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Crl.RC.No.784 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.06.2025

Pronounced on : 02.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.No.784 of 2025

1.Kovarthana Reddy
2.Shoaib Mohammed

... Petitioners

Versus

State, Rep. By
The Inspector of Police,
M-3, Puzhal Police Station,
Chennai
crime No.954 of 2024

... Respondent

PRAYER: Criminal Revision has been filed under Section 438 r/w 442 of BNSS, praying to set aside the order passed in Crl.MP.No.2301 of 2025 dated 14.05.2025 on the file of the Principal Special Judge under EC & NDPS Act, Chennai.

For Petitioners : Mr.C.M.Ramakrishnan

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)



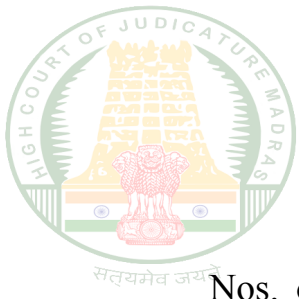
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ORDER

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This criminal revision case has been filed challenging the order passed in Crl.MP.No.2301 of 2025 dated 14.05.2025 on the file of the learned Principal Special Judge under EC & NDPS Act, Chennai, thereby allowed the petition filed under Section 36(A)(4) of The Narcotic Drugs and Psychotropic Substances Act (hereinafter called as 'NDPS Act').

2. The petitioners are accused 8 & 9 in crime No.954 of 2024 registered for the offences punishable under Sections 8(c) r/w 22(b), 25 and 29(1) of NDPS Act. The case of the prosecution is that on a specific information dated 19.11.2024, accused 1 & 2 entered in to a conspiracy for illicit transportation and sale of contraband. In pursuant to the said conspiracy, they had illegally possessed 2.1 grams of methamphetamine and the same was seized by the respondent. On their confession, the other accused persons have been implicated as accused and remanded to judicial custody on various dates. There are totally 21 accused, in which the petitioners are arrayed as A8 and A9. Further, in pursuant to their conspiracy, they had possessed 82.56 grams of methamphetamine and 12



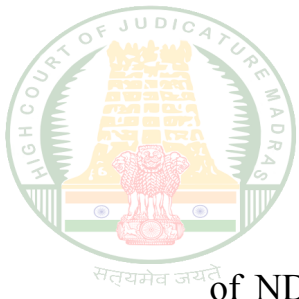
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Nos. of Nitrovet tablets and the same were seized by the respondent.

Since it was a commercial quantity, the offences were altered into offences under Sections 8(c) r/w 22(C), 25 and 29(1) of NDPS Act, 1985. Insofar as the petitioners are concerned, they were in possession of 61.24 grams of methamphetamine and 8.69 grams of methamphetamine respectively, which were recovered by the respondent. Thereafter, the petitioners filed application for bail and the same was dismissed. However, the respondent could not file final report within the stipulated time and as such, they filed application under Section 36(A)(4) of NDPS Act for extension of time to file final report. It was allowed and aggrieved by the same the present criminal revision case has been filed.

3. The learned counsel for the petitioners would submit that the petitioners were not given opportunity of hearing while extending time to file final report. Therefore, they are entitled for default bail. In fact, the petitioners filed application for default bail under Section 167(2) of Cr.P.C. and the same was returned on the ground that already the respondent filed application for extension of time under Section 36A(4)

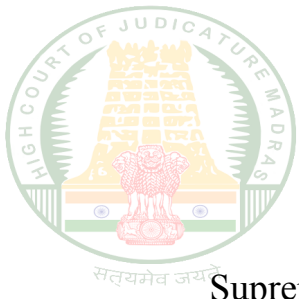


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of NDPS Act and the same was allowed, thereby three months of time was extended for completion of investigation in Crl.MP.No.2301 of 2025. He further submitted that the respondent did not even whisper any reason for non-completion of investigation within the stipulated time and as such, there is absolutely no ground to extend time for completion of investigation. The accused must be given opportunity of notice and hearing at the time of extending time for completion of investigation and it is indefeasible right for their default bail. It is not an empty formality and not automatic for extension of time. If any application is filed under Section 36A(4) of NDPS Act, the accused must be served notice and must be given opportunity of hearing. That apart, the respondent ought to have filed progress report about the investigation and must state valuable reasons for seeking extension of time to complete the investigation.

