



Crl.R.C.No.1314 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.10.2024
Pronounced On	31.01.2025

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1314 of 2024

Mathew

... Petitioner

Vs.

State, Rep. by,
The Inspector of Police,
T-11, Somangalam Police Station,
Chennai.

... Respondent

Prayer:- Criminal Revision filed under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order dated 24.07.2024, passed in Crl.M.P.No.7727 of 2024 in Crime No.279 of 2023, on the file of the Principal Special Judge under EC and NDPS Act, Chennai.

For Petitioner : Mr.S.Senthilvel
For Respondent : Mr.Hasan Mohammed Jinnah,
State Public Prosecutor assisted by
Mr.A.Damodaran
Addl.Public Prosecutor

ORDER

This Criminal Revision Petition has been filed by Mathew (Accused) in Crime No.279 of 2023, seeking to set aside the order passed



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by the learned Principal Special Judge for EC and NDPS Act cases at Chennai, dated 24.07.2024, in Crl.M.P.No.7727 of 2024.

2. Since the issue under consideration pertains to the grant of relief under statutory bail, the relevant facts of the case alone discussed for consideration of the above prayer.

3. The contention of the learned counsel for the petitioner is that the petitioner was arrested by the respondent Police in Crime No.279 of 2023 on 27.11.2023 for offences under Section 8(c) read with Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter referred to as "the NDPS Act"]. The petitioner was found in possession of 54.50 grams of Amphetamine, a psychotropic substance, which falls under the commercial quantity category.

4. The contention of the learned counsel for the petitioner is that the petitioner filed a statutory bail petition in Crl.M.P.No.5602 of 2024 on the 185th day. The respondent filed a petition under Section 36-A(4) of the NDPS Act in Crl.M.P.No.5047 of 2024, citing that the investigation could not be completed within 180 days. The trial Court dismissed the statutory



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bail petition of the petitioner on 03.06.2024 and allowed the petition for extension period by order dated 29.05.2024. The petitioner subsequently approached this Court in Crl.R.C.No.1093 of 2024, which was dismissed on 10.07.2024. The respondent then filed a second petition under Section 36-A(4) of the NDPS Act before the Special Court in Crl.M.P.No.7727 of 2024 on 24.07.2024, stating that the investigation could not be completed within the extended period of two months, which expired on 28.07.2024. The filing of the second petition for extension period appears to be mechanical and lacks valid justification, as the reason provided in the second extension period petition merely repeats what was stated in the first extension period petition. Further, the trial Court failed to consider that no proper notice was served to the petitioner regarding the second petition for extension period.

5. On the other hand, the extension period to complete the investigation was granted mechanically on the grounds of awaiting the Lab Report. Earlier, this Court had dismissed the revision case filed by the petitioner, primarily on the ground of whether the indefeasible right to statutory bail accrues to the accused upon the completion of the statutory



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prescribed period of 180 days, while the petition for extension period to complete the investigation is still under consideration. This Court, citing the maxim '*Actus curiae neminem gravabit*', found that the petition for extension was filed on the 169th day and considered before the completion of 180 days. Although the order was passed belatedly, the delay in considering the extension period petition by the Special Court could not be held against the prosecution. The trial Court's order was rightly upheld, as no perversity or illegality was found in its dismissal of the statutory bail petition.

6. Regarding the second petition for extension period, it was filed on 12.07.2024 due to the non-receipt of the Lab Report, the failure to ascertain the source of the contraband, and the incomplete enquiry into money transfer details. Notice was served to the accused in open Court, and after hearing, a 60-day extension was granted. However, according to the learned counsel for the petitioner, no notice was issued for the second extension petition, and the petitioner was neither produced in person nor heard on the matter. Therefore, the learned counsel for the petitioner submits that the mandatory conditions were violated.



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7. The learned counsel for the petitioner relied on the principles established in the case of **Judgebir Singh @ Jasbir Singh Samra @ Jasbir and others vs. National Investigation Agency** reported in **2023 SCC OnLine SC 543**. In this case, the Hon'ble Apex Court, referring the judgments of the Constitution Bench in **Sanjay Dutt vs. State** reported in **(1994) 5 SCC 410**, as well as the judgments in **Uday Mohanlal Acharya vs. State of Maharashtra** reported in **(2001) 5 SCC 453**; **Suresh Kumar Bhikamchand Jain vs. State of Maharashtra** reported in **(2013) 3 SCC 77**; and **M.Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence** reported in **(2021) 2 SCC 485**, held that filing of a charge sheet is sufficient compliance with the provisions of Section 167 of the Cr.P.C. Further, the Hon'ble Apex Court held that an accused does not have an indefeasible right to be released on statutory/default bail under Section 167(2) of the Cr.P.C., simply because cognizance has not been taken before the expiry of the statutory time period after filing the charge sheet.



