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

**CRR-1907-2022 (O&M)
Date of decision : 16.05.2023**

RAJPAL @ BILLU

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Pardeep Singh Poonia, Advocate and
Mr. Pulkit Dhanda, Advocate
for the petitioner.

Mr. NeerajPoswal, Asst. A.G., Haryana.

JASJIT SINGH BEDI, J.

The present revision petition has been preferred against the order dated 02.08.2022 passed by the Additional Sessions Judge, Sonapat whereby the application dated 02.08.2022 filed by the Police officials of the Police Station Ganaur through the Public Prosecutor seeking time for furnishing the final report in case FIR No.92 dated 13.02.2022 under Sections 20, 25 of NDPS Act at Police Station Ganaur, Sonapat has been allowed.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that Mani Ram son of Rajender, Rajpal @ Billu (petitioner) son of Sube Singh and Vishal son of Hoshiar Singh were moving around in the village carrying a heavy quantity of charas with them in a black coloured Tata Harrier car and if

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barricading was done on the road from Panchi Jattan to Rajpur, the three accused could be apprehended along with the vehicle and narcotics. Based on the information, a report was prepared and sent to the Police Station Ganaur in this regard. Meanwhile, the police party started checking vehicles and after some time the car in question was seen coming from the side of Panchi Jattan. It was stopped. Two boys alighted from the vehicle. One young boy was sitting on the driver seat and one boy ran away from the spot. The arrested boys disclosed their names as Mani Ram son of Rajender and the driver as Rajpal @ Billu (petitioner) son of Sube Singh. The boy who ran away was Vishal. Thereafter, the recovery of 1 kg 800gms of charas came to be effected from the dashboard of the vehicle. The copy of the FIR is attached as Annexure P-1 to the petition.

3. As the petitioner came to be arrested on 13.02.2022, the period of 180 days to present the report under Section 173(2) Cr.P.C. was to be completed on 11.08.2022. Therefore, an application was moved by the Investigating Officer seeking extension of time for presentation of a report under Section 173 Cr.P.C. The copy of the said application dated 02.08.2022 is attached as Annexure P-6 to the petition.

The said application was forwarded by the Public Prosecutor and vide the impugned order, the extension sought by the Investigating Agency for presentation of challan was allowed. The copy of the impugned order extending the time period for completion of investigation

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by 3 months dated 02.08.2022 is the order impugned in the present petition.

4. Thereafter, the petitioner filed an application for default bail under Section 167(2) Cr.P.C. on 30.08.2022. The same came to be dismissed vide order dated 31.08.2022. The copies of the application under Section 167(2) Cr.P.C. and the rejection order are attached as Annexures P-3 and P-4 to the petition. A separate revision petition has been filed challenging Annexure P-4.

5. The learned counsel for the petitioner contends that the prosecution had not moved any application seeking extension of time in accordance with law. Therefore, the petitioner's right to seek default bail under Section 167(2) Cr.P.C. had accrued. A perusal of the application dated 02.08.2022 would reveal that it was moved by the Police officials of the Police Station Ganaur though it has been forwarded through the Public Prosecutor. The Trial Court had, without applying its judicious mind extended the period for completion of investigation by 90 days which was in violation of the mandatory procedure as laid down in Section 36A(4) of the NDPS Act, 1985. As the extension has been allowed illegally, the bail application moved by the petitioner under Section 167(2) Cr.P.C. was also dismissed vide order dated 31.08.2022 which order is impugned in a separate petition. Reliance is placed by the learned counsel for the petitioner on the judgments in **Sanjay Kumar Kedia @ Sanjay Kedia Versus Intelligence Officer, Narcotic Control Bureau & Another, 2010(1) RCR (Criminal) 942, Joginder Singh**

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Versus State of Haryana, CRR-1314-2021, decided on 11.02.2022, Rohtash @ Raju Versus State of Haryana, CRR-933-2022, decided on 01.06.2022, Dhruv Kumar @ Alok & others Versus State of Haryana, CRR-363-2023, decided on 13.03.2023 and Hitendra Vishnu Thakur Versus State of Maharashtra, 1994(3) R.C.R (Criminal) 156.

6. A reply dated 11.02.2023 by way of an affidavit of AtmaRam, HPS Assistant Commissioner of Police, Gannaur, Sonipathas been filed on behalf of the State by the learned counsel for the State. He contends that since commercial quantity of contraband had been recovered from the petitioner, he was not entitled to the grant of bail. The application for extension had been moved in accordance with law and therefore, the extension of 90 days for completion of investigation had rightly been granted consequent to which his prayer for grant of default bail under Sections 167(2) Cr.P.C. had been dismissed. Even otherwise, the FSL report had been obtained and the challan had already been submitted in Court on 05.11.2022.

