180 days. This application was allowed by the Special Judge on 2nd August, 2007 i.e. on the day on which it was filed which also reveals that no notice had been issued to the accused and he was not even present in Court on that day.”

Record clearly reveals that the impugned order(s) lack satisfaction of aforesaid mandatory conditions of Section 36A(4) of the NDPS Act. In the absence of an appropriate report, the court would have no jurisdiction to deny an accused his indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. Moreover, no extension can be granted to keep an accused in custody beyond the prescribed period except to enable the investigation to be completed and as already stated above, before any extension is granted, the accused must be put on notice and permitted to have his say so as to be able to object to the grant of extension.

As regards Section 167(2) Cr.P.C., it creates an indefeasible right in an accused person, on account of the "default" by the investigating agency in the completion of the investigation within the maximum period prescribed or extended, as the case may be, to seek an order for his release on bail. It is for this reason that an order for release on bail under proviso (a) of Section 167(2) Cr.P.C. is generally termed as an “order-on-default” as it is granted on account of the default of the prosecution to complete the investigation and file the challan within the prescribed period. As a consequence of amendment, an accused after the expiry of 180 days from the date of his arrest becomes entitled to bail irrespective of the nature of the offence with which he is charged, where the prosecution fails to put up challan against him on completion of the investigation. Thus, in the considered view of this Court, as per Section 167(2) Cr.P.C., an

indefeasible right to be enlarged on bail accrues in favour of the accused, if the police fails to complete the investigation and put up a challan against him in accordance with law under Section 173 Cr.P.C. An obligation, in such a case, is cast upon the Court, when after the expiry of the maximum period during which an accused could be kept in custody, to decline the police request for further remand. There is yet another obligation also which is cast on the court and that is to inform the accused of his right of being released on bail and enable him to make an application in that behalf. This legal position has been very ably stated in Aslam Babalal Desai Vs. State of Maharashtra, 1993 (1) Recent Criminal Reports 600, where speaking for the majority, the Hon^{ble} Supreme Court referred the law laid down in Rajnikant Jivanlal Patel & another Vs. Intelligence Officer, Narcotic Control Bureau, New Delhi, AIR 1990 Supreme Court 71, wherein it was held that:-

"The right to bail under Section 167(2) proviso (a) thereto is absolute. It is a legislative command and not court's discretion. If the investigating agency fails to file chargesheet before the expiry of 90/96 days, as the case may be, the accused in custody should be released on bail. But at that stage, merits of the case are not to be examined. Not at all. In fact, the magistrate has no power to remand a person beyond the stipulated period of 90/96 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bond."

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Keeping in view the aforementioned discussion on the subject, the impugned order rejecting default bail to the petitioner is hereby set aside and he is ordered to be released on default bail on furnishing requisite bonds to the satisfaction of the trial court."

A perusal of the above-said judgment would show that even in the said case two criminal revision petitions had been filed, one in which challenge was to the order whereby which the application seeking extension of time for filing the challan had been allowed on the ground that co-accused in the said case had not been arrested and the FSL report had not been received, which are the same grounds considered in the

impugned order dated 18.06.2022 challenged in the present case and the second revision petition was filed therein challenging the dismissal of the application filed by the accused therein for grant of 'default bail' under Section 167(2) Cr.P.C. In the aforesaid judgment, it was observed that a Public Prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure and he was an independent statutory authority and is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for investigation and is not merely a post office or a forwarding agency and the said report must strictly comply with the requirements of Section 36A(4) of the NDPS Act and it must take into consideration the consequences of the grant of extension i.e. keeping the accused in further custody. It was further observed that the Court must also be satisfied with the justification afforded, from the report of the Public Prosecutor, to grant extension of time to complete the investigation. Reliance was placed upon the judgment of the Hon'ble Supreme Court in case titled as "Sanjay Kumar Kedia Vs. Narcotics Control Bureau, (2009) 17 SCC 631, in which, the conditions have been laid down for permitting extension of the period of detention, including the condition that specific compelling reasons have to be stated in the report of the public prosecutor for seeking detention of the accused beyond the period of 180 days, and on the basis of the conditions laid down in the said judgment, it was observed that no extension can be granted to keep an accused in custody beyond the prescribed period except to enable the investigation to be completed and that Section 167(2)

Cr.P.C. creates an indefeasible right in an accused person, on account of the 'default' by the investigating agency in the completion of the investigation within the maximum period prescribed or extended, as the case may be, to seek an order for his release on bail. After considering the entire matter, the order rejecting 'default bail' to the petitioner therein was set aside and the petitioner therein was released on 'default bail'.

10. To a similar effect is the judgment passed by a Co-ordinate Bench of this Court in **Nardev Inder Singh's case (supra)** and the relevant part of the said judgment is reproduced hereunder : -

"4. Learned State counsel would vehemently oppose the present petition for grant of regular bail by contending that a huge quantity of intoxicating tablets to the extent of 26000 approximately stand recovered from the petitioner as also co-accused and that the investigation is still under way. Learned State counsel submits that vide order dated 23.12.2013 passed by the Special Court, Patiala, an application filed under Section 36-A of the Act seeking extension of time to complete investigation has been allowed and 60 days' time has been granted for completion of investigation and for presentation of the final report. It is contended on behalf of the State that under such circumstances, the petitioner is not entitled to the benefit of regular bail.