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8. Further, the learned counsel for the petitioner, referring to Paragraph 76 of the **Judgebir Singh's case** [cited supra], submitted that an important principle has been highlighted, affirming that the law is now well settled the accused must be given an opportunity of hearing before the time for investigation is extended. It also held that the Courts could not have ruled that the extension period petition should be considered only after the statutory bail petition was decided, as this approach contradicts the well-established position of law. Further, it was emphasized that if the Investigating Agency seeks an extension, they must ensure that such a request is not made at the last moment.

9. The learned counsel for the petitioner further relied on the orders passed by this Court in **Crl.R.C.No.924 of 2023**, dated **22.06.2023** [**Ajith vs. State**] and **Crl.R.C.No.2122 of 2023**, dated **08.02.2024** [**Grant Victor Ikenna vs. State**]. In these cases, this Court referred to the guidelines and set aside the dismissal of statutory bail petition where the trial Court had delayed consideration of the bail petition and then dismissed the statutory bail petition, citing extension period to complete investigation under Section 36-A(4) of the NDPS Act had been granted, but at a later point of



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10. The learned counsel for the petitioner further submitted that the Hon'ble Apex Court, in the case of **Jigar @ Jimmy Pravinchandra Adatiya vs State of Gujarat** reported in **CDJ 2022 SC 1043 : 2022 SCC OnLine SC 1290**, extensively considered its previous judgments and the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA Act), the Prevention of Terrorism Act, 2002 (POTA Act), and the Unlawful Activities (Prevention) Act, 1967 (UAPA Act), which are similar to Section 36-A(4) of the NDPS Act. The Hon'ble Apex Court held that it is mandatory to produce the accused and inform about petition seeking extension period to complete investigation. Further, the investigation report must meet the twin requirements for extension, and unless these requirements are fully satisfied, the extension cannot be granted as a matter of routine. The Hon'ble Apex Court also emphasized that granting extension period to complete investigation results in the deprivation of the accused's indefeasible right to claim default bail which is a constitutional guarantee.

11. Further, the learned counsel relied on the decision of the Full Bench of the Calcutta High Court in **Subhas Yadav vs. The State of**



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West Bengal reported in **2023 SCC OnLine Cal 313** and submitted that the Full Bench of the Calcutta High Court had provided eight guidelines on how petitions arising under Section 36-A(4) of the NDPS Act and Section 167(2) of the Cr.P.C. should be considered, and issued directions accordingly.

12. The learned counsel submitted that any petition under Section 36-A(4) of the NDPS Act should be decided without undue delay, preferably within seven days from the filing of the petition. The Special Public Prosecutor's report seeking an extension must be served upon the accused or their counsel, and the accused should be present, either personally or through video link, at the time of Court's consideration of the petition.

13. The learned counsel further submitted that this Court, in the case of **Varun and others vs. State** reported in **2024 SCC OnLine Mad 162**, issued directions to the Special Court under the NDPS Act to adhere to these guidelines and circulated the order to all Principal District Judges across Tamil Nadu. Following the decision in **Varun's case** [cited supra], in a batch of cases in **Crl.R.C.Nos.1847, 1885, 1849 and 2002 of 2024**



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[**Mohamed Asaruthin vs. The State**], this Court, by order dated

27.11.2024, held that if an extension period petition is filed and is pending

when the statutory period for filing the final report expires, the trial Court must follow the directions issued by the Hon'ble Apex Court and consider the extension period petition and the bail petition together. The trial Court must consider the extension period petition as expeditiously as possible, and in any case, within seven days of receiving the petition. Furthermore, the investigating agency is required to file the extension period petition well in advance, at least 14 days before the expiry of the statutory period, so that, the trial Court can consider it before the statutory period ends. This would also allow the accused the opportunity to challenge the order if they feel aggrieved. There would thus be no need to consider the extension period petition together with the statutory bail petition. However, in extraordinary circumstances, the extension period petition may be filed within the last 14 days before the statutory period expires.