7. I have heard the learned counsel for the parties.

8. Before proceeding further, it would be apposite to refer to the relevant provisions of law. The same are enumerated hereinbelow:-

Section 36A (4) of the NDPS Act, reads as under:-

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

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

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

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

(ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the

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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.]

Section 167(2) of the Cr.P.C., reads as under:-

167. Procedure when investigation cannot be completed in twenty four hours.- (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub- inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(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 authorise the detention of the accused person, otherwise than in the custody of the police,

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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 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 authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend in any custody under further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;]

(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.”

9. The relevant judgments of the Hon'ble Supreme Court and this Court are as under:-

The Hon'ble Supreme Court in **Sanjay Kumar Kedia @**

Sanjay 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 offences 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) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and

(4) after notice to the accused.

11. *The question to be noticed at this stage is as to whether the two applications for extension that had been filed by the public prosecutor seeking an extension beyond 180 days met the necessary conditions. We find that the matter need not detain us as it is no longer res integra and is completely covered by the judgment of this Court in Hitendra Vishnu's case (supra). In this case, the Bench was 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 36A of the Act. This Court accepted the argument of the accused that an extension beyond 180 days could be granted but laid a rider that it could be so after certain conditions were satisfied. It was observed :*

" It is true that neither clause (b) nor clause (bb) of sub-section (4) of Section 20 TADA specifically provide for the issuance of such a notice but in our

opinion the issuance of such a notice must be read into these provisions both in the interest of the accused and the prosecution as well as for doing complete justice between the parties. This is a requirement of the principles of natural justice and the issuance of notice to the accused or the public prosecutor, as the case may be, would accord with fair play in action, which the courts have always encouraged and even insisted upon. It would also strike a just balance between the interest of the liberty of an accused on the one hand and the society at large through the prosecuting agency on the other hand. There is no prohibition to the issuance of such a notice to the accused or the public prosecutor in the scheme of the Act and no prejudice whatsoever can be caused by the issuance of such a notice to any party.

Mr. Lalit, has further contended that the two applications for extension of time could not, by any stretch of imagination, be said to be reports of the public prosecutor as envisaged under Section 36A (4) and has again referred us to the case ibidem :

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 this 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.

12. The court further went on to say that even if the application for extension of time was either rooted through the public prosecutor or supported by him would not make the said application a report of the public prosecutor.

13. Mr. Bhattacharjee has, however, pointed out that the applications for extension filed by the public prosecutor Section 36A (4) of the Act did satisfy the aforesaid conditions and merely because an independent report had not been tendered would not change the nature of the application. We reproduce herein the application dated 2nd August, 2007 for extension of time in extenso :

1. That, the aforesaid person was arrested on 12.02.2007 in connection with illegal distribution of psychotropic substances externally through the internet.

2. That he was produced before your honour on 12.02.2007 and thereafter he was remanded to judicial custody in Dum Dum Correctional Home.

3. That the investigation of the case is still on.

4. That a connected/related case against the associates of the present accused person is being investigated by the Drug Enforcement Administration (DEA), USA and the investigation report/collected documents are highly

relevant/essential in proving the case. In this regard necessary steps, sending letters to that competent authority, has already been taken.

5. That, the Servers, Laptop, CDs etc. as seized in connection with this case, which has already been reported before Your Honour earlier, were also been sent to the Central Forensic Science Laboratory (CFSL) for deciphering the data on 20.2.07 and several reminders have been sent for obtaining the reports, but till date same could not be received. It is pertinent to mention that a letter from the end of CFSL has been received by NCB, wherein they informed that in a short time it is not possible to send the report.

6. That, considering the exigencies of the report of CFSL in proving the case against the accused person the prosecution has to pray for further extension of time.

7. That, as per the provision of Section 36A Clause (4) proviso the prosecution is submitting this petition for extension of time for filing. Complaint after completing the investigation accepting the report of the prosecution kept in the case file submitted herewith showing that the detention of the aforesaid accused is further necessary.

In the abovementioned circumstances, it is hereby prayed before your Honour that,

A further period of 6 months may kindly be given for the completion of investigation and filing of complaint. And the accused person may be remanded in judicial custody for further period.