3.1 In support of his contention, the learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Jigar @ Jimmy Pravinchandra Adatiya Vs. State of Gujarat*** rendered in Crl.Appeal.No.1656 of 2022, in which the Hon'ble



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Supreme Court of India held that the public prosecutor may attach the request of the investigating officer along with his request or application and report. The said report must disclose on the face of it, as envisaged under clause (bb), 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 of Cr.P.C. as amended by Section 20(4) of BNSS 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.

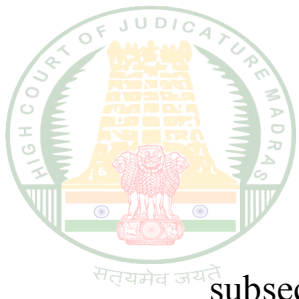
3.1.1 The Hon'ble Supreme Court of India further held that clause (b) of subsection (2) of [Section 167](#) of Cr.P.C lays down that no Magistrate shall authorise the detention of the accused in the custody of the police unless the accused is produced before him in person. It also provides that judicial custody can be extended on the production of the



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accused either in person or through the medium of electronic video linkage. Thus, the requirement of the law is that while extending the remand to judicial custody, the presence of the accused has to be procured either physically or virtually. This is the mandatory requirement of law. This requirement is *sine qua non* for the exercise of the power to extend the judicial custody remand. The reason is that the accused has a right to oppose the prayer for the extension of the remand. When the Special Court exercises the power of granting extension under the proviso to subsection (2) of [Section 20](#) of the 2015 Act, it will necessarily lead to the extension of the judicial custody beyond the period of 90 days up to 180 days. Therefore, even in terms of the requirement of clause (b) of subsection (2) of [Section 167](#) of Cr.P.C., it is mandatory to procure the presence of the accused before the Special Court when a prayer of the prosecution for the extension of time to complete investigation is considered. In fact, the Constitution Bench of this Court in the first part of paragraph 53(2)(a) in its decision in the case of ***Sanjay Dutt Vs. State through CBI, Bombay(II)*** reported in (1994) 5 ***SCC 410*** stated that the requirement of the report under proviso added by

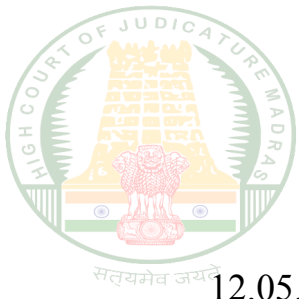


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subsection (2) of [Section 20](#) of the 2015 Act to clause (b) of subsection (2) of [Section 167](#) of Cr.P.C. is twofold. Firstly, in the report of the Public Prosecutor, the progress of the investigation should be set out and secondly, the report must disclose specific reasons for continuing the detention of the accused beyond the said period of 90 days. Therefore, the extension of time is not an empty formality. The Public Prosecutor has to apply his mind before he submits a report/ an application for extension. The prosecution has to make out a case in terms of both the aforesaid requirements and the Court must apply its mind to the contents of the report before accepting the prayer for grant of extension. In this case, the public prosecutor did not file any report and the petitioners were not given opportunity of hearing. Therefore, the impugned order passed by the trial court cannot be sustained and the same is liable to be quashed and the petitioners are entitled for statutory bail.

