



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.06.2024

Delivered on : 02.07.2024

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CRL OP(MD). Nos.8224 and 8225 of 2024

CRL OP(MD). No.8224 of 2024

Parimala Doss @ Doss

... Petitioner

Vs

Union of India
Through Junior Intelligence Officer,
Narcotics Control Bureau, Chennai Zonal Unit,
Chennai in NCB.
F.No.48/1/12/2023/NCB/MDS

... Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records connected with the order made in Crl.M.P.No.726 of 2024 on the file of the Additional District and Sessions Judge / Presiding Officer, Special Court for E.C and NDPS Act, cases, Pudukkottai and to set aside the same and pass the consequential order of default bail to the petitioner pending disposal of the investigation in F.No.48/1/12/2023/NCB/MDS on the file of the respondent.



WEB COPY

For Petitioner : Mr.B.Kumar, Senior Counsel
for Ms.A.Banumathi

For R-1 & R-2 : Mr.C.Arul Vadivel @ Sekar
Special Public Prosecutor

CRL OP(MD). No.8225 of 2024

Parimala Doss @ Doss Vs ... Petitioner

Union of India
Through Junior Intelligence Officer,
Narcotics Control Bureau, Chennai Zonal Unit,
Chennai in NCB.
F.No.48/1/12/2023/NCB/MDS

... Respondent

Prayer : Criminal Original Petition filed to release the petitioner on bail in
F.No.48/1/12/2023/NCB/MDS on the file of the respondent.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Ms.A.Banumathi

For R-1 & R-2 : Mr.C.Arul Vadivel @ Sekar
Special Public Prosecutor

COMMON ORDER

Crl.O.P.(MD)No.8224 of 2024 is filed under Section 482 Cr.P.C
to quash the order made in Crl.M.P.No.726 of 2024 on the file of the
Additional District and Sessions Judge / Presiding Officer, Special Court for
E.C and NDPS Act, cases, Pudukkottai and to grant default bail to the



petitioner pending disposal of the investigation in F.No.48/1/12/2023/NCB/MDS.

2. CrI.O.P.(MD)No.8225 of 2024 is filed under Section 439 Cr.P.C r/w. Section 37 of NDPS Act, to release the petitioner on bail in F.No. 48/1/12/2023/NCB/MDS on the file of the respondent.

3. The petitioner is arrayed as A4 in the case registered by NCB in F.No.48/1/12/2023/NCB/MDS for the offences under Section 8(c) r/w. Sections 20(b) (ii)(c), 25, 27(A), 28 and 29 of NDPS Act. The petitioner was arrested and remanded to judicial custody on 18.08.2023.

4. The prosecution case is that on secret information, the respondent has recovered 423 Kgs of Ganja from a vehicle bearing Registration No.TN-81-E-6961 at R.S.Mangalam – Paramakudi Road near Pachanankottai Village, Ramanathapuram District on 16.08.2023. 5 persons, including this petitioner, were arrested from the vehicle by the respondent.



WEB COPY

5. According to the respondent, this petitioner has engaged the other accused for illicit trafficking of the contraband on the instructions of one Pavithra, from Andhra Pradesh. As per the provisions under Section 36(A)(4) of NDPS Act, 1985, the duration for completing the investigation and filing final report is 180 days. By the proviso to this Section, on the report of the Public Prosecutor and the specific reasons for the detention of the accused, beyond the period of 180 days, the Special Court may extend the period for filing the final report upto one year.