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And for this act of kindness, the petitioner as is duty bound shall ever pray.

14. A bare perusal of this 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.

15. The second application dated 30th January, 2008 is even more incomprehensible. We reproduce the same hereinbelow :

*IN THE COURT OF LD.JUDGE-SPECIAL COURT
NDPS ACT KOLKATA AT BARASAT NORTH 24 PGS*

CASE NO.N-23/2007

Union of India

Versus

Sanjay Kedia ..Accused Person

The humble petition on behalf of the prosecution.

MOST RESPECTFULLY STATES;

1. That today is the date fixed for submission of the complaint.

2. That as the prosecution is not in a position to submit the complaint today hence prays for further time for the same. Under the above

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circumstances it is prayed that a short date may kindly allowed for the same for ends of justice

AND

For this act of kindness shall ever pray your petitioner as is duty shall ever pray."

A bare perusal of this unsigned application would reveal that it does not even remotely satisfy the tests laid down in Vishnu Thakur's case. The Special Judge allowed this application as well on the day it was filed by a cryptic order and without notice to the accused in the following terms :

"Accd. Sanjay Kedia is produced from J/C. Accd. Filed a vakalatnama. Prosecutor files Hazira. Prosecution also files a petition praying for time. Considered prayer for time is allowed to 13.2.2008 for production of the accd& report from I.O."

16. We are, therefore, of the opinion that the extensions granted to the investigating department under the proviso to Section 36A (4) did not satisfy the conditions laid down therein and both the extensions, therefore, being contrary to law, must be struck down accordingly.

[Emphasis supplied]

This Court in **Joginder Singh**, (supra) held as under:-

"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.

In the case in hand, the application for extension signed by the Investigating Officer cannot be construed as a report of the Public Prosecutor as envisaged in Proviso to sub section (4) of Section 36A of the NDPS Act for the reason that Public Prosecutor had only appended his signatures at the bottom of the page, that too, without even making an endorsement that he had perused the grounds and that, he was satisfied about the progress of investigation and reasons set out for extension of time to complete the investigation. Further, the report did not disclose the progress of investigation. It is a settle proposition of law that report is not a mere formality but requires due application of mind as to the ground for delay in filing challan and the reasons for further detention of accused. In the considered view of this Court, the application/report filed by the prosecution did not meet the aforesaid requirements envisaged in Proviso to Section 36A(4) of the NDPS Act. It can safely be held that the application for seeking extension of time was nothing but a transmission of request of an Investigating Officer. The report did not reflect the steps taken for obtaining FSL report during the period of first 180 days.”

[Emphasis supplied]

In **Rohtash @ Raju**(supra) held as under:-

“As per prosecution, the present case is with regard to recovery of commercial quantity of contraband and the petitioner was sent to custody on 23.09.2021. The police

presented challan against the petitioner on 17.03.2022, without FSL report. Along with the challan SHO of the concerned police station filed an application (Annx. P-2) under Section 36A(4) NDPS Act seeking extension of time. Admittedly, the said application was not forwarded by the public prosecutor or additional public prosecutor. The law requires that such an application should be supported by a report of public prosecutor, which indicates the progress of the investigation and further specify the compelling reasons for seeking the detention of the accused beyond the period of 180 days. In this context reference be made to Sanjay Kumar Kedia Vs. Narcotics Control Bureau (2009) 17 SCC 631. In the case in hand no such report of public prosecutor was filed along with the application moved under Section 36A(4) of NDPS Act. So, the aforesaid request for extension of time made by the prosecution agency was not in accordance with law. Thus, the order dated 31.03.2022, Annexure P-1, passed by the trial Court is not sustainable in the eyes of law.

The report of the FSL goes to the root of the case and is a material document and as such, filing of challan without the same is not to be treated as complete challan, as has been held by the coordinate Bench of this Court in Jagvinder Singh case (supra) and Ajai Singh's case (supra). The similar view has been taken by the coordinate Bench of this Court in Criminal Revision No.1314 of 2021, Joginder Singh Vs. State of Haryana, decided on 11.02.2022. Even the Hon'ble Apex Court in SLP (Criminal) No.8164-8166/2021 Mohammad Arbaz and others Vs. State of NCT and Delhi, also granted relief to the accused, under the similar circumstances.

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In the light of the above, the impugned order dated 24.03.2022 rejecting default bail to the petitioner is hereby set aside and he is ordered to be released on default bail on furnishing requisite bail bonds to the satisfaction of concerned trial Court/Special Judge (Duty).”