14. The learned counsel submitted that the indefeasible right guaranteed under Article 21 of the Constitution of India cannot be infringed by filing extension period petition at the last minute. Delays in serving the notice would unfairly infringe the statutory right and deny the



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indefeasible right that accrues to the petitioner. Furthermore, in this case, the second petition for extension period was filed on 12.07.2024 i.e., on the 228th day and the same was allowed on 24.07.2024 and no notice was served on the petitioner, depriving the petitioner of his mandatory right to be present, informed, and heard.

15. The learned Additional Public Prosecutor filed a counter affidavit detailing the registration of the case, the arrest of the accused, the seizure of contraband, which is of commercial quantity, the arrest of co-accused, and other aspects of the investigation.

16. The learned Additional Public Prosecutor submitted that the petitioner has been involved in the trafficking and distribution of psychotropic tablets. The petitioner was apprehended and, during interrogation, admitted to the offence. Based on his confession, the contraband was seized and sent to the laboratory for chemical analysis.

17. The learned Additional Public Prosecutor further submitted that once the extension period petition has been filed, the petitioner cannot seek or avail the statutory bail under Section 167(2) of the Cr.P.C. The learned Additional Public Prosecutor further submitted that the accused



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was arrested on 27.11.2023 and the 180th day fell on 25.05.2024. The respondent filed a petition under Section 36-A(4) of the NDPS Act in Crl.M.P.No.5047 of 2024, citing that the investigation could not be completed within 180 days. The trial Court allowed the petition for extension period by order dated 29.05.2024, granting two months time to complete the investigation. Since the investigation could not be completed within the said time frame, the respondent then filed a second petition seeking extension of further time for investigation under Section 36-A(4) of the NDPS Act before the Special Court in Crl.M.P.No.7727 of 2024 on 12.07.2024, and the same was allowed on 24.07.2024 directing the respondent to complete the investigation on or before 22.09.2024 and rightly dismissed the statutory bail petition filed by the petitioner in Crl.M.P.No.5602 of 2024 on 03.06.2024, hence, the learned Additional Public Prosecutor sought for dismissal of the Criminal Revision Case.

18. Considering the above submissions and on perusal of the materials, it is evident that the Hon'ble Apex Court, in the case of Judgebir Singh [cited supra], following the decision in Jigar @ Jimmy [cited supra], held that the accused must be given an opportunity to be heard before granting extended period to complete investigation. The Hon'ble Apex



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Court further held, it is incorrect for Courts to withhold consideration of statutory bail petition merely because the petition for extension period to complete investigation is pending. Such a delay is contrary to the well-established position of law. The investigating agency, when seeking an extension, must ensure that such requests are not made at the last moment.

19. In **Jigar @ Jimmy's case** [cited supra], the Hon'ble Apex Court referred to its previous rulings, including that of Constitution Bench, examined the relevant provisions of the TADA, POTA and UAPA Acts, which are analogous to Section 36-A(4) of the NDPS Act. These provisions impose specific restrictions and confer certain rights to the investigating agency. After detailed consideration, the Hon'ble Apex Court concluded that Section 167(2) of the Cr.P.C. sets an outer time limit for remanding an accused, proportionate to the seriousness of the alleged offence. If the investigation is not completed within prescribed time, the accused is entitled to default bail as a matter of right, which is a constitutional right.

20. The timeline set under sub-section (2) of Section 167 of the Cr.P.C. ensures that investigating officers are compelled to act promptly and efficiently, preventing misuse of further remand periods. The Hon'ble



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Apex Court further held that sub-section (2) of Section 167 of Cr.P.C. is intrinsically linked to the constitutional guarantee under Article 21 of the Constitution of India, which safeguards personal liberty against unlawful and arbitrary detention.

21. Furthermore, it emphasized that the report of the Special Public Prosecutor seeking extension period to complete investigation under Section 36-A(4) of the NDPS Act is not a mere formality but a crucial document, as its acceptance directly affects the liberty of the accused. The report must therefore strictly adhere to the legal requirements. Specifically, it must include:

- (a) A detailed account of the progress of the investigation, and
- (b) Specific reasons justifying the need for continuing the detention of the accused beyond the 180-day period.

Thus, the request for granting extension period to complete the investigation is not a mere procedural formality.