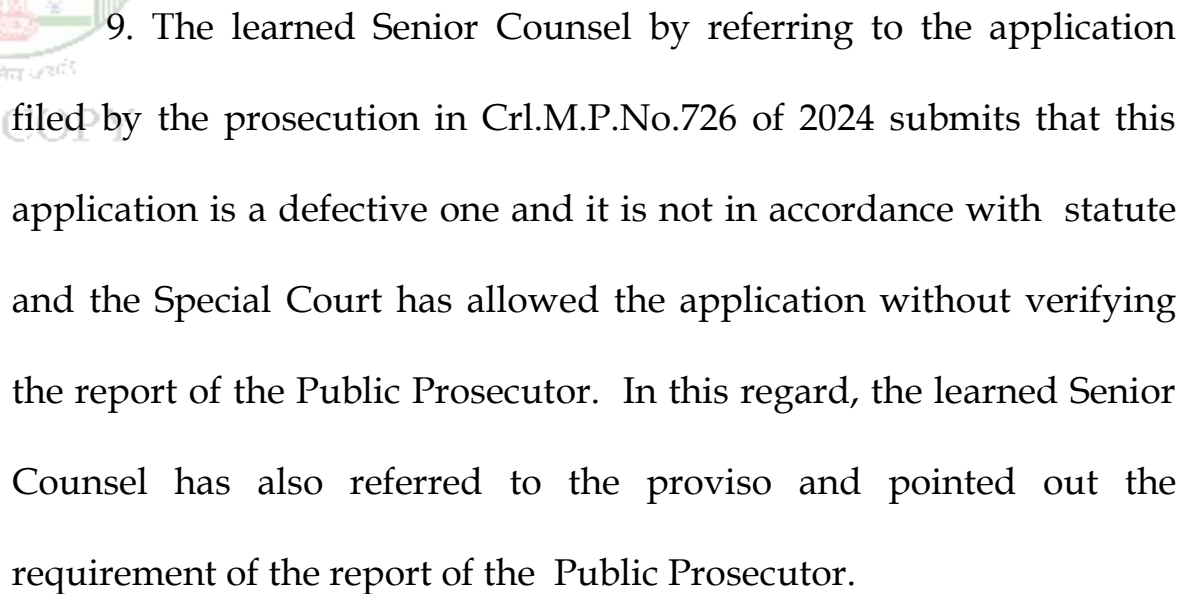
6. In this case, the period of 180 days from the date of arrest of this petitioner was over by 17.02.2024, but the respondent police has failed to file the final report within the stipulated time.

7. The learned Senior Counsel appearing for the petitioner submits that this petitioner is entitled for statutory bail under Section 167(2) Cr.P.C, on 17.02.2024 and on the date, the bail application filed by the petitioner in CrI.O.P.(MD)No.5935 of 2024 was pending before



this Court and the same was subsequently dismissed on 30.04.2024, on the ground that the period for filing the final report as required under Section 36(A)(4) was extended by the trial Court by order, dated 29.01.2024. Therefore, this petitioner has filed these applications in CrI.O.P.(MD)Nos.8225 of 2024, seeking bail and CrI.O.P.(MD)No.8224 of 2024, challenging the order passed by the learned Additional District and Sessions Judge / Sub Court for EC&NDPS Act Case, Pudukkottai, in CrI.M.P.No.726 of 2024, dated 29.01.2024.

8. The learned Senior Counsel appearing for the petitioner submits that this petitioner was remanded to judicial custody on 18.08.2023 and the statutory period for filing final report was over on 17.02.2024. The application under Section 36(A)(4) NDPS Act, seeking extension of time was filed on 23.01.2024 and it was allowed on 29.01.2024. According to the learned Senior Counsel, the application was filed belatedly and at the fag end of the completion of statutory period.



10. The learned Senior Counsel has also referred to the following judgments of the Hon'ble Supreme Court and various High Courts:

(i) *Hitandra Vishnu Thakur and others V. State of Maharashtra*
reported in 1994-4-SCC-602;

(ii) *Sanjay Kumar Kedia @ Sanjay Kedia V. Intelligence Officer, Narcotics Control Bureau* reported in 2009-17-SCC-631;

(iii) *Ubaid V. State of Kerala rep. By Public Prosecutor* reported in 2022-SCC-Onbline-Ker-5793;

(iv) *Nayantara Gupta V. The State of Maharashtra* reported in *2020-Live Law*;



(v) *Varun and others V. State Rep. By the Inspector of Police*

reported in 2024-SCC-OnLine-Mad-162;

(vi) *Mohammed Ajmal V. State of Kerala* made in Crl.M.C.No.

