

Sardarsingh Nagsingh Rajput (Sisodia) ... vs State Of Gujarat on 23 April, 1993

Equivalent citations: 1993CRILJ3473, (1993)1GLR905

ORDER

K.J. Vaidya, J.

1. In this group of three Misc. Criminal Applications pertaining to bail under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act"), following four are indeed the questions of quite great legal importance, having sweeping effect upon the ultimate fate of the prosecution as well as that of the accused pending trial, which have surfaced during the course of arguments calling for determination of the same by this Court. They are :-

(1) Whether for any alleged lapse or default committed by the Investigating Agency in not submitting Chargesheet within the prescribed time-limit of 90 days as warranted under Section 167(2)(a) of the Criminal Procedure Code, 1973, particularly in matter of the offences punishable under the NDPS Act, the accused are straightway entitled to be released on such default bail, altogether overlooking and ignoring the limitations imposed by the Legislature on Courts on exercise of such powers under Section 37 (amended) of the said Act?

(2) Whether any Court can refuse to accept the charge-sheet submitted to it by the Investigating Agency on the alleged two grounds viz., (i) that the same was not presented on either of the two days of a week so earmarked for the purpose for particular Police Station, and (ii) that the FSL report/ muddamal was not forwarded along with it?

(3) Whether any lapse or default committed by the learned Magistrate in contravening Section 36-A(1)(b) of the NDPS Act in not forwarding the accused to Special/ Session Court immediately on expiry of 15th day confers any legal right upon the accused to earn mechanical default-bail on the alleged ground that as his further continued detention in judicial custody on expiry of the said 15th day, have been rendered illegal and unauthorised, turning blind eyes to the gravity and seriousness of the offence and deaf-ears to the concern voiced by the Legislature in imposing limitations on granting bail under Section 37 (amended) of the said Act? And (4) Whether in absence of the Special Courts being constituted in concerned areas Under Section 36 of the NDPS Act, and further by virtue of express provision Under Section 36-D, the transitional jurisdiction in the said regard having been specifically vested in the Session Courts to take cognizance of the offences and conduct trial, the question

of complying with requirements under Section 36-A(1)(b) which pertains to the offences triable by Special Court by forwarding the accused to the Session Court on expiry of 15th day do not arise?

2. At the outset, it may be stated that having regard to the common facts-situation and circumstances in all these three petitions and the common questions of law arising therefrom, at the joint request and consent of the learned advocates appearing for the respective parties, it is decided to hear and decide all these matters together to be disposed of simultaneously by this common judgment.

3. Facts : Few relevant indisputable facts and circumstances which are absolutely necessary for reference to determine the ultimate outcome of the points raised herein-above are briefly but specifically set out as under:-

3.1 Misc. Criminal Appln. No. 4057/92 - On 2-6-1992, at 11.15 hours, the petitioner-Sardarsingh Nagsingh on being found in possession of 1 Kg. of Opium value at Rs. 4,000/- was arrested, there and then, by Mr. F.A. Gohil, P.I. - LCB, Anand, who thereafter filed a complaint against him for the alleged offence punishable under Sections 17 and 18 of the NDPS Act. Further as alleged, as per the requirement of Section 36-A(1)(b) of the Act, though the petitioner was required to be forwarded to the Special/Sessions Court within prescribed time-limit of 15 days i.e., on or before 17-6-1992, yet even as on today, he has not been so forwarded. It is still further alleged that though under Section 167(2)(a) of the Code, the charge-sheet was required to be submitted before the learned Magistrate within the prescribed time-limit of 90 days i.e., on or before 1-9-1992, still, however, the same came to be submitted on expiry of the said period i.e. on 14-10-1992 causing delay of 44 days. On the basis of aforesaid two defaults, alleging that as his further continued detention was quite illegal and unauthorised, the petitioner submitted a bail application, the same being Misc. Criminal Application No. 851 of 1992, before the Sessions Court, at Nadiad which came to be dismissed by the judgment and order dated 7-9-1992, giving rise to the present Misc. Criminal Application.

3.2 Misc. Criminal Appln. No. 182/93 - On 1-8-1992 at about 15.00 hours, the petitioner - Mas Ismail Sipoy, who was going on bicycle along with one Yusuf Ismail (absconding) on being found in possession of 240 grams of 'Charas' (6 small packets) valued at Rs. 2,890/- was arrested on the spot by Mr. B. K. Ayer, P.I., ACB, Bhavnagar, who thereafter on the basis of alleged facts filed a complaint against them for the offences punishable under Sections 8 and 20(b) of the N.D.P.S. Act Further as alleged, as per the requirement of Section 36-A(1)(b) of the Act, though the petitioner was required to be forwarded to the Special/Sessions Court on or before 18-8-1992, yet as the record shows he came to be so forwarded only on 15-2-1993. Raising this sole ground, the petitioner submitted a bail application, the same being Misc. Criminal Application No. 968 of 1992 before the learned Additional Sessions Judge, who ultimately by judgment and order dated 23-11-1992 dismissed the same giving

rise to the present Misc. Criminal Application.

3.3 Misc. Criminal Appln. No. 253 of 1993 -On 23-10-1992 at about 2.00 a.m., the petitioner Hasam Kasam Shaikh along with two other accused persons on being found in possession of 538 grams of 'Charas' valued at Rs. 7,400/- were arrested on the spot by Mr. G. S. Raghuvanshi, PS1 "B" Division, Rajkot City Police Station, who thereafter filed a complaint against them for the alleged offences punishable under Sections 20 and 29 of NDPS Act. Further as alleged, as per the requirement of Section 36-A(1)(b) of the Act, though the petitioners were required to be forwarded to the Special/Sessions Court on or before 6-10-1992, they came to be forwarded to the said Court on 9-11-1992, i.e., there was a delay of 36 days. On the basis of the aforesaid ground the petitioner submitted a bail application, the same being Misc. Criminal Application No. 798 of 1992 before the learned Sessions Judge at Rajkot who ultimately dismissed the same on 19-11-1992, giving rise to the present Misc. Criminal Application.

3.4 From the facts and circumstances set out above in paras 3.1,3.2 and 3.3., it could be seen that so far Misc. Criminal Application at para No. 3.1 is concerned, the same raises all the four questions mentioned at the top of this judgment, whereas so far as the rest of two Misc. Criminal Applications are concerned, the point raised therein are only two, namely, as referred in Questions Nos. 3 and 4.

