



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 556 OF 2026

1. **Safiq Khan Rafiq Khan** **APPLICANTS**
Aged about 37 years,
Occupation :
R/o Near Water Tank, Kamakshi
Housing Society Raut Nagar,
Narsala Nagar, Nagpur
Maharashtra 440034

// V E R S U S //

1. **The State of Maharashtra,**
Through P.S. Wathoda, **NON-APPLICANT**
Nagpur City

Mr. Mohd. Naveed Opai, Advocate for the applicant.
Mr. Nikhil Joshi, APP for non-applicant /State.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 23.03.2026

ORAL JUDGMENT :

1. Heard.
2. **ADMIT.** Taken up for final disposal with the consent
of learned counsel for the parties.

3. By this application the applicant is seeking quashing of the order passed by the Judge Special Court NDPS Act, Nagpur in Crime No.474/2025 below Exh.1 dated 10.03.2026.

4. The applicant came to be arrested on 11.09.2025 in connection with Crime No.474/2025 registered under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as 'NDPS Act'). The crime is registered on the basis of the report lodged by police constable Vijay Yadav on an allegation that he alongwith other raiding party members have received an information when they were on patrolling duty that one person approximately of the age of 35 to 40 years is roaming on Activa Two Wheeler vehicle without any number in suspicious condition. As his activities were suspected therefore, he was intervened. During interception of the said person his personal search was carried out and during his personal search in presence of panchas Mefedon drugs of 102 gm worth of Rs.5,10,000/-, one mobile phone, one Activa moped was found in his possession. Therefore, he was arrested. On the basis of the said report, police have registered the crime against the present applicant and investigation was initiated.

5. As the charge-sheet was not filed within 180 days in view of the provision under Section 187 subsection 3 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (for short, 'the BNSS, 2023) (167 (2) of the Code of Criminal Procedure), therefore, the applicant has preferred an application on 181st day for seeking bail on the ground that in view of Section 187(3) the Magistrate cannot authorize the detention of the accused person in custody under this sub-section for total period exceeding 90 days where the investigation relates to an offence punishable with death imprisonment for life or imprisonment for a term of ten years or more and on expiry of said period of 90 days and 60 days as the case may be 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 released under the provisions of Chapter XXXV for the purposes of that Chapter. In view of Section 36-A sub-section (4) in respect of the offences punishable under Sections 19 or Section 24 or Section 27-A or also for the offences involving commercial quantity the references in sub-section (2) of Section 167 of the Code of Criminal Procedure thereof to 90 days where they occur, shall be construed as reference to 180 days. Proviso to the said sub-section (4) says

that if it is not possible to complete the investigation within the said period of 180 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 period of one hundred and eighty days.

6. The application was filed on the ground that within the 180 days charge-sheet is not filed and therefore, indefeasible right accrued to the present applicant to release him on bail.

7. The said application was opposed by the State before the trial Court. After hearing learned APP as well as learned counsel for the applicant the trial Court observed that the applicant was produced before the Magistrate on 11.09.2025. His detention in custody became 180 days. Today, charge-sheet is filed on the last day. Hence charge-sheet is filed within 180 days. He is not entitled for default bail. It is further observed that the accused was arrested. The first date is to be excluded while computing the days of detention. On 12.09.2025 the detention became for one day. Considering this fact, if total days of detention in the month of September comes to be 19 so, today is the 180th days after

accused is produced before the Court. As charge-sheet is filed, the applicant is not entitled for the default bail.

8. Being aggrieved and dissatisfied with the same the present application is filed by the applicant on the ground that it is erroneously held by the Special Court that the day of the arrest or the remand is to be excluded. In fact, both days to be included and if both days are to be included then admittedly charge-sheet is not filed within 180 days and indefeasible right accrued to the present applicant. In view of that, the order passed by the Special Court deserves to be quashed and set aside and applicant to be released on bail.

9. On perusal of Section 187 (3) of the BNSS which authorises the detention of the accused person beyond the period of fifteen days, if Magistrate is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding ninety days, where the investigation relates to offence and punishable with death, imprisonment for life or imprisonment for a term of ten years or more and on expiry of the

said period of ninety 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 XXX the purposes of this Chapter. Thus the indefeasible right accrued to the applicant if the charge-sheet is not filed within 90 days if the offence punishable death imprisonment for life or imprisonment for a term of ten years or more.

10. This provision is to be read alongwith Section 36(A) sub-section (4) of NDPS Act which states that in respect of persons accused of an offence punishable under section 19 or section 24 or section 27-A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 the period of "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days".

11. The proviso to sub-section (4) shows 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 period of one hundred and eighty days. Admittedly, in the present case no application for extension of the period of 180 is filed by the Public Prosecutor indicating the progress of the investigation and indicating the specific reasons for the detention of the accused beyond the period of 180 days. Therefore, 180 days period is the crucial period for the investigating agency to submit the charge-sheet before the Special Court.

12. Learned counsel for the applicant placed reliance on the full Bench decision in the case of *Enforcement Directorate Government of India vs. Kapil Wadhawan and another* reported in *(2024) 7 SCC 147* wherein the Hon'ble Apex Court has clarified that if period of remand is calculated from day next to date of passing of remand order, continuity in process would break, thereby creating a legal vacuum as even though accused is in custody on the date of remand order and police empowered to investigate accused on that day, that day would not be counted within prescribed 90/60 days, this would not be a just, fair and

reasonable procedure of law and would infringe accused's right to life, liberty and dignity guaranteed under Article 21 of the Constitution. Section 167 should be construed so as to be in consonance with standards of just, fair and reasonableness.

