

Crl.R.C.Nos.1395 and 1445 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved On	23.10.2024
Pronounced On	31.01.2025

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THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.1395 and 1445 of 2024

Crl.R.C.No.1395 of 2024:-

Kishore @ Kishore Kumar

... Petitioner

Vs.

State rep. by
The Inspector of Police,
S-7, Madipakkam Police Station,
St. Thomas Mound,
Chennai.

... Respondent

Prayer:- Criminal Revision filed under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order of dismissal passed by the learned Principal Special Judge under the EC and NDPS Act Cases at Chennai, in the petition filed under Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in Crl.M.P.No.8272 of 2024 in Crime No.22 of 2024, on the file of the respondent and enlarge the petitioner on bail.

For Petitioner : Mr.R.C.Paul Kanagaraj
For Respondent : Mr.Hasan Mohammed Jinnah,
State Public Prosecutor assisted by
Mr.A.Damodaran,
Addl.Public Prosecutor

Crl.R.C.No.1445 of 2024:-



Crl.R.C.Nos.1395 and 1445 of 2024

1.Ashok @ Otthakan Ashok
2.Udhaya @ Udhaya Kumar

... Petitioners

Vs.

State rep. by
The Inspector of Police,
S-7, Madipakkam Police Station,
St. Thomas Mound,
Chennai.

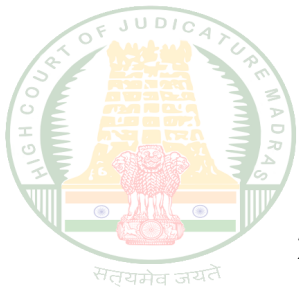
... Respondent

Prayer:- Criminal Revision filed under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order of dismissal passed by the learned Principal Special Judge under the EC and NDPS Act Cases at Chennai, in the petition filed under Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in Crl.M.P.No.8273 of 2024 in Crime No.22 of 2024, on the file of the respondent and enlarge the petitioners on bail.

For Petitioners : Mr.R.C.Paul Kanagaraj
For Respondent : Mr.Hasan Mohammed Jinnah,
State Public Prosecutor assisted by
Mr.A.Damodaran,
Addl.Public Prosecutor

COMMON ORDER

These Criminal Revision Cases have been filed by Kishore @ Kishore Kumar [A1], Ashok @ Otthakan Ashok, and Udhaya @ Udhaya Kumar [A2 and A3] in Crime No.22 of 2024, seeking to set aside the dismissal order passed by the learned Principal Special Judge under the EC and NDPS Act at Chennai, dated 12.08.2024, in Crl.M.P.Nos.8272 and 8273 of 2024, respectively.



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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.

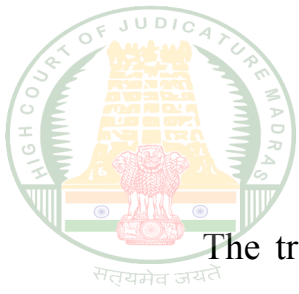
3. The learned counsel for the petitioners contended that the petitioners were arrested in Crime No.22 of 2024 on 30.01.2024 for offences under Sections 8(c), 20(b)(ii)(c), 29(1), and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter referred to as "the NDPS Act"]. The learned counsel further submitted that, even after the completion of the statutory period of 180 days, the charge sheet has not been filed. Consequently, the petitioners filed petitions for statutory bail in Crl.M.P.Nos.8272 and 8273 of 2024 under Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023, on 29.07.2024, i.e., on the 181st day. However, the trial Court dismissed the statutory bail petitions on 12.08.2024. It was only then that the petitioners learned that the respondent police had filed a petition in Crl.M.P.No.7908 of 2024 under Section 36-A(4) of the NDPS Act, seeking extension period to complete investigation. The petitioners were not served with the mandatory notice, nor were they produced before the Court or informed about the report filed



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by the Special Public Prosecutor seeking extension period to complete investigation. Hence, the petitioners were denied their right to oppose the petition. The trial Court passed a common order in both petitions, granting further time for investigation and dismissing the statutory bail petitions on 12.08.2024.

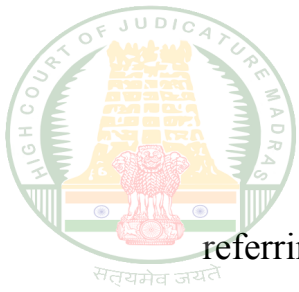
4. The learned counsel for the petitioners, referring to Paragraph 11 of the impugned order, submitted that the trial Court had ordered notice to the petitioners through the prison authorities on 22.07.2024, directing their appearance on 24.07.2024. However, the prison authorities failed to produce the petitioners before the Court because the petitioners had been transferred to the Central Prison, Vellore. Subsequently, another communication was sent to the Superintendent of the Central Prison, Vellore, on 25.07.2024, requesting the petitioners' appearance on 29.07.2024. Despite the same, the petitioners were again not produced. Only on 01.08.2024 the notice was served to the petitioners with delay, and the accused filed their counter on 06.08.2024, i.e., well beyond the statutory period. In this case, it is an admitted fact that the notice was served on 01.08.2024, which is in violation of the mandatory requirement.