4. Messrs K. B. Paade, Yogesh Lakhani and M. H. Chinoy, the learned advocates appearing for the respective petitioners while attacking the impugned orders rejecting their bail applications have submitted that in all these cases, both the concerned Investigating Agency as well as learned Magistrates have committed patent illegality on their respective part firstly in not observing the Legislative mandate Under Section 167(2)(a) of the Code in submitting the chargesheet against the accused within the prescribed time-limit of 90 days before the learned Magistrate, secondly, as per the affidavit of P.I. Mr. Pathan that though the chargesheet was presented in the court of learned Magistrate within prescribed time-limit of 90 days, the same came to be refused on the alleged two grounds viz., (i) that it was not presented on one of the two days of a week (Tuesday and Wednesday) fixed for Anand Rural Police Station, and (ii) that FSL muddamal was not forwarded along with the chargesheet papers, and thirdly, the learned Magistrate by contravening provision contained in Section 36-A(1)(b) of the NDPS Act has not forwarded the accused to Special/Session Court on expiry of 15th day of their production before them respectively. And fourthly, the reasons given by learned Judge in two of these three petitions to the effect that since the State Government has not issued any notification constituting Special Court under Section 36 of the NDPS Act, and further since by virtue of the provisions contained in Section 36-D of the said Act, till the time such Special Courts are constituted, the said powers of Special Courts are vested in the Session Courts to take cognizance of the offence and conduct the trial, unless the learned Magistrate completes committal proceeding under

Section 209 of the Code, there was no question of forwarding the accused to the Session Court.

4.1 While driving home the aforesaid submissions, the learned advocates for the petitioners have first of all invited attention of this Court to the relevant Sections under the Criminal Procedure Code and NDPS Act which forms the background of the subject matter for arguments and counter-arguments between the parties, which reads as under:-

"Section 167 - Procedure when investigation cannot be completed in twenty-four hours, 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 consider 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 the 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) 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years;

(ii) 60 days, where the investigation relates to any other offence, and, on the expiry of the said period of 90 days, or 60 days, as the case may be, that accused person shall be released on bail if he is prepared to and thus 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;

(b) No Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) No Magistrate of the second class, not specially empowered in this behalf by the High Court shall authorise detention in the custody of the police.

Explanation.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a) the accused shall be detained in custody so long as he does not furnish bail."

"Section 36. Constitution of Special Courts.- (1) The Government may for the purpose of providing speedy trial of the offences under this Act, by Notification in the Official

Gazette constitute as many Special Courts as may be necessary for such area as may be specified in the Notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

Explanation.- In this sub-section (High Court) means the High Court of the State in which the Sessions Judge or the Additional Sessions Judge of a Special Court was working immediately before his appointment as such Judge."

"Section 36-A. Offences triable by Special Courts-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) All offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Court then, one for such area, by such one of them as may be specified in this behalf by the Government;

(b) Where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under subsection (2) or Sub-section (2-A), of Section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding 15 days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate;

Provided that where such Magistrate considers-

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under Section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that Section;

(d) A Special Court may, upon a perusal of Police Report of the facts constituting an offence under this Act or upon a complaint may by an officer of the Central Government or a State Government authorised in this behalf, take cognizance of that

offence without the accused being committed to it for trial."

Section 36-D. Transitional Provisions.- (1) Any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 until a Special Court is constituted under Section 36, shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), be tried by a Court of Session.

Provided that offences punishable under Sections 26, 27 and 32 may be tried summarily.

(2) Noting in Sub-section (1) shall be construed to require the transfer to a Special Court of any proceedings in relation to an offence taken cognizance of by a Court of Session under the said Sub-section (1) and the same shall be heard and disposed of by the Court of Session."

Old Section 37- Old Section 37 runs as under:-

"37. Offences to be cognizable - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) every offence punishable under this Act shall be cognizable."

"37. Offences to be cognizable and non-bailable- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(Emphasis supplied) (2) The limitation on granting of bail specified in clause (b) of Sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

4.2 Point No. 1 - The first two points raised above arise only in Misc. Criminal Application No. 4057 of 1992, and accordingly making good the same, Mr. Pande submitted that in the instant case, the chargesheet was filed 44 days beyond the prescribed statutory time limit of 90 days and accordingly since the further detention of the petitioner in judicial custody was already rendered illegal and unauthorised, by this time, he was entitled to be released on default bail. In support of this contention, Mr. Pandey has relied upon the four Supreme Court decisions rendered in cases of

Hussainara Khatoon v. Home Secretary, State of Bihar reported in AIR 1979 SC 1377 : (1979 Cri LJ 1052), Rajnikant Jivanlal Patel v. Intelligence Officer, Narcotics Control Bureau, New Delhi, reported in AIR 1990 SC 71: (1990 Cri LJ 62) Aslam Babalal Desai v. State of Maharashtra reported in AIR 1993 SC 1, Narcotics Control Bureau v. Kishanlal reported in AIR 1990 SC 558. Mr. Pande has also further relied upon some judgments of this Court on this very point. Mr. Pande further submitted that the aforesaid decisions clearly confirm the settled legal position that once the chargesheet is found to have been filed beyond the stipulated period of 90 days then in that case, the concerned Court has no option left open to it but to release the accused on default bail. Mr. Pande further submitted that as a matter of fact the latest Supreme Court decision in case of Aslam Babalal Desai v. State of Maharashtra (supra), Supreme Court has gone one step ahead by observing that even the subsequent filing of the chargesheet beyond the prescribed time limit cannot improve upon and salvage the situation in favour of the Investigating Agency, as the same by itself was not sufficient to cancel the bail, merely because the petitioner was released on default bail and not on merits, unless some compelling justifiable grounds as streamlined and highlighted in the said judgment were made out. Mr. Pande relying upon the decision of Supreme Court rendered in case of Hiissainara Khatoon v. State of Bihar (supra) submitted that in fact, in cases wherein the Investigating Agency failed to submit charge-sheet within the stipulated period, it is always considered to be an important duty of the learned Magistrate to point out to the accused that he is entitled to be released on bail. Mr. Pande submitted that despite the above observations of the Supreme Court as far back as in the year 1979, the same have not been paid any heed to by the learned Magistrate. Mr. Pande ultimately on the basis of aforesaid submissions finally urged that the Supreme Court having consistently taken the view that once the Investigating Agency fails to submit the chargesheet within the prescribed time-limit, the accused is entitled to bail, in the present case also, petitioner was entitled to be released on default-bail, and accordingly, he should be so released. Mr. Pande thereafter on this point probably anticipating the counter argument from the side of the learned APPS further submitted that the decision of the Supreme Court in case of Narcotic Control Bureau v. Kishan Lal (supra) would not be applicable in the facts and circumstances of the present case. While distinguishing the said decision, Mr. Pande further submitted that in the instant case, the petitioner had applied for bail in the Session Court quite prior to submission of the charge-sheet. Not only that but even after filing bail application in this High Court, and thereafter also even till today, no chargesheet is filed before the Session Court which is put at par with the 'Special Court' by virtue of Section 36-D of the NDPS Act. Mr. Pande further submitted that having regard to the provision for the Special Court in Section 36 and Section 36-D giving transitory powers of the Special Court to the Session Courts under the NDPS Act, the learned Magistrate is not authorised by law to accept the chargesheet. Under the circumstances, according to Mr. Pande, it is not clear from the judgment of the Supreme Court in case of Narcotic Control Bureau v. Kishan Lal (supra) as to whether the accused in that case had filed bail application prior to submission of the charge-sheet or not, as it has not discussed the same in detail because special leave was granted for limited purpose. Under the circumstances, judgment of the Supreme Court in case of Narcotic Control Bureau v. Kishan Lal (supra) being far away from the facts and circumstances of the present cases, the same having no bearing at all was not applicable.