This Court in the case of **Dhruv Kumar @ Alok & others** (supra), held as under:-

“11. A perusal of the law quoted hereinabove would show that mere filing of an application for extension does not ipso facto empower the Court to extend the stipulated period for filing the report under Section 173(2) Cr.P.C. A perusal of the application does not show any application of mind on the part of the Public Prosecutor as to why he feels that the period to present the report under Section 173 Cr.P.C. ought to be extended. In fact, he has acted like a post office or a forwarding agency. A Public Prosecutor is an important officer of the State Government and independent statutory authority. He is expected to independently apply his mind to the request of the Investigating Agency before submitting a report to the Court as to why extension of time for completion of investigation is sought and that he was satisfied as to the progress of the investigation. He is not merely a post office or a forwarding agency. Quite to the contrary, a Public Prosecutor may or may not agree with the reasons assigned by the Investigating Officer. He may also come to the conclusion that there has been unnecessary, deliberate or avoidable delay in the completion of the investigation. Therefore, 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 investigation. In fact, the report of the Public Prosecutor is not an empty formality but a vital report because the consequences of its acceptances affects the liberty of an accused and it must, therefore, strictly comply with the requirements of Section 36A (4) of the NDPS Act. In the instant case, a perusal of Annexure P-2 i.e. the application seeking extension of the period for presenting challan would show that the Public Prosecutor simply forwarded the same without any independent application of mind.

12. Keeping in view the aforementioned discussion, the present revision petition is allowed and the impugned order dated 10.06.2022 passed by the Additional Sessions Judge, Fatehabad, whereby the period for completion of investigation has been extended by 90 days stands quashed.

(emphasis supplied)

The Hon'ble Supreme Court in the case of **Hitendra Vishnu**

Thakur (supra) 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 on the investigation and furnish reasons for seeking further custody of an accused. A Public Prosecutor is an important officer of the State Govt. 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 alongwith his request or application and report, but his report, an 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 him 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 jealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without adding 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 over-looks and ignores the requirements of a valid report fails in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether the Public Prosecutor label his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the fact of it, that he has applied his mind and is satisfied with the progress of the investigation and 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 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 bounds 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.”

[Emphasis supplied]

10. For a proper appreciation of the facts, a tabulated chart of the relevant dates is reproduced hereinbelow:-

1.	Date of FIR/arrest	13.02.2022	Annexure P-1
2.	Application for extension	02.08.2022	Annexure P-6
3.	180 Days completion	11.08.2022	--
4.	Application U/s 167(2) Cr.P.C.	30.08.2022	Annexure P-3
5.	Order whereby extension of 90 days granted.	02.08.2022	Impugned order
6.	Order of dismissal of bail application U/s 167 (2) Cr.P.C.).	31.08.2022	Annexure P-4.
7.	Challan presented	05.11.2022	--

11. A perusal of the legal position as enumerated hereinabove would show that mere filing of an application for extension does not *ipso facto* empower the Court to extend the stipulated period for filing the report under Section 173(2) Cr.P.C. A perusal of the application does not show any application of mind on the part of the Public Prosecutor as to why he feels that the period to present the report under Section 173 Cr.P.C. ought to be extended. In fact, he has acted like a post office or a

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forwarding agency. A Public Prosecutor is an important officer of the State Government and independent statutory authority. He is expected to independently apply his mind to the request of the Investigating Agency before submitting a report to the Court as to why extension of time for completion of investigation is sought and that he was satisfied as to the progress of the investigation. He is not merely a post office or a forwarding agency. Quite to the contrary, a Public Prosecutor may or may not agree with the reasons assigned by the Investigating Officer. He may also come to the conclusion that there has been unnecessary, deliberate or avoidable delay in the completion of the investigation. Therefore, 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 investigation. In fact, the report of the Public Prosecutor is not an empty formality but a vital report because the consequences 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. In the instant case, a perusal of Annexure P-6 i.e. the application seeking extension of the period for presenting challan would show that the Public Prosecutor simply forwarded the same without any independent application of mind.

12. Keeping in view the aforementioned discussion, the present revision petition is allowed and the impugned order dated 02.08.2022

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passed by the Additional Sessions Judge, Sonapat, whereby the period for completion of investigation has been extended by 90 days stands quashed.

(JASJIT SINGH BEDI)
JUDGE

16.05.2023

JITESH **Whether speaking/reasoned:- Yes/No**
Whether reportable:- Yes/No