



3. It has also been submitted that the petitioner is seeking concession of default bail under Section 36-A(4) of the NDPS Act and Section 167(2) r/w Section 482 Cr.PC since the prosecution had failed to present the challan within the prescribed period of 180 days.

4. It has been asserted by the learned counsel for the petitioner that although the investigation was complete, the investigating agency failed to file the challan within the statutory period, citing absence of FSL report. As a result, on 23.02.2023, the Public Prosecutor moved an application requesting for extension of time under Section 36-A (4) of the NDPS Act. The trial Court, without any substantial justification, arbitrarily granted an additional 90 days to the prosecution for filing the challan along with the FSL report, as is evident from a perusal of the impugned order dated 24.02.2023 (Annexure P-2). Furthermore, the Public Prosecutor's report did not meet the criteria outlined in Section 36-A(4) of the NDPS Act, rendering the extension for the investigation period unwarranted. Consequently, the extension granted by the trial Court was invalid, implying that the investigation remained incomplete upon the expiry of the statutory period. Furthermore, the order granting extension was liable to be set aside on the ground that it was passed without notice to the accused.

5. Per contra, learned State counsel has opposed the prayer and submissions made by the counsel opposite and disputed the claim made by the petitioner by asserting that the statutory period for filing the challan was due to expire on 06.03.2023. Consequently, the investigating agency, through Public Prosecutor, filed an application under Section



36-A(4) of the NDPS Act, seeking an extension of time to submit the Final report due to the pending FSL report. The trial Court on 24.02.2023 rightly allowed this application by way of a well reasoned order and granted an additional 90 days to the prosecution to complete the investigation. Learned counsel for the State has further submitted that the request for extension of time was made well before the expiry of the statutory period of 180 days, which was due to expire on 06.03.2023. Notably, the order was passed on 24.02.2023 with 10 days still remaining for the expiry of the statutory period. Subsequently, the FSL report was received on 06.06.2023 and then the challan along with the FSL was promptly presented before the trial court on 07.06.2023 well before the expiry of the extended deadline. Therefore, the order granting the extension to the investigating agency to present the challan cannot be faulted, especially since the public prosecutor had provided valid and sufficient reasons, specifically the non-receipt of the FSL report, for the delay in filing the challan within the stipulated period, in compliance with the provisions of Section 36-A(4) of the NDPS Act.

6. Heard learned counsel for the parties and perused the relevant material available on record.

7. Before proceeding further, it would be apposite to reproduce the provisions of Section 167(2) Cr.P.C., and Section 36(4) of the NDPS Act, which read as under:-

“167 (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 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 sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

36A (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.”

8. A conjoint reading and interpretation of the above reproduced provisions unequivocally provide that if upon expiry of the stipulated 180 days period, the investigation remains incomplete, the accused would be entitled to default bail under Section 167(2) Cr.PC. “Investigation” would necessarily mean proceedings undertaken by the investigating agency for collection of material to facilitate the Magistrate in ascertaining whether an offence has been committed or not. In cases under the NDPS Act, FSL report is a crucial document to determine the nature of the substances recovered from the accused. In the absence of any definite opinion from the Chemical Examiner, mere sensory observation such as smell, sight etc. of the alleged recoveries of narcotic substance would not be sufficient to conclusively prove their nature, and also as to whether the recovered substance fall in the category of controlled narcotic and psychotropic substances or not. It would also be most pertinent to observe that in the absence of any FSL report being annexed with the challan, the trial Court would be severely handicapped to proceed further much less take cognizance of the offences under the NDPS Act. Therefore, in the cases under the



NDPS Act, the investigation of a case cannot be considered to be complete unless the FSL report is annexed with the challan.

9. No doubt, incomplete investigation upon the expiry of the statutory period of 180 days would entitle an accused to the grant of default bail, however, Section 36-A(4) of the NDPS Act provides for extension of the period of investigation in NDPS Act cases, subject to the conditions outlined in the aforementioned Section are adhered to. In short, the interplay between Section 36A(4) of the NDPS Act and Section 167(2) Cr.P.C. clearly reflects the legislative intent to strike a balance between the need for thorough investigation in serious drug related offences on one hand and the protection of the rights of the accused on the other hand. These provisions thus, establish a robust framework aimed at ensuring fairness, transparency, efficiency in the investigation and adjudication of such cases.