4.2-A It was next submitted by Mr. Pande that in Misc. Criminal Application No. 4057 of 1992, in order to show that the chargesheet was presented within the prescribed time-limit of 90 days, Police

Inspector Mr. Pathan has filed a reply - Affidavit wherein it has been stated that the chargesheet was submitted through Jenumiya Mallik, Head Constable, Anand Rural Police Station and that the same was presented to the concerned clerk of the Court Mr. Mahendra Patel on 1-9-1992, however, it was not accepted on the ground that the chargesheet papers of Anand Rural Police Stations were being accepted only on every Tuesday and Wednesday of the week. Thereafter, when once again Head Constable submitted the chargesheet on another day, the same was not accepted on the ground that muddamal sample from FSL was not produced along with it. Thus, according to Mr. Pathan though the chargesheet papers were ready before the prescribed time-limit of 90 days and presented twice by the Head Constable, yet the same were not accepted for no fault of Investigating Agency and thus ultimately the same came to be accepted by learned JMFC on 14-10-1992 resulting into delay of 44 days. Commenting upon this explanation given by Police Inspector Mr. Pathan, Mr. Pande, further submitted that the said affidavit was totally incorrect and untrustworthy. On the basis of the above, Mr. Pande finally urged that the shelter taken by Investigating Agency behind the plea that Mahendra Patel, concerned clerk-of the Court did not accept the chargesheet on the aforesaid grounds being ex facie false and incorrect, the same cannot be accepted.

4.3 While making good the third point regarding contravention of Section 36-A(1)(b) of the NDPS Act, Messrs. Pande, Lakhani and Chinoy, the learned Advocates for the petitioners submitted that as the learned Magistrate did not forward custody of the petitioners on expiry of the 15th day of the Session Court, their further detention in custody of the learned Magistrate was rendered quite illegal and unauthorised [alike the illegal and unauthorised detention of the accused under Section 167(2)(a) of the Code, on the ground of not submitting the Charge-sheet within the prescribed time-limit of 90 days], and accordingly, they also as a matter of course and right are entitled to be released on default-bail. Referring to Section 36-A(1)(b) of the Act, the learned advocates for the petitioners submitted that the same not only expressly prohibits detention of the accused in any manner whatsoever, either in Police custody or Judicial custody beyond the span of 15th day as a whole, but the same also further specifically directs the learned Magistrate to forward custody of accused to the Session Court, thus, placing reliance upon Section 36-A(1)(b) of the Act, the learned advocates submitted that by virtue of express mandatory provision, the accused cannot be kept even in judicial custody exceeding the prescribed statutory time-limit of 15 days, as after the expiry of the said period, petitioners were required to be forwarded to the Special Court and in absence of it, to the Session Court; as the case may be which is duly invested with necessary powers of the Special Court during the transitory period as provided in Section 36-D of the Act. Thus, any default in complying with the said provisions of Section 36-A(1)(b) of the Act being patently illegal, petitioners were entitled to be released on bail forthwith. Thus, according to the learned advocates for petitioners in these petitions also, any detention exceeding the period of 15 days being without any authority of law, the same was per se unauthorised enough, warranting immediate release of the accused on default-bail. The learned advocates for the petitioners also further submitted that in all these cases, since the judicial custody of the accused on expiry of 15th day had become quite illegal and unauthorised, not to release them on bail would be tantamount to taking away their liberty without due sanction of law, which in turn clearly violates Article 21 of the Constitution, making their further continued detention unconstitutional. The said Article 21 of the Constitution of India, which pertains to the protection of life and property reads as under :-

"Article 21. No person be deprived of his life or personal liberty except according to the procedure established by law."

In support of the above submission, the learned advocates for the petitioners have relied upon the authorities of the various High Courts, viz.:--

(1) 1991 Drugs Cases, 414 (DB) Kalam Khan v. The State of West Bengal;

(2) 1992 Drugs Cases, 95 (DB) Criminal reference by Session Court - Kerala High Court;

(3) 1992 Drugs Cases, 106, Aslam Khan v. The State of Madhya Pradesh; and (4) 1992 Drugs Cases, 103, P. R. Muthu v. The State of Madras.

