

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CRR No.1360 of 2023

Lovepreet

... Petitioner

Versus

State of Haryana

... Respondent

2. CRR No.1619 of 2023

Tejpal @ Teji @ Sonu

... Petitioner

Versus

State of Haryana

... Respondent

3. CRR No.1538 of 2023

Hira Singh @ Herry

... Petitioner

Versus

State of Haryana

... Respondent

4. CRM-M No.27025 of 2023

Lovepreet

... Petitioner

Versus

State of Haryana

... Respondent

5. CRM-M No.31738 of 2023

Hira Singh @ Herry

... Petitioner

Versus

State of Haryana

... Respondent

6. CRM-M No.36812 of 2023

Tejpal @ Teji @ Sonu

... Petitioner

Versus

State of Haryana

... Respondent

Date of decision: 1st September, 2023

CORAM: HON’BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Navkiran Singh and Ms. Harpreet Kaur, Advocates
for the petitioners in CRR Nos.1360 & 1538 of 2023;
and CRM-M Nos.31738 & 27025 of 2023

Mr. G.S. Sandhu, Advocate for the petitioner
in CRR No.1619 of 2023 and CRM-M No.36812 of 2023.

Mr. Kanwar Sanjiv Kumar, Asst. Advocate General, Haryana
for the respondent/State.

MANJARI NEHRU KAUL, J.

1. All the petitions, detailed herein above, are being taken up together for disposal by way of this common order as they arise out of FIR No.750 dated 03.09.2022 under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as, ‘the Act’ of ‘the NDPS Act’) registered at Police Station Samalkha, District Panipat. For the sake of convenience, facts are being taken from CRR No.1360 of 2023.
2. For better appreciation of facts, a tabulated chart of relevant dates has been reproduced below.

Date and time of FIR	03.09.2022 19:34 hrs
Alleged recovery	Total weight of Opium as well as plastic jar is 10 kgs 300 grams.
Date or arrest of petitioners	03.09.2022
Challan filed without FSL report	23.02.2023
Application by Investigating Officer seeking extension of time for filing of challan	24.02.2023
Order granting 6 months more time for filing of Challan along with FSL Report	24.02.2023
Completion of 180 days to file challan as per	02.03.2023

Section 36A NDPS Act	
Application for default bail filed by petitioners Lovepreet and Hira Singh @ Herry	11.04.2023
Application for default bail filed by petitioner Tejpal @ Teji @ Sonu	31.05.2023
Petition for grant of default bail of petitioners Lovepreet and Hira Singh @ Herry rejected by the Ld. ASJ, Panipat vide impugned order	12.04.2023
Petition for grant of default bail of petitioner Tejpal @ Teji @ Sonu rejected by the Ld. ASJ, Panipat vide impugned order	16.06.2023

3. As per allegations, FIR in question (Annexure P-1) was registered pursuant to a secret information received by the police qua all the three petitioners i.e. Lovepreet, Tejpal alias Teji alias Sonu and Hira Singh alias Herry that they were transporting contraband in huge quantity from the State of Jharkhand to Panipat. The petitioners, who were allegedly traveling in car bearing registration No.HR-06-AC-8316, were then stopped and apprehended on the spot and a recovery of 10 kg 300 gm Opium was effected from the boot of their car.

4. Learned counsel have vehemently submitted that in cases registered under the NDPS Act, challan has to be presented within 180 days from the date of arrest of the accused. However, the challan, which though, was presented before the expiry of 180 days, was an incomplete one as admittedly no report of the Forensic Science Laboratory (FSL) was part of it. It has been thus, asserted that the challan would be deemed to be incomplete entitling the petitioners to default bail under Section 167(2) Cr.P.C. In support, learned counsel have placed reliance upon a

judgment rendered by a Division Bench of this Court in '**Ajit Singh @ Jeeta & another vs. State of Punjab**' CRR No.4659 of 2015.