8404 of 2022, dated 08.12.2022 .

11. In *Hitandra Vishnu Thakur's* case, the Hon'ble Supreme Court has held as follows:

“23. 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



WEB COPY



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."



WEB COPY

12. In *Sanjay Kedia's* case, the Hon'ble Supreme Court has held as follows:

12. 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.*

13. 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 36-A 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.

14. It was observed :

21....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.

15. 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:

23. 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



WEB COPY



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.

(emphasis in original)

16. 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. 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.

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

18. 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.

19. The second application dated 30.01.2008 is even more incomprehensible. We reproduce the same hereinbelow:



*In the Court of learned Judge, Special Court,
NDPS Act Kolkata at Barasat North 24
parganas*

Case No.N-23/2007

Union of India

Versus

Sanjay Kedia

... .Accused

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 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.

20. 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:



WEB COPY



"Accused. 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 accused and report from I.O."

21. 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.

13. Following the above cases, this Court in *Varun and others V. State Rep. By the Inspector of Police* reported in 2024-SCC-OnLine-Mad-162, has held as under:

31. In light of the aforesaid discussion, the issues are answered as follows:?

1. Right of an accused to statutory bail upon expiry of the period of detention prescribed under section 36A(4) of NDPS Act is an inchoate one till he avails of his right by seeking statutory bail either by way of an application or even orally. Hence, he cannot be released automatically on statutory bail on the mere



expiry of 180 days even if the prosecutor has failed to submit report seeking extension of detention in terms of the proviso to section 36A(4) of the Act before expiry of the said period;

2. Order extending the period of detention under proviso to section 36A(4) of NDPS Act on a report of the Public Prosecutor submitted after expiry of 180 days but prior to the accused availing of his right does not envisage retrospective operation but the total period of detention under the aforesaid provision cannot exceed one year in the whole;

3. As per Para 25.3 of M. Ravindran (supra) the right to statutory bail stands extinguished once the report of the Public Prosecutor seeking extension is filed. Hence, remand of the accused till the prayer of the prosecutor is disposed of is traceable to section 167(2) Cr. P.C. read with section 36A(4) of the NDPS Act. In the event, the application for extension is dismissed or an order extending detention is set aside by a superior court right to statutory bail revives in favour of the accused;

4. Upon expiry of 180 days of detention, Special Court as a cautionary measure ought to inform the accused (particularly if he is from an underprivileged section of society and is unrepresented by a counsel) of his right to statutory bail. However, failure to intimate



the accused of his right by itself would not entitle him to statutory bail unless he avails of such relief;

5. Prayer for extension of period of detention must be on the basis of a report of Public Prosecutor which must record progress of investigation and spell out specific reasons to justify further detention beyond 180 days pending investigation;

6. Special Court on the basis of the report of Public Prosecutor and materials in support of such plea must be satisfied of the twin requirements, i.e., (a) there is appreciable progress in the investigation and (b) there are specific/compelling reasons to justify further detention pending investigation. Each case has to be decided on its own merits. For example, failure to complete investigation solely on the score of non~submission of FSL report of the samples drawn from the contraband is an institutional shortcoming. This by itself may not justify further detention pending completion of investigation. But if the aforesaid fact situation is coupled with compelling circumstances like complexities in investigation in an organized crime racket or inter~state/trans~border trafficking, criminal antecedents of the accused giving rise to possibility of recidivism, abscondence of co~accused, etc., constituting ?specific reasons? justifying further detention, the Court may be inclined



to extend the period of detention and deny liberty;

7. Prayer for extension of period of detention must be decided at the earliest without undue delay preferably within 7 days from making such application. Reasons for adjournment must be specifically stated;

8. No written notice or copy of report of Public Prosecutor requires to be served upon the accused or his counsel but the accused or his counsel must be present personally or through video linkage at the time of consideration of the application. Accused and/or his counsel must be aware of such consideration and may raise objection, if any, with regard to compliance of mandatory requirements of law.