Further still, probably sensing the counter-reply to their above submissions from the learned APPs, the learned Advocates for the petitioners were at pains to point out that Sections 36-A and 37 (amended) of the NDPS Act had nothing in common between them and operate independently and entirely in their respective fields that is to say, Section 37 (amended) was having no control or effect over Section 36-A(1)(b) in the matters where the petitioners would be entitled to default bail. Making good this submission, the learned advocates for the petitioners further submitted that if the default is committed by the learned Magistrate in not complying with the procedure prescribed under Section 36-A(1)(b), then as per Sub-section (3) of Section 36-A of the Act, the petitioners should be released on bail, as no limitation are specifically provided in the said section, while exercising powers under Section 439 of the Code meaning thereby the powers under Section 439 of the Code were not controlled or curtailed in any manner which has been done in Sub-section (2) of Section 37 of the Act. Further according to the learned Advocates for the petitioners, had indeed there been any intention on the part of the Legislature to put limitation on exercise of the powers in cases of default under Section 36-A(3), then the same would have surely been incorporated in Section 36-A itself. That is not done. Instead, it is specifically mentioned that the special powers of the High Court are unaffected when such default or breach is found to have been committed. Further, according to the learned advocates for the petitioners, the case of Narcotic Control Bureau v. Kishan Lal (supra) does not mention anything on this point of default-bail under Section 36-A(1)(b). It was further submitted that Section 37 of the Act specifically provides conditions to be borne in mind while deciding the bail applications. Therefore, it can be said that as per the above referred Supreme Court decision, the Supreme Court had decided on limited question of law in the facts of that case, and that it has not uttered a single word about the effect of Section 37 in cases of default committed under Section 36-A(1)(b) of the Act. Thus, in substance, according to the learned advocates for the petitioners, special provision enacted in Sections 36-A(1)(b) and 36-A(3) will prevail over Section 37, and accordingly, under the said Sub-section (3) of Section 36-A, bail is required to be granted.

4.4 Coming to the 4th and last point, the learned advocates for the petitioners vehemently submitted that the learned Session Judge in two of the present petitions have clearly misinterpreted the provision contained in Section 36-D of the Act which pertains to transitional provisions. It was

further submitted that by virtue of Section 36-D, the Session Courts have been specifically invested with special powers to take cognizance and conduct the trial under NDPS Act, and accordingly, till the time such special courts are constituted, the Session Courts for all practical purposes under the said Act are deemed to be the 'Special Courts' and in that view of the matter, there was no question of any accused under NDPS Act having been committed to the Session Court without complying with the requirements contained in Section 209 of the Code, Making good these submissions, the learned advocates for the petitioners have invited attention of this Court first of all to Section 36 which speaks about 'Constitution of the Special Courts by the Government for the purposes of providing speedy trial of the offences under the NDPS Act.' Thereafter, attention of this Court was further invited to Section 36-A(1)(b) which directs the Special Courts to take cognizance of the offence upon the perusal of police report without the accused being committed to it for trial. Thereafter, attention of this Court was further invited to Section 36-D of the said Act which as stated above pertains to the transitional provisions, that is to say, till the time Special Courts are constituted under Section 36 of the said Act, offences under the NDPS Act were required to be tried by the Courts of Session. On the basis of above, it was further submitted that looking to the scheme of the NDPS Act and the relevant provisions under Sections 36, 36-A(1)(b) and 36-D, they are indeed clear enough to indicate that the cases under the said Act are to be conducted by the Special Courts under Section 36 and for that purpose, similarly by virtue of Section 36-A(1)(b), the committal proceedings were dispensed with, Thus, till the time Special Courts are constituted by the State Government, Session Courts have been invested with the powers of "Special Courts" by virtue of Section 36-A, hence the question of committing the accused to the Court of Session clearly stands dispensed with. In support of this contention, the learned advocates for the petitioners have relied upon decision of Kerala High Court rendered in Criminal Reference No. 2, reported in 1992, Drugs Cases, 95.

5. As against the above, M/s. P. S. Chapaneri, K. C. Shah, M. A. Bukhari & K. P. Raval, the learned APPs vehemently opposing these bail applications at the very outset submitted that in the instant Cases, following three circumstances emerge from the record, namely; (i) that the offences alleged against the petitioners-accused are under the NDPS Act which is the special Act, (ii) that there is a Section 37 (amended) in the said Act which once again is specially engrafted in place of old Section 37 which in unmistakable terms had placed limitation on exercise of powers by the Courts in matter of releasing the accused on bail, and (iii) that the petitioners have been found to be in (a) conscious and intelligent possession of muddamal drugs, (b) of quite big quantity and the value. According to the learned APPs, thus taking into consideration the overriding effect of Section 37 (amended) in the matter of granting bail applications, there was not and indeed cannot be any such question of releasing the petitioners-accused on default-bail either under Section 167(2)(a) of the Code or under Section 36-A(1)(b) of the NDPS Act. Making good these submissions, the learned APPs have first of all invited attention of this Court to Section 37(old) and amended one. In this regard, the learned APPs submitted from the bare reading of Section 37(old) and amended one, the difference between the two is ex facie clear. Section 37 came to be amended by the Amending Act No. 2 of 1989, substituting the old Section 37 by giving overriding effect over the relevant provision relating to bail under the NDPS Act as well as the Code. The learned APPs thereafter further invited attention of this Court to the special circumstances that have constrained the Parliament to amend Section 37, which are so reflected in the Statement of Objects and Reasons for Narcotic Drugs & Psychotropic

Substances Act (Amendment) Act, 1988 (No. 2 of 1989). These are -

"In recent years, India has been facing a problem of transit traffic in illicit drugs. The spill over from such traffic has caused problems of abuse and addiction. The Narcotics Drugs & Psychotropic Substances Act, 1985 provides deterrent punishment for drug trafficking offences. Even though the major offences are non-bailable by virtue of the level of punishment, on technical grounds, drug offenders were being released on bail. In the light of certain difficulties faced in the enforcement of the Narcotics Drugs & Psychotropic Substances Act, 1985, the need to amend the law to further strengthen it, has been felt....."

(Emphasis supplied) The learned APPs submitted that reading of the above Statement of Objects and Reasons makes it abundantly clear that the old Section-37 of the Act came to be amended and substituted by the new one, giving the overriding effect over all other provisions relating to the bail in matter of offences under the Act, including the one under the Code bearing in mind the absolute gravity and seriousness of the offences on the one hand and the pressing urgency of protecting the social interest on the other. The learned APPs further submitted that the NDPS Act is a special and self-contained Act, wherein Section 37 (amended) occupies special field in the matter of granting or refusing the bail, and therefore, the provisions of the Code have no application in the matter of offences under the Act. Consequently, the petitioners are not entitled to any bail under Section 167(2)(a) of the Code or under Section 36-A(1)(b) of the Act.

