



Crl.R.C.Nos.1304, 1327 and 1334 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.Nos.1304, 1327 and 1334 of 2024

Crl.R.C.No.1304 of 2024:-

Jayanthan

... Petitioner

Vs.

The State,
Rep. by the Inspector of Police,
H-8, Thiruvottiur Police Station,
Chennai.

... Respondent

Prayer:- Criminal Revision filed under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records relating to the impugned common order dated 24.07.2024, passed in Crl.M.P.No.7779 of 2024, on the file of the Principal Special Judge under EC and NDPS Act, Chennai, in Crime No.57 of 2024, on the file of the respondent Police and to set aside the same by allowing the present revision petition and release the petitioner on statutory bail.

For Petitioner : Mr.N.Nishar Ahamed

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

Crl.R.C.No.1327 of 2024:-



Crl.R.C.Nos.1304, 1327 and 1334 of 2024

Mohammed Yasin

... Petitioner

Vs.

The State,
Rep. by the Inspector of Police,
H-8, Thiruvottiyur Police Station,
Chennai.

(Crime No.57 of 2024)

... Respondent

Prayer:- Criminal Revision filed under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records and set aside the order dated 24.07.2024 of the learned Principal Special Judge under EC and NDPS Act, Chennai, passed in Crl.M.P.No.7780 of 2024, and enlarge the petitioner on bail in Crime No.57 of 2024, pending on the file of the respondent.

For Petitioner : Mr.D.Padmanabhan

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

Crl.R.C.No.1334 of 2024:-

1.Sukel Ahamed

2.Raja @ Jai

... Petitioners

Vs.

The State,
Rep. by the Inspector of Police,
H-8, Thiruvottiyur Police Station,
Chennai.

(Crime No.57 of 2024)

... Respondent



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Prayer:- Criminal Revision filed under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records and set aside the order dated 24.07.2024 of the learned Principal Special Judge under EC and NDPS Act, Chennai, passed in Crl.M.P.No.7778 of 2024, and enlarge the petitioner on bail in Crime No.57 of 2024, pending on the file of the respondent.

For Petitioners : Mr.D.Padmanabhan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

COMMON ORDER

These Criminal Revision Cases have been filed by Jayanthan [A4], Mohammed Yasin [A3], Sukel Ahamed, and Raja @ Jai [A2 and A5] in Crime No. 57 of 2024, seeking to set aside the common order dated 24.07.2024 in Crl.M.P.Nos. 7779, 7780, and 7778 of 2024, respectively.

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

3. The petitioners herein were arrested on 19.01.2024 for illegal possession of 4.620 kgs. of Methamphetamine and 1.425 kgs. of Abin, both of which are of commercial quantity, and were remanded to judicial custody on 20.01.2024 for offences under Section 8(c) read with Section



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18(b), 22(c), 25, and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter referred to as "the NDPS Act"]. They filed statutory bail petitions in Crl.M.P.Nos.7779, 7780, and 7778 of 2024 on 18.07.2024, i.e., on the 181st day. The Special Public Prosecutor filed a petition in Crl.M.P.No.7549 of 2024 for extension period to complete investigation under Section 36-A(4) of the NDPS Act on 11.07.2024, and the statutory bail petitions were dismissed on 24.07.2024, and extension period to complete investigation was granted. Challenging the same, the above Criminal Revision Cases have been filed.

4. The contention of the learned counsels for the petitioners is that the petitioners filed statutory bail petitions on 18.07.2024. The respondent had filed a petition in Crl.M.P.No.7549 of 2024 for extension period to complete investigation; however, no notice was served to the petitioners immediately. According to the learned counsels for the petitioners, in one case, for the 182nd day, the notice was served on 19.07.2024, which is a clear violation of the conditions stipulated by the Hon'ble Apex Court in **Jigar @ Jimmy Pravinchandra Adatiya vs State of Gujarat** reported in **CDJ 2022 SC 1043 : 2022 SCC OnLine SC 1290**, which has been reiterated in **Judgebir Singh @ Jasbir Singh Samra @ Jasbir and**



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others vs. National Investigation Agency reported in **2023 SCC OnLine**

SC 543. The Hon'ble Apex Court, after considering previous judgments, set forth guidelines in this regard. 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.

5. Further, the learned counsels for the petitioners, 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



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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.

6. The learned counsels for the petitioners 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 time.

7. The learned counsels for the petitioners further submitted that the



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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 the 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.