14. Therefore, according to the learned Senior Counsel, the application for extension of time beyond 180 days can be filed only by way of report of the Public Prosecutor and there cannot be any substitute for the report of the Public Prosecutor. This application in CrI.M.P.No.726 of 2024 was filed with an affidavit of the investigation officer, but not with the report of the Public Prosecutor. Therefore, it is a defective one and the order passed in CrI.M.P.No.



WEB COPY

726 of 2024 has to be set aside, in view of the judgments of the

Hon'ble Supreme Court cited supra.

15. He further submits that the right of bail under proviso to Section 167(2) Cr.P.C is a valuable right and also a fundamental right. In this case, the extension of time granted on 29.01.2024 is not valid and therefore, he has filed the quash application in CrI.O.P.(MD)No. 8224 of 2024, as against the order of extension dated 29.01.2024. Once the extension order is quashed, the petitioner would be entitled for default bail under Section 167(2) Cr.P.C and therefore, the petitioner has also filed the bail application in CrI.O.P.(MD)No.8225 of 2024

16. The learned Special Public Prosecutor submits that the petition in CrI.O.P.(MD)No.8224 of 2024 is not maintainable as the order passed by the Special Court for EC & NDPS Act cases, in CrI.M.P.No.726 of 2024 dated 29.01.2024 is a final order and the same cannot be challenged under Section 482 Cr.P.C. He further submits that the order dated 29.01.2024 is challenged after a period of four months and the final complaint was also filed by the respondent on



29.05.2024. Therefore, this application challenging the order permitting the respondent to file the final complaint has become infructuous.

17. He further submits that the Public Prosecutor can seek for extension of period upto one year by filing a report under Section 36A(4) of the NDPS Act. The time limit of 180 days to file complaint / final report was about to expire and therefore, the Special Public Prosecutor, with the signature of the respondent, filed a petition under Section 36A(4) of NDPS Act, 1985, for extension of time limit for further period of four months to file the complaint by assigning valid reasons. The learned Special Public Prosecutor submits that the order in Cr.M.P.No.726 of 2024 dated 29.01.2024 passed by the Special Court for EC & NDPS Act Cases, Pudukkottai, is exhaustive and clear and the same is factually and legally valid.

18. The learned Special Public Prosecutor further submits that during the course of investigation, several incriminating materials including conversation datas, UPI transactions datas, photos and



documents were seized linking him to the other accused persons.

A total of 4 mobile phones were seized from the possession of this petitioner. The investigation in this regard is to a larger extent and it is in the crucial stage. The incriminating facts revealed by the accused in their admissions have to be verified and the other associates named by the accused in drug trafficking have to be traced and apprehended. The call data records of Mobile numbers 7200644504 used by one Naina Mohammed, 8438592994 used by one Jegan, 6385431642 and 9042011574 used by the petitioner and 7845784011 used by one Sasikumar were not received before 180 days, which are very essential to scrutinize the telephonic communications done for this illegal drug trafficking. Therefore, the petition for extension was filed. Apart from that, the CDR of all accused and the property details of accused No.4 were not received then.

19. He further submits that the trial Court had meticulously exercised the jurisdiction conferred under the proviso to sub-Section (4) of Section 36A of the NDPS Act, 1985, considering the reasons stated by the Special Public Prosecutor, the quantity of contraband



involved ie., commercial quantity, and after finding the real necessity to keep the petitioner under continued detention, has granted extension of four months time for the respondent to file the final complaint.