5.1 As regards the Point No. 2(1), it was further submitted by the learned APPs that in the instant cases, the Investigating Agency cannot be blamed for not submitting the Chargesheet within stipulated period of 90 days as the Affidavit of P.I. Mr. Pathan clearly shows that it was the Court of learned Magistrate which was at fault in refusing to accept the same. Similarly, as regards Point No. 2(ii), the learned APPs, have relied upon decision of this Court rendered in case of Vihabhai Ramdas Patel v. Hemtuji Shivaji Dabhi, reported in 1984 (2) 25 GLR 883, which squarely covers the point.

5.2 It was further submitted by the learned APPs that so far as the first three points are concerned, they are squarely covered by the decision of the Supreme Court and this Court respectively in cases of Narcotics Control Bureau v. Kishan Lal (supra) and Vihabhai Ramdas Patel v. Hemtuji Shivaji Dabhi (supra). The learned APPs further submitted that taking into consideration rules of interpretation, precedents and judicial propriety, it would simply be not open to the petitioners to ask this Court to distinguish the said Supreme Court decision by reading into it something and by saying that the Supreme Court has not considered the same.

5.3 Turning to the fourth point raised above, the learned APPs submitted that having regard to the clear-cut provisions incorporated in Sections 36, 36-A and 36-D of the Act, it cannot be said that the same have been misinterpreted by the Session Court the learned APPs adopting the very reasoning of the learned Sessions Judge further submitted that admittedly in the instant cases, the Special Courts are not constituted so far and thereby, by virtue of Section 36-D of the Act, the transitory jurisdiction in the matter of taking cognizance and conducting the trial has been vested in the Session Courts. The learned APPs further submitted that the Session Courts can take cognizance of

the offence and conduct the trial only after the case is Committed to it by the learned Magistrate. In the instant case, admittedly, no such committal proceedings have taken place, and in that view of the matter, though the Session Court is vested with the powers to take cognizance of the offence and conduct the trial, yet since the cases were not committed to it, there was no question of forwarding the accused under Section 36-A(1)(b) of the NDPS Act. The learned APPs further submitted that the offence under the Act are triable by the Special Court and by Court of Session, by deeming fiction under Section 36A(iii) wherein reference to the Magistrate Court would also include reference to the Special Court. Thus, according to the learned APPs, the learned Magistrate before whom the accused were forwarded has the powers to remand them to the custody until the cases are committed. Thus, bearing in mind the scheme of the Act, unless and until the bail is granted to the accused, the learned Magistrate has powers to detain the accused in judicial custody. When such is the legal position, the petitioners have indeed no right to be released on bail either on the ground that the Chargesheets were not filed within the prescribed time limit of 90 days or their detention have become illegal and unauthorised on expiry of the 15th day of their detention.

5.4 On the basis of above submissions, the learned APPs finally urged that none of the points raised by the learned advocates for petitioners have any substance worth the name, and therefore, there was no question of releasing the petitioners on default-bail as prayed for.

6. Point No. 1 - Taking the first contention first, it is true that in case of the petitioner in Misc. Criminal Application No. 4057/92, there is a delay of about 44 days in filing the chargesheet by the Investigating Agency before the learned Magistrate. It is equally further true that ordinarily in view of the said patent illegality, the petitioner would have been entitled to be released on default-bail by virtue of several pronouncement of the Supreme Court and of this Court on the point. Still however, in view of the Supreme Court decision rendered in case of Narcotics Control Bureau v. Kishan Lal (supra), the aforesaid contention does not survive any more. In the aforesaid case, the Supreme Court was called upon to decide the identical questions, that is to say - whether in a case (under the NDPS Act) wherein the Charge-sheet was filed quite belated, i.e., beyond the prescribed time-limit of 90 days as warranted under Section 167(2)(a) of the Code, despite the provisions contained in Section 37 (amended) of the NDPS Act, the accused was entitled to be released on default bail or not ? The Supreme Court considering the scheme and object underlying the NDPS Act held that as the said Act is a "Special Act" and more particularly in view of the specific provision contained in Section 37 (amended), though the Chargesheet was filed quite belatedly, beyond the prescribed time limit of 90 days, the accused was not entitled to get himself released on default-bail. While discussing this aspect, the Supreme Court in para 6 of the Narcotics Control Bureau v. Kishan Lal (supra) has made some useful observations on the point, which reads as under:-

"6. Section 37 as amended starts with a non obstante clause stating that Notwithstanding anything contained in the Code of Criminal Procedure, 1973 no person accused of the offence prescribed therein shall be released on bail unless the conditions contained therein are were satisfied. The NDPS Act is a special enactment and as already noted, it was enacted with a view to make stringent provisions for the control and regulation of operations relating to narcotic drugs & psychotropic substances. That being the underlying object and particularly when the provision of

Section 37 of NDPS Act are in negative terms limiting the scope of applicability of the provisions of Cr.P.C. regarding bail, in our view, it cannot be held that High Courts' powers to grant bail under Section 439 of Cr.P.C. are not subject to the limitations mentioned under Section 37 of the NDPS Act. The non-obstante clause with which the Section starts should be given its due meaning and clearly it is intended to restrict the powers to grant bail. In case of inconsistency between Section 439 of Cr. P.C. and Section 37 of the NDPS Act, Section 37 prevails. In this context, Section 4 of Cr.P.C. may be noted which reads thus :

"(4). Trial of offences under the Indian Penal Code and other laws - (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provision hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealtt with according to the same provisions, but subject to any enactment for the time-being in force regulating the manenr or place of investigating, inquiring into, trying or otherwise dealing with such offences."

It can thus be seen that when there is a special enactment in force relating to the manner of investigation, enquiry or otherwise dealing with such offences, the other powers under Cr.P.C. should be subject to such special enactment. In interpreting the scope of such a statute the dominant purpose underlying the state has to be borne in mind. In Lt. Col. Prithi Pal Singh Bedi v. Union of India, (1983) 1 SCR 393 : AIR 1982 SC 1413 L (1983 Cru LJ 647), regarding the mode of interpretation the Supreme Court observed as followed at page 1419 of AIR:

"The dominant purpose in construing a statute is to ascertain the intention of Parliament. One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision, the Court should adopt literal construction if it does not lead to an absurdity."