8. The learned counsels for the petitioners further submitted that a Full Bench of the Calcutta High Court in **Subhas Yadav vs. State of West Bengal** reported in **2023 SCC OnLine Cal 313**, considered the provisions of Section 36-A(4) of the NDPS Act in conjunction with



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Section 167(2) of Cr.P.C. and issued guidelines. These guidelines followed by this Court in **Varun and others vs. State** reported in **2024**

SCC OnLine Mad 162 and directions have been issued to all Principal District Judges across Tamil Nadu handling NDPS Act cases. Despite these precedents and guidelines, the trial Court did not follow the prescribed conditions. The right of the accused is a constitutional one, which cannot be infringed upon, and the procedure is mandatory.

9. The learned counsels submitted that merely awaiting the Forensic Science Laboratory (FSL) report should not be the sole reason to seek an extension period to complete the investigation. Further, 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.



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10. The learned counsels further submitted that this Court, 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** [**Mohamed Asaruthin vs. The State**], this Court, by order dated **27.11.2024**, held that if an extension 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.

11. The learned counsels submitted that the indefeasible right



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guaranteed under Article 21 of the Constitution of India cannot be infringed by filing an extension period petition at the last minute. Delays in serving the notice would unfairly infringe the statutory right and deny the indefeasible right that accrues to the petitioners.

12. The learned Additional Public Prosecutor submitted that the accused were arrested on 19.01.2024, and upon their arrest, contraband of commercial quantity was seized. Since the investigation could not be completed within 180 days of their remand, the prosecution filed a petition in Crl.M.P.No.7549 of 2024 for extension period to complete investigation on 11.07.2024, i.e., on the 174th day.

13. The learned Additional Public Prosecutor further submitted that the contraband seized from the accused is of commercial quantity, and the lab report yet to be received. Further, the source of the contraband, details of money transfers, and bank statements need to be collected, and the role of the other accused must be thoroughly investigated. The learned Additional Public Prosecutor also submitted that the final report was filed in this case on 15.07.2024 through e-filing.



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WEB COPY 14. At this juncture, the learned counsels for the petitioners submitted that the respondent Police in a hurried manner, without the lab report filed the final report. The learned counsels produced the e-filing status report of the case, which shows that the charge sheet was filed before the Special Court for EC and NDPS Act cases, Chennai. The learned Principal Special Judge, EC and NDPS Act Cases, Chennai, took cognizance of the charge sheet in C.C.No.8817/2024 on 23.07.2024, and not on 15.07.2024 as recorded in the impugned order. If the trial Court's recording of 15.07.2024 is correct, there would have been no need to pass the order on 24.07.2024, justifying the grant of extension of period to complete investigation.

15. 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 Court further held, it is incorrect for Courts to withhold



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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.

16. 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.

17. The timeline set under sub-section (2) of Section 167 of the



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Cr.P.C. ensures that investigating officers are compelled to act promptly and efficiently, preventing misuse of further remand periods. The Hon'ble 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.

18. 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 investigation is not a mere procedural formality.

19. As far as the service of notice regarding the petition for



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extension period to complete investigation is concerned, it is not necessary for the accused to receive a written notice with the reasons 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.

20. It is mandatory for the accused to be produced before the Court when considering the petition for extension period to complete 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.

21. 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



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period, constitutes more than a procedural irregularity, it is a serious violation of the accused's rights under Article 21 of the Constitution of India.

22. 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.

23. In this case, the notice was admittedly served on the 187th day, on 24.07.2024. This clearly constitutes a violation of the mandatory requirement, as the accused's right under Article 21 of the Constitution of India has been denied. Considering the facts of the cases, 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 their right to seek default bail, leading to a failure of justice. Hence, the



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decision to grant an extension period for completing the investigation is improper and vitiated.

24. In view of the above, these Criminal Revision Cases stand allowed and the impugned order dated 24.07.2024, is set aside and the petitioners are entitled to statutory bail with the following conditions:-

(i) Each of the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only), with two sureties, each for a like sum to the satisfaction of the learned Principal Special Judge, Principal Special Court under EC & NDPS Act cases, Chennai;

(ii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court may obtain a copy of their Aadhar Card or Bank Pass Book and mobile numbers to ensure their identity; and

(iii) The petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m until further orders and if they are not able to appear before the trial Court on any day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other



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day in lieu of the date of their absence, as directed by the trial
Court.

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

31.01.2025

To

- 1.The Principal Special Judge,
Special Court for EC and NDPS Act cases,
Chennai.
- 2.The Inspector of Police,
H-8, Thiruvottiyur Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court,
Madras.



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M.NIRMAL KUMAR, J.

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Pre-delivery common order in
Crl.R.C.Nos.1304, 1327 and 1334 of 2024

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