20. The learned Special Public Prosecutor has also relied on the case of *Sanjay Dutt V. State* reported in **1994-5-SCC-410** and submits that once an application for extension of time to complete the investigation is filed, the right of statutory bail to the accused stood extinguished. He has also relied on the judgment of the Kerala High Court in the case of *Sabarinath V. State of Kerala* reported in **2023-SCC Online Ker-3666**, which after referring to the law encapsulated by the Hon'ble Apex Court for an application for extension of time for completing investigation, has held as under:

(a) It is mandatory to produce the accused at the time when the Court considers the application for extension, either physically or virtually, and the accused must be informed that the question of extension of the period of investigation is being considered.

(b) The accused may not be entitled to get a



copy of the report as a matter of right as it may contain details of the investigation carried out.

(c) The accused would be entitled to raise his objection to the application for an extension though the scope of objection may be limited.

(d) While raising his objections, it would be possible for the accused to point out that the prayer that has been made by the public prosecutor has merely parroted the version of the investigation officer. The accused can also urge that the Public Prosecutor has not indicated the progress of the investigation and he has not specifically stated the reason for extending the period of detention of the accused beyond 180 days. The accused can point out to the Court that unless it is satisfied that full compliance is made with the twin requirements, the extension may not be granted.

(e) The failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him that the application made by the Public prosecutor for the extension of time is being considered is not a mere procedural irregularity. It is a gross illegality that violates the rights of the accused under Article 21.



21. With regard to CrI.O.P.(MD)No.8225 of 2024, the learned Special Public Prosecutor submits that the earlier bail application filed by the accused in CrI.O.P.(MD)No.5935 of 2024 was dismissed by this Court only on 30.04.2024. Since the final complaint has now been filed within the extended time limit, the petitioner is not entitled for the statutory bail under Section 167 (2) Cr.P.C and therefore, the application filed by the petitioner in CrI.O.P.(MD)No.8225 of 2024 is also liable to be dismissed.

22. This Court considered the rival submissions made on either side and also perused the materials placed on records.

23. The petitioner was arrested on 16.08.2023. The respondent on specific information, intercepted the Mahindra Pick Up Truck bearing Registration No.TN-81-E-6961 at R.S.Mangalam- Paramakudi road and recovered 423 Kgs of Ganja. The earlier application filed by the petitioner in CrI.O.P.(MD)No.5935 of 2024 was dismissed by this Court by order dated 30.04.2024, as under:



WEB COPY

“11.The quantity of contraband involved in C.C.No.2 of 2021 is 144 Kgs and in F.No.48/1/12/2023-MCN/MDS is 423 Kgs. In both these cases admittedly, the contraband has not been recovered from this petitioner. The petitioner has been implicated only through the confession statement of the co-accused. The NIB-CID has conducted investigation in Crime No.12 of 2020, which was registered on 22.06.2020 and has also filed the final report on 28.08.2023. Though NIB-CID has filed the final report, they have not collected any materials as against this petitioner, other than the confession statement of the co-accused. However, the NCB has conducted a thorough investigation and found out the nexus of the petitioner with the other accused, who has involved in a case, which is pending with the NCB. The petitioner was in possession of a SIM Card, which has been taken in the name of A5, in his mobile phone and the tower location details of the said mobile phone reveals that this petitioner, a native of Manamelkudi Village, Pudukottai was present in Viralimalai toll plaza, where according to the NCB, the contraband, which has been transported from Andhra Pradesh in an Ashok Leyland vehicle was transferred to a Mahendra bolero pick-up vehicle. The investigation agency has also collected the tower location details of the other accused, who have involved in this case. Apart from these two cases, the petitioner has also involved three other cases, which is tabulated above.