10. Adverting to the present case, the petitioner was arrested on 07.09.2022 and the statutory period of presentation of challan within 180 days was set to expire on 06.03.2023. However, admittedly, prior to the expiry of this period, learned Public Prosecutor submitted an application/report as per provisions of Section 36-A(4) of the NDPS Act seeking extension of time to complete investigation since the FSL report had not yet been received. Vide order dated 24.02.2023, an extension of 90 days was granted by the learned trial Court to the investigating agency.



11. No doubt, it was vehemently argued by the learned counsel for the petitioner that the report of the Public Prosecutor in the instant case was not in consonance with the provisions of Section 36A(4) of the NDPS Act, as it did not detail the progress of the investigation nor any cogent reason was given for seeking an extension of time to present challan. However, this submission of the learned counsel for the petitioner is bereft of any merit. A perusal of the report of the Public Prosecutor, given before the trial Court while praying for extension of time under Section 36A(4) of the NDPS Act leaves no manner of doubt that it is in consonance with the conditions stipulated under Section 36-A(4) of the NDPS Act.

12. It would be apposite to reproduce the report made by the learned Public Prosecution under Section 36A(4) of the NDPS Act, which is as under:

“In the above noted case, I have gone through the case file and revealed accused Suresh and Sachin were apprehended by the police party on 07.09.2022 and recovery of 2 qtl. 10 kg ganja were recovered from them. During investigation, accused Sunder was arrested on 27.10.2022. Investigation of this case is complete and challan was prepared on 22.02.2023 but FSL report is also not received till date. On 23.01.2023 and 13.02.2023, SHO sent special messenger to RFSL, Hisar for obtaining FSL report but official of the RFSL report that “the above said case has been not reported yet. Concern PS will be informed accordingly.” DO letter also sent to the



RFSL, Hisar by Superintendent of Police, Fatehabad vide memo No.7432 dated 15.02.2023 but till date, result of FSL not received. The accused is in custody since 07.09.2022 and period of submit the Final Report under Section 173 Cr.PC against accused is going to be expired on 06.03.2023. In view of the above, the request dated 23.02.2023 of the SHO, Police Station Sadar Ratia regarding extension of time to submit challan may kindly be accepted in the interest of justice.”

13. A perusal of the above report submitted by the Public Prosecutor before the trial Court clearly demonstrates that earnest efforts were made by the investigating agency including requests to RFSL, Hisar to expedite the preparation and the despatch of the report. It is also a matter of record that in the said regard, a written request vide letter dated 15.02.2023 was also sent to RFSL, Hisar, by the Superintendent of Police, Fatehabad. Thus, there can be no manner of doubt that the delay, if any, in presenting the challan cannot be attributed to the investigating agency; the investigating agency was left with no other resort but to seek extension of time to complete investigation. As already observed earlier, since the FSL report is a crucial document to determine the nature of the recovered substance, challan presented without it would be deemed incomplete.

14. The argument raised by the learned counsel that no notice had been sent by the Court to him when the application seeking



extension of time for presentation of challan was filed by the prosecution/public prosecutor too is devoid of any merit. A perusal of the impugned order dated 24.02.2023 clearly reveals that not only was the petitioner present during the proceedings (through VC), but was duly represented by one Mr. Vinod Kamra, Legal Aid Counsel, who had opposed the prayer made by Public Prosecutor for extension of time for completion of investigation. Thus, the impugned order cannot be faulted with.

15. Still further, a perusal of the order dated 13.04.2023 also reveals that the application for default bail under Section 167(2) Cr.PC had been filed by the petitioner before the trial Court before the expiry of the extended period for completion of investigation, therefore, on the said date, no right under Section 167(2) Cr.PC stood accrued to the petitioner for grant of default bail. Furthermore, a perusal of the reply dated 18.07.2023 filed by the State reveals that prior to the expiry of extended period to file challan on 04.06.2023, another application for extension had been filed by the prosecution, which was allowed by the trial Court vide order dated 01.06.2023 and the time for completion of investigation was further extended till 03.07.2023; which order has not been challenged by the petitioner before this Court. The reply filed by the State clearly reveals that prior to the expiry of the extended period, challan alongwith the FSL report, had been filed by the prosecution in the instant case before the trial Court on 07.06.2023.



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16. As a sequel to the above, the present petition being devoid of any merit, stands dismissed.

27.05.2024
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No