5. Learned counsel have further argued that even after the expiry of the statutory period of 180 days, for filing challan in cases under the NDPS Act, the police had not filed any report of the FSL. Still further, prior to the expiry of the statutory period of 180 days, an application dated 24.02.2023 under Section 36A(4) of the Act, for extension of time for completion of investigation had no doubt been filed before the trial Court, however, no report of the Public Prosecutor, as mandated under Section 36A(4) of the Act was made. It was a matter of record that it had been filed by ASI Anil Kumar. Learned counsel have submitted that in the circumstances, the trial Court had gravely erred in granting extension of time to the prosecution to complete the investigation by ignoring the mandate of Section 36A(4) of the Act. In support, learned counsel have placed reliance upon '**Hitendra Vishnu Thakur vs. State of Maharashtra**' 1994 (4) SCC 602, wherein it has been held that extension of time for completion of investigation can only be granted on a report made by the Public Prosecutor and not on an application by the Investigating Agency.

6. A prayer has therefore, been made that since there was non-compliance of Section 36A(4) of the Act, an indefeasible right of default bail had accrued to the petitioners.

7. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has vehemently

submitted that it was a matter of record that vide order dated 24.02.2023, the trial Court had granted extension of time to the investigating agency. He has submitted that the impugned order could not be faulted with as the application contained all the relevant details as to why extension of time had been sought by the investigating agency, beyond 180 days. It has, however, not been disputed that the application seeking extension of time had been moved by the Investigating Officer/ ASI Anil Kumar, but, learned State counsel has asserted that it was well within the knowledge of the Public Prosecutor as the said application had been duly forwarded by him. Learned State counsel has further vehemently argued that since the recovery effected was huge i.e. 10 kg 300 gm of Opium, petitioners cannot be permitted to derive any benefit, even in case, the report had been merely forwarded by the Public Prosecutor.

8. I have heard learned counsel for the parties and perused the relevant material on record.

9. In the case in hand, the petitioners were arrested on 03.09.2022. As per the submissions made by the learned counsel for the petitioners, even after the expiry of the statutory period of 180 days, investigation remained incomplete as admittedly report of the FSL was not part of the challan.

10. Before proceeding further, it would be apposite here to reproduce Section 167(2) Cr.P.C. and Section 36A(4) of the NDPS Act.

Section 167(2) Cr.P.C. reads as follows:-

“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 authorise 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 authorise 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 subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise 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(4) of the NDPS Act reads thus:-

“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”

11. This Court, in **‘Saleem @ Mulla vs. State of Haryana’**

CRM-M No.11271 of 2021 d/d 26.03.2021, has held as under:

“A co-joint reading of Section 167(2) Cr.P.C., as well as Section 36A(4) of the NDPS Act reveals that a great deal of emphasis has been laid on completion of 'investigation'. The moot question which thus arises is as to what would be implied by 'investigation' which appears in both the aforementioned Sections and as to when 'investigation' would be deemed to have been completed in cases under the

NDPS Act. Section 2(h) of the Cr.P.C., defines investigation as:-

'investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;'

Thus, what can be culled from the above definition of 'investigation' is that it would include within its ambit all proceedings conducted by the investigating agency for collection of all such material and evidence which would help in ascertaining whether an offence has been committed or not. In other words, investigation would be deemed to have been completed in cases under the NDPS Act only after an opinion has been formed and given by the chemical examiner qua the nature of the articles/substance sent to it by the investigating agency. Therefore, without a doubt in cases under NDPS Act, FSL report would be a decisive document to link the accused with the alleged commission of crime for attracting the mischief of offences under the NDPS Act. It is precisely for this reason that it becomes imperative in cases under the NDPS Act that the challan is mandatorily accompanied by FSL report. Unless and until no definite opinion is given by the chemical examiner qua the nature of the articles etc., sent, it would lead to no other inference but the one that the investigation is still incomplete as 'smell' and 'sight' of the articles/substance seized by the investigating agency cannot be taken to be a conclusive proof of the nature of the articles/substance. Moreover, in the absence of the FSL report not being part of the challan, the Magistrate would be handicapped to proceed further

and take cognizance of the offences. FSL report in cases under NDPS Act is an intrinsic part of the investigation and it is for this reason that investigation of cases under the NDPS Act would have to be kept at a pedestal, different from investigation which is carried out in cases under the Indian Penal Code and certain other statutes.”

12. Still further, a Division Bench of this Court, in **Ajit Singh @ Jeeta’s case** (supra), has held that challan filed without FSL report with regard to the nature of substance in question, would be deemed to be an incomplete challan.