12.As rightly pointed by the learned Special Public



WEB COPY

*Prosecutor for Narcotics Control Bureau, the Hon'ble Supreme Court in **Union of Indian through Narcotics Control Bureau, Lucknow Vs. Mohamed Nawaz Khan** reported in (2021) 10 SCC 100 held that absence of possession of contraband on the accused person, would not dilute the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act. Section 37 of the NDPS Act mandates that any person involved in an offence of commercial quantity shall not be released without satisfying the twin tests contemplated. Considering the call details, which is collected by the NCB in F.No.48/1/12/2023-NCN/MDS and the antecedents of the petitioner under the NDPS Act, this Court is not inclined to grant bail to the petitioner. Accordingly the criminal original petition in CrlOP(MD)No.5935 of 2024 stands dismissed.”*

24. Crl.O.P.(MD)No.8225 of 2024 is filed stating that this petitioner is entitled for statutory bail under Section 167(2) Cr.P.C and that the application filed for extension by the prosecution is defective. It appears that this petitioner was arrested on 16.08.2023 and remanded to judicial custody on 18.08.2023. The statutory period was 180 days for filing the final complaint / final report was 180 days and the period was completed on 17.02.2024. On that date, the application



filed by this petitioner for bail was pending before this Court. In the meantime, the trial Court, on the report filed by the Public Prosecutor, has permitted the investigation agency to continue the investigation by order dated 29.01.2024 in CrI.M.P.No.726 of 2024.

25. According to the learned Senior Counsel for the petitioner, this order granting extension is illegal and it was based on a defective application. The Hon'ble Supreme Court in *Hitandra Vishnu Thakur's* case and *Sanjay Kedia's* case as cited supra, has stated that the Special Court is not expected to extend the time mechanically, without valid reasons and that the reasons must be filed by a report by the Public Prosecutor.

26. Section 36(A)(4) of NDPS Act, is extracted as under for easy reference:

“(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to “ninety



days”, where they occur, shall be construed as reference to “one hundred and eighty days”:

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

27. As per the proviso to this Section, the Special Court may extend the time only on the report of the Public Prosecutor. The Public Prosecutor is expected to state the progress of the investigation and the specific reasons for the detention of the accused beyond the period of 180 days.

28. This Court feels it relevant to extract the application filed by the Public Prosecutor for extension, as under:

*“PETITION FOR EXTENSION OF TIME FOR
FILING COMPLAINT UNDER SEC. 36A(4) OF NDPS
ACT THE REPORT OF THE SPL. PUBLIC
PROSECUTOR*



WEB COPY



The respondent humbly submits that the during enquiry, Parimaladoss (A-4) has revealed that he has financed the drug trafficking operation right from transporting it from A.P and handing it over to Srilankan smugglers at a pre decided spot near the Adhiramampattinam coast. It was also learn during preliminary investigation that Parimaladoss (A-4) has some incriminating material including whatsapp conversation data's. UPI transactions datas, photos and documents linking him to the case, saved in his mobile phones. A total of 4 mobile phones were seized from the possession of Parimala Doss to connection with other accused Investigation to a large extent is pending against them. It is essential that the incriminating facts revealed by the accused in their admissions be verified and also that the other associates named by them involved in drug trafficking be traced and apprehended. Let of investigation pertaining to them is yet to be completed. Details of under and also apprehending of other drug traffickers, this same drug trafficking ring is to be achieved.

Moreover, call data records of Mobile numbers 7200644504 used by Nainarmohammed 8438592994 used by Jegan, 6385431642 and 9042011574 used by the Parimaladoss 784578401 used by Sasikumar yet to be received from Bharathi Airtel. It is very essential to



WEB COPY



scrutinizing the telephonic communications done for this illegal drug trafficking. Apart from that, bank statements and CDR of all accused is still awaited. Letters were sent to IG Registration, Chennai for find out the property details of the accused A4 which may lead to the Financial Investigation in this case.

6. Further, a person belongs from Andhra Pradesh, who has been named as the main supplier arranged the seized drug in this case is to be traced and arrested. Also, the other drug traffickers associated with this drug trafficking ring are also get to be traced and apprehended.

7. On the basis of the reasons cited above, it is prayed that this Court may be pleased to extend the time for investigation and further filing of complaint against the accused in this case so that a complete and proper investigation may be conducted against the above said accused. This extension will give time for detailed investigation in this case and it will also give opportunity to arrest further drug traffickers involved in the same drug trafficking.