As already noted, Section 37 of the NDPS Act starts with a non obstante clause stating that notwithstanding anything cotnained in the Code of Criminal Procedure, 1973, no person accused of an offence prescribed therein shall be released on bail unless the conditions contained therein are satisfied. Consequently, the power to grant bail under any of the provisions of Cr. P. C. should necessarily be subject to the conditions mentioned in Section 37 of the NDPS Act."

Thus, in view of the aforesaid discussion, since the point raised above by the petitioners rests concluded by the aforesaid Supreme Court decision, nothing further requires to be discussed. However, it would not be out of place if the two additional factors fortifying the above point in favour of the prosecution, which probably were missed by it to bring it to the notice of the Supreme Court, may incidentally be referred to. They are - (i) Section 35 of the NDPS Act, which pertains to the presumption of the culpable mental state of the accused; and (ii) Section 54 of the said Act, which pertains to the presumption from possession of illicit articles. Thus, taking into consideration

the facts and circumstances of these cases, and further examining the same in light of Section 37 (amended) and Sections 35, 54 of the Act, prima facie, there appears to be no reasonable ground for this Court for believing that the petitioners are not guilty of the alleged offences, and that they are not likely to commit any offence while on bail. When such is an unescapable factual and legal position, these are not the cases wherein the petitioners can be permitted to be released on default-bail on any of the alleged grounds of contravention of Section 167(2)(a) of the Code or that of Section 36-A(1)(b) of the Act.

Point No. 2 - This takes us now to other two controversies in matter of filing the Chargesheet under Section 167(2)(a) of the Code regarding refusal by the Clerk of the Court to accept the same on two grounds viz., (i) that it was only on Tuesday and Wednesday i.e., two days in a week fixed for Anand (Rural) Police Station that the Chargesheet were to be accepted; and (ii) that while submitting the Chargesheet papers, the FSL muddamal was not forwarded along with the same. These two controversies in fact now do not survive in view of the fact that the point regarding belated filing of the Chargesheet in matter of offences under the NDPS Act rests clinched and concluded by the decision of the Supreme Court rendered in case of *Narcotic Control Bureau v. Kishan Lal* (supra). Still however, with a view to prevent some such controversial practices as alleged in the instant cases, inadvertently even, by way of some abundant caution, this Court would like to make some observations for the benefit of subordinate Courts. Accordingly, firstly having regard to the provisions contained in Section 167 of the Code, the alleged practice of not accepting the Chargesheet papers except on particular fixed days cannot be countenanced for a while. The reason is that it is very likely that by following such illegal practices, in a given grave and serious case where the chargesheet gets belated and as a result of which the accused, sometimes even hard core accused, may get benefit of default bail and get released even if the same was filed late by one day only ! Thus, if at all any such practices under some bona fide misconception is prevailing in any court, then in that case, the Sessions Court will take care by issuing circular to all the concerned Magistrate with a view to see that such practices are at once discontinued. Further in this regard, this court does not deem it necessary to enter into controversy alleged by Mr. Pathan in his affidavit-in-reply and the Clerk of the Court as highlighted by Mr. Pathan in his argument, hoping that the requirements of law would duly be complied with in future. Secondly, as regards another controversy of non-acceptance of the chargesheet by the court on the ground that FSL muddamal was not forwarded along with the chargesheet papers, it may be stated that this point also rests concluded by the decision of this court rendered in the case of *Vihabhai v. Hemtuji Shivaji Dabhi*, reported in 1984 (2) 25 GLR 883, wherein it has been held as under:

"There is no question of submitting interim chargesheet. Merely because the Chemical Analyser's report was not annexed with the chargesheet, it would not amount to an interim chargesheet. As the Investigating Officer was awaiting the said report, he had submitted a chargesheet under Section 173(4) alongwith the documents which are required to be submitted as prescribed under Section 173(5) of the Criminal Procedure Code. It was an error of law to hold that merely because the Chemical Analyser's report was not annexed with the chargesheet, it would amount to an interim chargesheet....."

7. That takes us now to the third important question as regards the contravention of Section 36-A(1)(b) of the Act. It may be stated that while interpreting any section, the court is not supposed to merely stop at some words and/or its literal meaning. Infact, it is duty of the court to closely scrutinise and appreciate the object of that particular section which is brought under challenge and that it is further required to be interpreted in such a harmonious manner which ultimately protects and enhances the ultimate object underlying that particular section. Not only that, but further while interpreting any section, the object of the whole Act as well shall have got to be kept before the mental eyes which led to the enhancement of the special statute or any amendment thereunder carried out thereafter. On reading Section 36-A(1)(b) of the Act, no doubt, it is true that the learned Magistrate can authorise the detention of the person in custody as he thinks it fit for a period not exceeding 15 days and thereafter he is ordinarily supposed to forward the accused to the Special/Session Court. This is only the first-hand impression and the literal meaning of reading of the said section at the first glance. In fact, the basic reason/object underlying this provision appears to be the speedy trial. Not only that but even in case of default-bail under Section 36-A(1)(b), while interpreting the said Section, this Court cannot lose sight of the fact that there is a special provision regarding bail only, by way of Section 37 (amended). Thus, when the question of interpreting Section 36-A(1)(b) of the Act arises, it shall have to be read in conjunction with the said Section 37 (amended).