22. As far as the service of notice regarding the petition for extension period to complete the investigation is concerned, it is not necessary for the accused to receive a written notice with the reasons



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stated, suffice for the Court to inform the accused that the extension of the investigation period is under consideration, ensuring accused is put on notice and given an opportunity to object to the request for an extension.

23. It is mandatory for the accused to be produced before the Court when considering the petition for extension period to complete the investigation. The accused must be informed that the issue of extending the investigation period is being considered. If the accused is not given an opportunity to be heard, the requirement to produce the accused becomes a mere formality and loses its legal significance.

24. The Hon'ble Apex Court further held that granting an extension period for completing investigation directly impacts the accused's indefeasible right to default bail. Therefore, the issuance of notice is not a mere procedural formality. The procedures outlined in Article 21 of the Constitution of India, which protects personal liberty, must be followed, ensuring that the process is fair and reasonable. Failing to produce the accused before the Court, either physically or virtually, and failing to inform them of the Special Public Prosecutor's petition for an extension period, constitutes more than a procedural irregularity, it is a serious violation of the accused's rights under Article 21 of the Constitution of



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25. Such a failure is not just an error; it constitutes a gross illegality that infringes upon the constitutional protection guaranteed to the accused. Therefore, the prejudice is presumed and does not need to be demonstrated by the accused. Further, the Hon'ble Apex Court mandated that the Public Prosecutor must file a report at least a week before the statutory period expires, allowing the accused sufficient time to know the contents and oppose the extension if they wish to do so under the law.

26. Considering the facts of the case, the grant of extension period to complete investigation without adhering to the procedural safeguards established by the Constitution Bench and various decisions of the Hon'ble Apex Court, has deprived the accused of his right to seek default bail, leading to a failure of justice. Hence, the decision to grant an extension period for completing the investigation is improper and vitiated.

27. Further, it is seen that the petitioner was arrested on 27.11.2023, and the 180th day fell on 25.05.2024. The first petition for extension period under Section 36-A(4) was filed in Crl.M.P.No.5047 of 2024 on 14.05.2024, which was the 169th day. Notice was served to the petitioner



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on 16.05.2024, and orders in the said petition were passed on 29.05.2024.

The petitioner then filed a petition in Crl.M.P.No.5602 of 2024 under Section 167(2) of the Cr.P.C. seeking statutory bail, but the trial Court dismissed the petition on 03.06.2024, recording that a two-month extension period had been granted in Crl.M.P.No.5047 of 2024 on 29.05.2024. Thereafter, the respondent filed a second petition for extension period to complete investigation under Section 36-A(4) in Crl.M.P.No.7727 of 2024 on 12.07.2024, and orders were passed on 24.07.2024. It is recorded in the order that the accused appeared in person, and notice was served to the accused in open Court and the petition filed for extension period to complete investigation being explained to the accused. However, it is also recorded that there was no representation on behalf of the accused. These two statements appear contradictory, as both cannot be true at the same time.

28. The Hon'ble Apex Court in the case of **Jigar @ Jimmy Pravinchandra Adatiya vs State of Gujarat** reported in **CDJ 2022 SC 1043 : 2022 SCC OnLine SC 1290**, at Paragraph No.31, held as follows:-

"31. An attempt was made to argue that the failure to produce the accused will not cause any prejudice to him. As noted



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earlier, the grant of extension of time to complete the investigation takes away the indefeasible right of the accused to apply for default bail. It takes away the right of the accused to raise a limited objection to the prayer for the extension. The failure to produce the accused before the Court at the time of consideration of the application for extension of time will amount to a violation of the right guaranteed under Article 21 of the Constitution. Thus, prejudice is inherent and need not be established by the accused."

29. In the light of the above, this Court finds that prejudice to the accused is inherent and does not require further proof. Therefore, the order dated 24.07.2024 in Crl.M.P.No.7727 of 2024, granting further extension period to complete investigation, is set aside. Consequently, the petitioner's statutory bail petition stands revived. The trial Court to pass appropriate orders on the petitioner's statutory bail petition. Accordingly, this Criminal Revision Case is allowed.

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
smn2

31.01.2025

To



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- 1.The Principal Special Judge,
Special Court for EC and NDPS Act cases,
Chennai.
- 2.The Inspector of Police,
T-11, Somangalam Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court,
Madras.



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M.NIRMAL KUMAR, J.

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Pre-delivery order in
Crl.R.C.No.1314 of 2024

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