29. The extension of time application has been filed by the Public Prosecutor and by the investigation officer. The application



was filed on 23.01.2024. The accused was produced before the trial Court on 24.01.2024. The trial Court has informed the accused about the application filed by the complainant through Special Public Prosecutor. The copy of the petition was also furnished to the accused persons. Written objection was filed by the accused Nos. 1 to 3 and on behalf of the Accused Nos.4 and 5.

30. The Special Court for EC and NDPS Act cases, Pudukkottai has allowed the application and the relevant portion of the order, is extracted as under:

1) This petition is filed by the Petitioner/ Complainant through Special Public Prosecutor in which the Petitioner prays this Court to extent the Four Months time to file Final Complaint.

2) Accused persons produced before this Court on 24.01.2024. This court is informed the accused persons about the Application made by the Complainant through Special Public Prosecutor and in which he prays Four months time to file Final Complaint. The copy of the present Petition is furnished to the Accused persons.

3) The Special Public Prosecutor in his petition is stated that the accused persons are charged u/s 8(c) r/w



20(b)(ii)(C), 25, 28 and 29 of NDPS Act 1985. The Special Public Prosecutor seeks extension of Four months time to file final complaint for the following reasons :

a) It is essential that the incriminating facts revealed by the accused in their admissions be verified and also that the other associates named by them involved in drug trafficking be traced and apprehended.

b) Lot of investigation pertaining to them is yet to be completed.

c) Details of are under and also the tracing and apprehending of other drug traffickers in this same drug trafficking ring is to be achieved.

d) Moreover call data records of Mobile Numbers 7200644504 used by Nainar Mohammed, 8438592994 used by Jegan, 6385431642 and 9042011574 used by Parimaladoss and 7845784011 used by sasikumar yet to be received from Bharthi Airtel.

e) Apart from that, Bank statements and CDR of all accused is still awaited.

f) Letters were sent to IG Registration, Chennai for find out the property details of the accused A4 which may leads, to the Financial Investigation in this case.

g) Further, a person belongs from Andhra Pradesh, who has been named as the main supplier arranged the seized drug in this case is to be traced and arrested.



WEB COPY

h) The other drug traffickers associated with this drug trafficking ring are also yet to be traced and apprehended.

31. It appears that the application itself has been filed as a report of the Special Public Prosecutor. The Special Public Prosecutor has also signed the application. What is expected is that the application for extension shall not be filed mechanically by the investigation agency itself and shall not be entertained mechanically by the Court concerned. The Public Prosecutor has to apply his mind, find out the necessity for the extension and it has to be filed by way of a report. The Special Public Prosecutor has to satisfy the reasons for extension. In this case, the Public Prosecutor only has filed the report. However, the investigation officer has also signed the same. It is not filed by way of an affidavit. However in two paragraphs it is stated as “respondent police has submitted”. When the application has been filed by the Special Public Prosecutor by way a petition headed as report and also with reasonings, this court is not inclined to hold that it is only an application filed by the investigating agency. Moreover, as rightly pointed out by the learned Special Public Prosecutor, the



extensions were provided without any reasons and therefore, this ratio cannot be applied to this case, when the application has been filed by way of a report by the learned Special Public Prosecutor in detail, assigning reasons and the Court has also passed an order granting extension after providing opportunity to the accused and also on valid grounds. Therefore, these petitions lack merit. Accordingly, these criminal original petitions are dismissed.

02.07.2024

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
LS/dsk

To

1. The Additional District and Sessions Judge / Presiding Officer,
Special Court for E.C and NDPS Act, cases, Pudukkottai.
2. The Junior Intelligence Officer,
Union of India
Narcotics Control Bureau, Chennai Zonal Unit,
Chennai in NCB.



WEB COPY



B.PUGALENDHI, J.

LS

Pre-delivery order made in
CrI.OP(MD)Nos.8224 and 8225 of 2024

02.07.2024