Further still, the NDPS Act is a special Act for which 'Special Courts' are provided with a view to see that the trial of the accused are conducted as expeditiously as possible. If the cases under the NDPS Act were to be tried by the ordinary Criminal Courts viz., Session Courts, then in that case, the Session Courts being busy with number of other criminal cases, the cases under the NDPS Act may unnecessarily get delayed and accordingly, bearing in mind, perhaps this particular circumstance, that the Legislature has thought it fit to have a "Special Court for the purpose, meaning thereby that Special Courts are given only the work of conducting the trial of the offences registered under the NDPS Act. While making this special provision under the special Act, if once again the same procedure under the Criminal Procedure Code of committing the accused to the Sessions Court under Section 209 of the Code was to be followed, then the same would indeed be quite time consuming and self-defeating factor. Therefore, with a view to see that because of this procedural delay on account of committal proceedings, the trial does not get delayed, Section 36A(1)(d) and 36D pertaining to the transitory provision appear to have been engrafted in the NDPS Act. Apparently, therefore, it is for this purpose that in place of the committal proceedings, the learned Magistrate is directed to forward the accused to Special Court on expiry of the 15th day of his production and that there was no other purpose behind it. In fact, at the expiry of the 15th day, whether the accused was in custody of the Magistrate or that of the Special Court, the same does not make any difference for him, as in either case, the custody remains judicial. What in substance and spirit it matters, is the forwarding of the initial police papers on the basis of which either remand was granted or refused. And therefore merely because some default is committed either in not physically forwarding the custody of the accused or the police papers pertaining to him to the Special/Session Court, that by itself can not be held to be sufficient to mechanically confer any right on the accused to be released on default-bail, who is otherwise arrested and kept in the custody on some serious charges of non-bailable offence under the NDPS Act, for which the Legislature has come out with a special enactment and thereafter with a provision under Section 37 (amended)

placing absolute limitation on the courts while considering the bail applications.

Further still, while interpreting Section 36A(1)(b) of the NDPS Act, this Court cannot afford to remain oblivious to the decision rendered by the Supreme Court in the case of *Narcotics Control Bureau v. Kishan Lal* (supra) which was also under the said Act, where the effect of Section 167(2)(a) of the Code came to be appreciated in the context of Section 37 (amended) of the said Act. In the said decision of the Supreme Court, the chargesheet came to be filed beyond the prescribed time limit of 90 days and therefore though the custody of the accused thereafter was clearly rendered illegal and unauthorised, and yet the Supreme Court in its wisdom, in view of the specific provisions as contained in Section 37 (amended) of the NDPS Act did not release the accused on bail.' In the instant case also, the arguments advanced by on behalf of the petitioners-accused were to the effect that since the learned Magistrate did not forward custody of the accused to the Special/ Session Court on expiry of 15th day, their subsequent detention stands clearly illegal and unconstitutional, and therefore, accused deserves to be released on bail. Now this contention under Section 36A(1)(b) and Section 167(2)(a) regarding default-bail on account of illegal and unauthorised detention are quite identical and accordingly, if under the identical situation under Section 167(2)(a) of the Code, applying the provision of Section 37 (amended) of NDPS Act, the Supreme Court has thought it fit not to release the accused on default-bail, this Court thinks that in the instant case also, under the similar set of circumstances of illegal and unauthorised detention under Section 36A(1)(b) and in view of Section 37 (amended) of the said Act, it would be simply illegal, unjust and improper to release them on bail. Not only that but any attempt to distinguish the case in any other manner, as it is sought to be vehemently argued by the learned advocates for the petitioners, would indeed be quite preposterous and not in fitness of things. Further, as far as Section 36A(1)(b) is concerned, the underlying object of the Legislature appears to be "the expeditious trial", as could be easily gathered from Section 36A(1)(d) of the NDPS Act where the committal proceedings have been sought to be dispensed with and instead, the learned Magistrates are directed to forward the accused to the Session Court or the Special Court, as the case may be, for the purpose of taking cognizance. Thus, instead of following the ordinary procedure of committment under the Code, the time-gap is sought to be lessened by providing an expeditious procedure of immediately forwarding the accused to the Session/Special Court, as the case may be. Accordingly, the breach of provision of Section 36A(1)(b), if at all is considered to be breach then even, it is just a simple breach of the procedural legality like the breach of procedure under Section 167(2)(a) of the Code wherein Investigating Agency is directed to file the Chargesheet within prescribed time limit. Thus, as held by the Supreme Court in case of *Narcotic Control Beureau v. Kishan Lal* (supra) such procedural illegality cannot be permitted to outweigh and over-shadow the underlying object of the special provision as contained in Section 37 (amended) of the NDPS Act which has clearly taken away all the rights of the accused to have the benefit of default bail. No doubt, it is indeed true that in all these cases, the petitioners have been kept in judicial custody exceeding 15 days, which is in clear contravention of Section 36A(1)(d) of the Act. It is equally true that there is no decision on this point either of the Supreme Court or of this Court. It is also further true that the authorities cited at the Bar that of various High Courts while interpreting the said Section 36A(1)(b) of the Act have in unmistakable terms held that the custody of the accused exceeding 15 days being without any sanction of law, illegal and unauthorised, and therefore, the accused deserves to be released on bail and were released on bail accordingly. Still however, with due respect to the said High Courts, for the reason discussed

hereinabove, this Court finds it not possible to agree with the same.

Further, as regard the argument of the learned advocates for the petitioners that since the accused were not forwarded to the custody of the Session Courts, as warranted under Section 36-A(1)(b) of the Act, their continued detention on expiry of 15th day having been rendered clearly illegal and unauthorised, in view of Article 21 of the Constitution, their liberty cannot be interfered with without due procedure established by law, this Court has no hesitation in holding that this contention of the learned advocates also has no substance worth the name, for the simple reason that in the facts and circumstances of these cases, it cannot be said that the liberty of the citizen have been taken away without any due procedure established by law. It is quite true that on expiry of 15th day, the learned Magistrates were ordinarily required to forward custody of the petitioners/their case papers to the Session Courts which have not done. But then, at the same time, under such circumstances, even if the petitioners claim to be released on default-bail, the alleged offence being non-bailable, they would obviously be required to make regular bail applications before the Court and while considering such bail applications, as discussed above, the Court is duty-bound to take into consideration the provisions as contained in Section 37 (amended) which are special in matter of releasing any accused under the NDPS Act on bail. Thus, making the conjoint reading of Section 36-A(1)(b) and Section 37 (amended), it cannot be said by any stretch of imagination that the liberty of the petitioners has been taken away without due procedure established by law. Thus, despite the fact that petitioners were not forwarded on expiry of the 15th day, by virtue of operation of Section 37 (amended), they would not be entitled to be released on bail. Thus, if at all the liberty of the petitioners has been taken away, as alleged, that has been taken away in the light of Section 37 (amended) of the NDPS Act.