3.2 The learned counsel for the petitioners also produced the certified copy of the remand extension order. On perusal of the same, it is revealed that the petitioners were produced before the trial court on

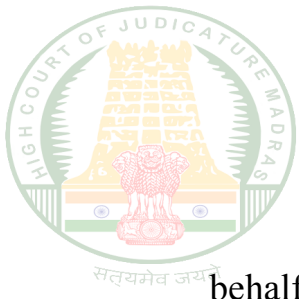


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12.05.2025 and their remand was extended till 19.05.2025. Thereafter, they were produced before the trial court only on 19.05.2025 and their remand was extended till 02.06.2025. In the meanwhile, without the appearance of the petitioners, the order impugned was passed on 14.05.2025. As such, the petitioners were not produced before the trial court on the date of passing and they were not given any opportunity of hearing.

4. Per contra, the learned Government Advocate(crl.side) appearing for the respondent filed counter and submitted that the respondent could not complete the investigation and file final report within a period of 180 days. Therefore, the respondent filed petition seeking extension of time to complete the investigation under Section 36A(4) of NDPS Act on 06.05.2025 i.e. 164th day & 162nd day from the date of remand of the petitioners. They were duly served notice in the open court on 12.05.2025. They were apprised with the factual details and regarding the provision under Section 36(A)4 of NDPS Act. Therefore, they were given sufficient opportunity to file counter on their



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behalf. In fact, they were duly represented by their counsel. However, on 14.05.2025, there was no representation on behalf of the petitioners. Therefore, the petitioners cannot say that they were not given opportunity of notice and hearing. Therefore, their application sought for default bail was dismissed. In support of his contention, he relied upon the following judgments:

- (i) ***Qamar Ghani Usmani Vs. State of Gujarat***
reported in ***(2023) 18 SCC 155***
- (ii) ***Sanjay Kumar Kedia Vs. Intelligence Officer, Narcotic Control Bureau and Ors*** rendered by the Hon'ble Supreme Court of India in Crl.Appeal Nos.2008-2009 of 2008
- (iii) ***Abdul Jameel & Others Vs. State of Madhya Pradesh***
rendered by the Hon'ble High Court of Madhya Pradesh in Misc.Crl.Case No.12249 of 2023

5. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

6. The only point arising for consideration in this criminal



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revision case is that whether the petitioner was given notice and opportunity of hearing while deciding the petition seeking extension of time to file final report. The respondent filed application in Crl.MP.No.2301 of 2025 for extension of time to complete the investigation and file final report in Crime No.954 of 2024. On receipt of the said application, the trial court ordered notice to the petitioners. On 12.05.2025, they were produced before the trial court and they were duly served notice. In fact, they were represented through their respective counsel and time was requested to file counter. Therefore, the trial court adjourned the petition seeking extension of time to 14.05.2025. However on that day, no one represented the petitioners and as such the trial court passed orders on merits and thereby allowed the petition and extended time for further period of 60 days to complete the investigation and file final report in Crime No.954 of 2024. Therefore, the petitioners were duly served with notice on 12.05.2025. The only contention raised by the learned counsel for the petitioners is that on the date of passing order i.e. 14.05.2025, the petitioners were not produced before the trial court and they were not given opportunity of hearing. Though they engaged



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counsel and took time to file counter, their counsel did not appear before the trial court and as such, the petitioners must be produced before the trial court on the date of hearing though they engaged their respective counsel.

7. The Hon'ble Supreme Court of India in the case of ***Qamar Ghani Usmani Vs. State of Gujarat*** reported in ***(2023) 18 SCC 155***, held that while considering the application filed by the investigation agency for extension of time for completing the investigation beyond the period prescribed under Section 167 (2) of Cr.P.C., the accused is to be given notice and/or is to be kept present before the court, so that the accused had knowledge that extension is sought and granted. In this case, admittedly the petitioners were given notice on 12.05.2025. In fact, the counsel appeared on their behalf, took time to file counter in Crl.MP.No.2301 of 2025, which was filed for extension of time to complete the investigation. It is relevant to extract the provision under Section 36A(4) of NDPS Act hereunder:

“36A(4) In respect of persons accused of an offence punishable under section 19 or section 24 or



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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. Accordingly, the maximum period of 90 days fixed under Section 167(2) of the Criminal Procedure Code has been increased to 180 days for several categories of offences under the NDPS Act, but the proviso authorises a yet further period of detention which may in total go upto one year, provided the stringent conditions provided thereon or specified and are complied with. The conditions are as follows:

- (i) a report of the Public Prosecutor
- (ii) which indicates the progress of the investigation, and



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

(iv) after notice to the accused.