13. While clarifying the positions the Hon'ble Apex Court has considered the catena of decisions and in paragraph No. 36 it is observed that the three-Judge Bench in *M. Ravindran vs, Revenue Intelligence Directorate (2021) 2 SCC 485* followed *Rustam vis-à-vis Ravi Prakash Singh Vs. State of Bihar* reported in *(2015) 3 SCC (Cri) 605* being per incuriam, cannot in our opinion be considered as the correct law. Therefore, the Court in Ravindrans ought to have followed the computation principle laid down in *Chaganti Satyanarayana vs. State of A.P.* reported in *(1986) 3 SCC 141*.

14. In paragraph No.38 it is observed that in the scheme of CrPC, as has been elaborated above, the provisions contained in sub-section (1) of Section 167 runs in continuation of sub-section (2). The production of the accused before the Magistrate is a sequel to his arrest by the police and at the same time, the accused too has a right to be produced before the Magistrate, within 24

hours of his arrest. The day on which the accused is brought on remand before the Magistrate, sub-section (2) of Section 107 empowers the Magistrate to authorise the detention with the police either by continuing it or remanding him to Magisterial custody. There cannot be a pause/break between the two processes. No delimitation is conceptualised in Section 167 nor can it be fitted into a period of limitation "from" and "to" since there is no limitation for completion of investigation and filing of the charge-sheet. The production before the Magistrate is a process in continuation of arrest by the police and the Magistrate will authorise detention for not more than 15 days in the whole but if he is satisfied that sufficient grounds exist, he may authorise an accused's detention beyond 15 days otherwise than in the custody of police.

15. In view of the above observations of the Hon'ble Apex Court admittedly, the date of arrest or date of the remand is to be counted while counting 180 days. The object behind the said provision is required to be taken into consideration, in order to avoid long incarceration of the accused only because of the investigation the legislature thought it fit to confer a right on the

accused to be released on default bail if he is prepared to offer bail bond and the investigation may still continue. This is why the General Clauses Act cannot be made applicable to subsection (2) of Section 167. This gives the indefeasible right to the accused to apply for the bail as the charge-sheet is not filed within 180 days. In other words to claim a default bail under Section 167(2) first proviso Cr.PC. the accused does not have to make out any substantive grounds for securing bail nor does he have to file a detailed bail application. All he has to aver in the application is that since the stipulated 60/90 (180) in view of Section 36(A) subsection 4 of the NDPS Act, that period has expired and the charge-sheet has not been filed, accused is entitled to bail and such indefeasible right cannot be defeated by filing the charge-sheet after the accused has offered to furnish bail.

16. Admittedly, in the present case the report of the Superintendent Judicial Side District Court shows that the application for default bail was filed at about 10.50 a.m. as per the filing Section whereas the charge-sheet was received at 3.00 p.m. therefore, as soon as 180 days are completed on 181st day. The application filed by the applicant is prior in time, whereas the

charge-sheet filed subsequently. The right to personal liberty and prosecution right to file charge-sheet is within the limitation which is enumerated in Section 167 (2) of Cr.P.C. and Section 187 (3) of the 'BNSS' and 36(A) subsection (4) of the NDPS Act. The Court has to safe guard individuals right as held by the Hon'ble Apex Court in the said judgment. The 60/90 days limit (180 days) in view of Section 36(A) sub-section (4)) is statutory requirement which allows the State Agency to investigate serious offences beyond the 15 days police custody in case State fails to file charge-sheet or supplementary request for remand within the stipulated period. The 60/90 day limit is a statutory requirement which allows the State agencies to investigate serious offences beyond the 15-day police custody. In case the State fails to file charge-sheet or supplementary request for remand within the stipulated 60/90 day period, we need to strike a balance between the rights of the individual and the restriction on those rights and prevent prolonged incarceration is to be considered. The statutory remand period ends, an indefeasible right to default bail accrues to the accused and same needs to be guarded. The liberty of the individual is surely relative and regulated. The law therefore allows authorities to detain accused persons and facilitate

investigation during the said limitation period. It is the duty of the court to see whether unnecessary detention is there of the accused and whether the charge-sheet is filed or not filed within the prescribed period. The right to default bail is not extinguished by the subsequent filing of the charge-sheet, and the accused continues to have the right to default bail.

17. In the light of the observation of the Hon'ble Apex Court in its judgement by Full Bench in *Enforcement Directorate, Government of India vs. Kapil Wadhawan and another* subsequent filing of the charge-sheet does not take away the right of the present applicant for default bail. In view of that, the application deserves to be allowed.

18. Hence, I proceed to pass the following order:-

ORDER

- (i) The Criminal Application is allowed.
- (ii) The order passed by the Special Court NDPS Act, Nagpur rejecting the bail application of the present applicant by order dated 10.03.2026 is hereby quashed and set aside.

(iii) The accused is released on bail in connection with crime No.474/2025 registered under Sections 8(c), 22(c) and 29 of the NDPS Act, 1985 on executing PR bond of Rs.1 lakh with one surety of like amount.

(iv) The applicant shall attend the concerned police station Wathoda Nagpur twice in a month on every 1st and 15th day of every month till conclusion of the trial and the police Station Officer shall record his presence.

(v) The applicant shall not leave the jurisdiction of the Nagpur City without prior permission of the Court.

(vi) The applicant shall furnish his detail address with the address of his two relatives alongwith the address proof.

(vii) The contravention of the any of the provision or terms/conditions would lead to the cancellation of the bail.

(viii) The authenticated copy of the order be supplied to other side.

19. The criminal application stands disposed of in the above said terms.

Pending applications, if any, also stand disposed of.

(URMILA JOSHI PHALKE, J.)

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