Point No. 4:- Turning to the fourth and the last contention, between the parties, it appears that in two of the present three petitions, the concerned Sessions Judges have quite surprisingly observed that since the Special Courts are not constituted under Section 36 of the NDPS Act, by virtue of transitional provision in Section 36D, the Session Courts have been invested with some powers of the Special Court to conduct the trial of the alleged offences under the NDPS Act. And thus, till the time learned Magistrate commits the case to Sessions Court the same in its turn was not expected to take cognizance of offence. Now it appears that the learned Sessions Judge while recording the above findings has committed an obvious error in interpreting Section 36D of the NDPS Act.

Now regarding the said Section 36D, it is very clear that the Legislature has made some transitional provision only till such time the Special Courts are constituted under Section 36 of the NDPS Act, that is to say, by virtue of this transitional provision under Section 36D, the Legislature has directed that till the time Special Courts are constituted under Section 36, the cases under NDPS Act shall be tried by the Court of Session and accordingly for that purpose the Sessions Court shall be deemed to be 'Special Court'. At this juncture, it is indeed further necessary to bear in mind the relevant provisions under Section 36A(1)(d) the NDPS Act which has clearly dispensed with committal proceedings in the matter of offences under the NDPS Act. Thus, having read and appreciated both Sections 36D and 36-A(1)(b) of the said Act in juxtaposition, the same under cannot be interpreted to say that what is provided under Section 36-A(1)(b) is sought to be written off by Section 36D. Both these sections are mutually complimentary and not self-contradictory. Thus the submissions

made by the learned advocates for the petitioners on this count deserves to be accepted. In that the view that this Court is taking is clearly supported by a decision of Kerala High Court, reported in 1992 Drugs Cases 95, cited at Bar by the learned advocates for the petitioners. In para 2 of the aforesaid judgment, it is observed as under:-

"36D is a transitional provision and it mandates that until a Special Court is constituted under Section 36 any offence committed under the Act shall be tried by a Court of Session, Power under Section 36D has been given notwithstanding anything contained in the Code. It may also be noticed that Section 4(2) of the Code specifically states that all offences under any law other than Indian Penal Code shall be investigated, enquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time-being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. It is important to note that the purpose and object of the enactment of the Act is to have a speedy trial of all offences. That is why the Special Courts are allowed to take cognizance of the offence' without there being a committal proceedings. So, the Court of Session empowered to try the case during the transitional period shall be deemed to be a Special Court having power under Section 36-A(1)(b) of the Act to take cognizance of the police report upon a complaint made by an officer of the Central or State Government authorised in this behalf. Section 193 of the Code has no application as the entire trial is conducted in accordance with the provisions of the Act. The Court of Session by virtue of the provision contained in Section 36D of the Act is competent to exercise the power under Clauses (c) and (d) of Sub-section (1) of Section 36A of the Act, as if it is a Special Court constituted under Section 36 of the Act. The Court of Session empowered under Section 36D of the Act can take cognizance of the offence without there being a committal proceeding and the method of taking cognizance in the manner laid down in Sections 190 and 193 of the Code is not applicable to the Session Court trying offence under Section 36D of the Act."

In view of the aforesaid discussion, this Court is clearly of the view that the learned Session Judge has committed a serious error in holding that as the State Government has not constituted 'Special Courts' under Section 36 of the NDPS Act, Section 36A(1)(b) was not affected making it obligatory upon the learned Magistrate to comply with the requirements of forwarding the custody of accused to the Session Court on expiry of the 15th day. At the cost of repetition, it may once again be stated that till the time regular Special Courts are constituted by the State, the Session Courts of the areas are deemed to be the "Special Courts" for all purposes under the NDPS Act and accordingly in view of Section 36-A(1)(b) of the said Act there was no scope whatsoever for the committal proceeding which have been expressly dispensed with.

The answers to the questions raised at the top of this judgment, when briefly summarised, the same read as under :--

(1) In the matter of offences under NDPS Act so far the default-bail under Section 167(2)(a) of the Code as well as Section 36A(1)(b) of the said Act are concerned, they in view of firstly Section 37 (amended) and secondly, the Supreme Court decision in case of *Narcotic Control Bureau v. Kishan Lal* (supra) are out of question. (Ref : Questions Nos. 1 and 3) (2) That merely because it is held that the accused under the NDPS Act are not entitled to any default bail either under Section 167(2)(a) of the Code or under Section 36-A(1)(h) of the said Act that does not relieve Investigating Agency and the concerned Court from discharging their obligation of complying with the necessary requirements, either to submit the Charge-sheet on or before the stipulated period of 90 days and forward the custody of the accused to Special/Session Court on expiry of the fifteenth day. In fact, any default either by Investigating Agency or the concerned Magistrate would be liable to explanation to its superior authorities. In this regard, the Home Department would indeed do well if appropriate circulars are issued to all the concerned Police Officers investigating the cases under the NDPS Act, insisting upon them to file the charge-sheet within stipulated statutory time-limit as defined under Section 167(2)(a) of the Code. Similarly, the Registry of this Court is also directed to issue Circulars to all the learned Magistrates regarding due compliance of Section 36-A(1)(b) of the NDPS Act to forward custody of the accused to the Special/ Session Court on expiry of first fifteen days. (Ref.: Questions Nos. 1 and 3 above).

(3) That the alleged practices of not accepting the charge-sheet either on the ground that the same was not submitted on stipulated days as fixed for particular Police Station and or either FSL report or muddamal is not forwarded along with it is patently illegal, and if at all prevailing, is required to be discontinued at once. (Ref.: Question No. 2) (4) That in cases wherein Special Courts are not constituted under Section 36 of the NDPS Act, by virtue of Section 36-A(1)(b) and 36D of the said Act, Session Courts for all the practical purposes under the said Act are deemed to be the 'Special Courts' and accordingly, there is no question of either not forwarding the accused to the Session Court on expiry of first 15 days or to have the committal proceedings against the accused. (Ref.: Question No. 4).

(5) That since the offences under the NDPS Act are to be tried by the Special Courts which during the transitional period includes the Session Courts also, the chargesheet of the cases under the said Act are required to be submitted before the Special Court or the Session Court, as the case may be.

8. In the result, these three Misc. Criminal Applications fail and are dismissed accordingly. (The Office registry is directed to issue necessary Circulars to all the Courts of learned J.M.F.Cs. as directed in para 8, and also forward a copy of this judgment to the Secretary, Home Department, Gandhinagar, inviting his attention to Clause (2) of para 8. Rule discharged in all the petitions.)