9. Therefore, one of the conditions says, a notice must be issued to the accused before the extension of time to complete the investigation. Further, a report of the public prosecutor to be filed. On perusal of records, revealed that the respondent filed report for extension of statutory period of investigation. In the report, the respondent specifically stated about the process of investigation and the status of the investigation as follows:

“It is submitted that in the above case accused were arrested on different dates and in different states, further the source of the contraband Methamphetamine has to be found whether accused had link. It is further submitted that in the above case CDR details of mobile phones of accused are investigated on the angle that whether they have any connection with any other accused. There is need to do financial investigation regarding whether the accused had purchased any properties through Selling of Methamphetamine and SBI, HDFC, Andhra Bank Pass Book was seized. The source

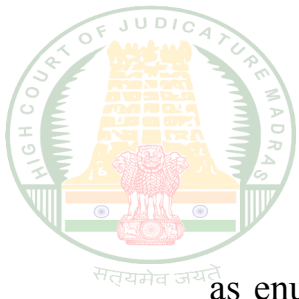


of the contraband and money transfer (Bank Statements) has to be enquired in detail. The source of the contraband and crucial documents pertaining to the investigation in the above case which required detailed analysis and interrogation of various persons has to be made to complete the investigation.

5. It is submitted that in the above case the chemical analysis report/Lab Report in respect of the seized contraband yet to be received from Forensic Lab. It is further submitted that some of the accused God father, Ayisha, Vinay (Hyderabad), Kiran (Vijayawada), Santhosh (Thanjavur) are still absconding in spite of serious effort taken by the police to arrest them. The said Ayisha, Vinay (Hyderabad), Kiran (Vijayawada), Santhosh (Thanjavur) are hailing from different places hence tracing them taking huge time.

6. Therefore it is submitted that since the crucial documents pertaining to the investigation in the above case which required detailed analysis and interrogation of various persons and follow up searches are required to be conducted time is required for completing the investigation.”

10. Therefore, the respondent duly complied with the conditions



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as enumerated under Section 36A(4) of NDPS Act. Further, the learned Government Advocate(crl.side) relied upon the judgment of the Hon'ble High Court of Madhya Pradesh in the case of ***Abdul Jameel & Others Vs. State of Madhya Pradesh*** rendered in Misc.Crl.Case No.12249 of 2023, in which it is held that the judicial remand may be extended even if the accused does not move any application for default bail before the trial court before filing of charge sheet. It is further held that the accused cannot be released on default bail merely because they were not produced before Special Court on some dates and there is non compliance of the provisions of producing through video linkage or physical appearance. In the absence of any corresponding provision for grant of bail when charge sheet is not filed within the mandatory period, the petitioners cannot claim to be released on default bail. In the case on hand, admittedly the petitioners were produced for extension of their remand on 12.05.2025 and their remand were extended till 19.05.2025. On their appearance on 12.05.2025, they were duly served notice about the petition filed by the respondent for extension of time to complete the investigation. Therefore, they were properly noticed and they were given



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opportunity. Hence, the judgment relied upon by the learned counsel for the petitioners, is not helpful to the case on hand.

11. In view of the above, this Court finds no infirmity or illegality in the impugned order. As such, this criminal revision case is liable to be dismissed. Accordingly, this criminal revision case is dismissed.

02.07.2025

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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To

1.Principal Special Judge under EC & NDPS Act, Chennai

2.The Inspector of Police,
M-3, Puzhal Police Station,
Chennai

3.Public Prosecutor,
Madras High Court



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G.K.ILANTHIRAIYAN. J,

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