13. Hence, this Court concurs with the submissions made by learned counsel for the petitioners that even after expiry of 180 days, from the date of their arrest, investigation remained incomplete. No doubt, learned State counsel has vehemently argued that prior to the expiry of 180 days, an application seeking extension of time had been moved by the prosecution, which was allowed vide order dated 24.02.2023, and thus, in the circumstances, it could not be said that time for completion of investigation had lapsed, however, this Court does not find any merit in the said submission. A perusal of the impugned order dated 24.02.2023 (Annexure P-3), which stands reproduced herein below, makes it abundantly clear that the application had been filed by the Investigating Officer/ ASI Anil Kumar and not by the Public Prosecutor.

“File taken up today as an application for extension of period of completion of investigation is filed by ASI Anil Kumar. It is submitted in the application that although

challan has been presented by the police, the report from FSL Madhuban could not be procured. The police has written letters in this regard but some time has been sought by the FSL Madhuban for sending the report. As such, extension under Section 36A(4) of NDPS Act be granted. Keeping in view the fact that the report from FSL Madhuban has not been received by the police despite best efforts, the application filed by ASI Anil Kumar is allowed. Extension of 180 days is granted to the police for completion of investigation in the present case. To come up on 03.03.2023, the date already fixed.”

14. As per the provisions of Section 36A(4) of the NDPS Act, extension of time beyond the period of 180 days can be granted only on a report made by the Public Prosecutor. It is, therefore, clear that since the application seeking extension of time (Annexure P-2) had been moved by the Investigating Officer, even if, as claimed by the learned State counsel, it was within the knowledge of the Public Prosecutor, it can not be deemed to be necessary compliance of the provisions of Section 36A(4) of the Act. Any application made by an Investigating Officer for extension of time, as has been done in the instant case, cannot substitute a report of the Public Prosecutor, which is mandated under Section 36A(4) of the NDPS Act, for the reason that report of the Public Prosecutor under Section 36A(4) of the Act, is not a mere formality but a crucial document to assist the Court in deciding whether extension of time to complete the investigation should be granted or not and whether detention of an accused beyond the statutory period of 180 days would be

justified. A Public Prosecutor cannot act as a conduit of the investigating agency in just forwarding the request for extension of time, especially when the personal liberty of the accused is at stake. The Public Prosecutor thus, must necessarily comply with the mandatory provisions of Section 36A(4) of the Act by submitting his report, after due application of his mind.

15. Hon'ble the Supreme Court, in **Hitendra Vishnu Thakur's case (ibid)**, has held as under:

“22. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. 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 not a part of the investigating agency. 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 extension of time with a view to enable the investigating agency to complete the 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 or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated 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 along with his request or application and report, but his report, as envisaged under clause (bb), 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 necessary. The use of the expression "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" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important

and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. 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 as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release hi on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated 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 Designated Court must be satisfied for the Justification, from the report of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes indefeasible and cannot be defeated by reasons other than those contemplated by sub-section (4)

of Section 20 as discussed in the earlier part of this judgment. We are unable to agree with Mr Madhava Reddy or the Additional Solicitor General Mr Tulsi that even if the public prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the report of the public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution of any expression in it. We have already dealt with the importance of the report of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (bb) of sub-section (4) of Section 20. Since the law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid report falls in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether the public prosecutor labels his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as

envisaged by clause (bb) (supra). Even the mere reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report to seek extension of time. In the absence of an appropriate report the Designated Court would have no jurisdiction to deny to 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 before any extension is granted under clause (bb), 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.”

16. As a sequel to the above discussion and the ratio of law laid down by the Hon’ble Apex Court in **Hitendra Vishnu Thakur’s case (supra)**, this Court has no hesitation in holding that the impugned orders dated 12.04.2023 and 16.06.2023 passed by Additional Sessions Judge, Panipat, whereby the petitioners were declined the concession of default bail under Section 167(2) Cr.P.C. as well as the impugned order dated 24.02.2023 of Additional Sessions Judge, Panipat, wherein extension of time was granted to the Investigating Agency to complete investigation, deserve to be set aside. Consequently, the petitions are allowed and the

petitioners are ordered to be admitted to bail in terms of Section 167(2) Cr.P.C. to the satisfaction of the trial Court/Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

September 1, 2023
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No