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Even otherwise, the application, so submitted, has been produced before the Court during the course of hearing and the same has been perused. The only reason and basis cited in the application seeking extension of time for completion of investigation is that the report of the Chemical Examiner as regards the sample of the intoxicating/narcotic tablets has not been received. Solely on such premise, the Additional Public Prosecutor, Incharge of the case, has recorded a satisfaction that the Investigating Agency has made an effort to obtain the report of the Chemical Examiner and as such, on account of non-receipt of the same, further extension of a period of 180 days for completion of investigation was prayed for.

9. *In my considered view, there has been a noncompliance of the provisions contained in Section 36-A of the Act. The provision mandates a report of the Public Prosecutor indicating the progress of the investigation as also the specific and compelling reason for seeking the detention of the accused beyond a period of 180 days. This Court would have no hesitation in observing that the application submitted seeking extension of time for completion of investigation as also the order passed thereon by the Special Court, Patiala granting extension of 60 days have been done in a routine and mechanical fashion. In this view of the matter, the petitioner is held entitled to the benefit of regular bail.*

10. *For the reasons recorded above, the petition is allowed. The petitioner is enlarged on bail subject to the satisfaction of the Chief Judicial Magistrate/Illaqa Magistrate, Patiala."*

In the above-said case also, the reasons given for seeking extension of time was non-receipt of the chemical examiner report and the said reason did not find favour with the Co-ordinate Bench of this Court and it was held that the said reason given by the prosecution could not be stated to be a compelling reason for seeking the detention of the accused beyond the period of 180 days.

11. This Court, after considering the facts and circumstances of the present two petitions as well as the law laid down in the above-said judgments, is of the considered opinion that both the impugned orders deserve to be set aside and the revision petitions deserve to be allowed on the following grounds:-

- (i) In the order dated 18.06.2022, which has reproduced herein above, no specific, much less compelling, reason has been spelled out to substantiate as to why the detention of the petitioner beyond the period of 180 days is necessary. The impugned order has not taken into consideration, one of the

essential ingredients of Section 36A(4) of the NDPS Act, which was required to be complied with for the extension to be granted for keeping the petitioner in further detention.

- (ii) The reasons which have been given in the impugned order i.e., non-receipt of the FSL report and pending arrest of the co-accused Raju @ Diwan Aacharya, have been repeatedly held by various Co-ordinate Benches of this Court in various judgments referred to herienabove, to be invalid reasons for granting extension & thereby keeping the petitioner in further detention and further nothing has been stated in the impugned order to show as to how the detention of the petitioner would facilitate the arrest of the said co-accused or the receipt of the FSL.
- (iii) A perusal of the impugned order would also show that several judgments, including the judgments which have been cited before this Court, have been referred to by the Special Court, but none of the said judgments have been considered before passing the order dated 18.06.2022 and the said order is thus cryptic and non-speaking.
- (iv) A perusal of the application dated 15.06.2022 filed by the public prosecutor under Section 36A(4) of the NDPS Act for extension of time would also show that no specific reasons have been stated therein for keeping the petitioner in further detention, beyond the stipulated period of 180 days and thus, the application does not meet the parameters as laid down

under Section 36A(4) of the NDPS Act and also the law laid down by a Co-ordinate Bench of this Court in **Joginder Singh's case (supra)**.

- (v) It is not in dispute that the period of 180 days had already elapsed on the date on which the application under Section 167(2) Cr.P.C. read with Section 173(5) was filed. Since this court has come to the conclusion that the extension of time granted, vide order dated 18.06.2022, was not granted in accordance with law and thus the said order dated 18.06.2022 is liable to be set aside and accordingly, the application of the petitioner filed under Section 167(2) Cr.P.C. read with Section 173(5) Cr.P.C., which creates an indefeasible right in an accused person on account of the default by the investigating agency, deserves to be allowed and thus, the order dated 22.06.2022 also deserves to be set aside.

12. Keeping in view of the above-said facts and circumstances, both the criminal revision petitions are allowed and the impugned orders dated 18.06.2022 as well as dated 22.06.2022 are set aside and the application filed by the petitioner under Section 167(2) Cr.P.C. for 'default bail' is allowed and the petitioner is ordered to be released on 'default bail' on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
 2. The petitioner will not pressurize / intimidate the prosecution witness(s).
 3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
 4. The petitioner shall not commit an offence similar to the offence of which they are accused of, or for commission of which he is suspected.
 5. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.
13. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail, before this Court.

September 19, 2022
naresh.k

**(VIKAS BAHL)
JUDGE**

Whether reasoned/speaking?	Yes
Whether reportable?	Yes