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The trial Court was aware that the petitioners were confined in Vellore Prison as early as 24.07.2024, but their presence could have been ensured, either physically or virtually, to consider the Special Public Prosecutor's petition for extension period to complete investigation. Moreover, it is seen that the petition seeking an extension of the investigation period was filed on 22.07.2024, i.e., on the 174th day, which is beyond the seven-day period mandated by the Hon'ble Apex Court. Thus, there has been a clear violation of the mandatory condition, and the accused has been denied their right guaranteed under Article 21 of the Constitution of India. In these circumstances, the grant of an extension period to complete investigation, without adhering to the requirements laid down by the Constitution Bench, has deprived the accused of the right to seek default bail, resulting in a miscarriage of justice. Therefore, granting the extension period to complete the investigation is improper and vitiated.

5. Further, the learned counsel for the petitioners relied on the principles established in the case of **Judgebir Singh @ Jasbir Singh Samra @ Jasbir and others vs. National Investigation Agency** reported in **2023 SCC OnLine SC 543**. In this case, the Hon'ble Apex Court,



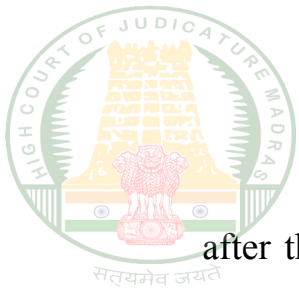
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referring the judgments of the Constitution Bench in **Sanjay Dutt vs.**

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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.

6. Further, the learned counsel 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 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

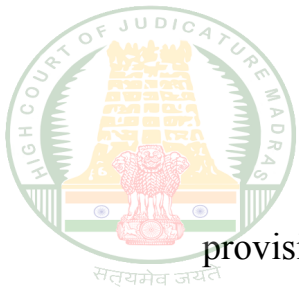


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after the statutory bail petition was decided, as this approach contradicts the well-established position of law. Further, it was emphasized that if the Investigating Agency seeks an extension, they must ensure that such a request is not made at the last moment.

7. The learned counsel 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.

8. The learned counsel for the petitioners further submitted that the Hon'ble Apex Court, in the case of **Jigar @ Jimmy Pravinchandra Adatiya vs State of Gujarat** reported in **CDJ 2022 SC 1043 : 2022 SCC OnLine SC 1290**, extensively considered its previous judgments and the

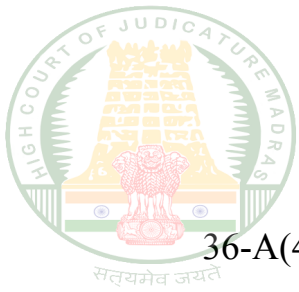


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provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA Act), the Prevention of Terrorism Act, 2002 (POTA Act), and the Unlawful Activities (Prevention) Act, 1967 (UAPA Act), which are similar to Section 36-A(4) of the NDPS Act. The Hon'ble Apex Court held that it is mandatory to produce the accused and inform about petition seeking extension period to complete investigation. Further, the investigation report must meet the twin requirements for extension, and unless these requirements are fully satisfied, the extension cannot be granted as a matter of routine. The Hon'ble Apex Court also emphasized that granting extension period results in the deprivation of the accused's infeasible right to claim default bail which is a constitutional guarantee.

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

10. The learned counsel submitted that any petition under Section



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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.

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

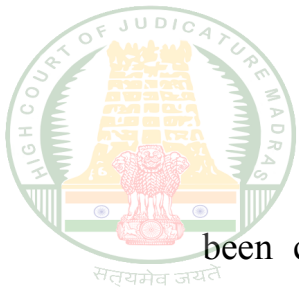


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and in any case, within seven days of receiving the petition. Furthermore, the investigating agency is required to file the extension period petition well in advance, at least 14 days before the expiry of the statutory period, so that, the trial Court 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.

12. The learned counsel submitted that the indefeasible right 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.

13. In the present case, the petitioners were arrested on 30.01.2024, and the 180th day for filing the charge sheet was completed on 28.07.2024. However, the extension petition under Section 36-A(4) of the NDPS Act was filed on 22.07.2024, i.e., on the 174th day, which clearly violates the guidelines set by this Court in **Varun's case** [cited supra], which have



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been consistently followed. Furthermore, in this case, the notice was served on 01.08.2024, depriving the petitioners of their mandatory right to be present, informed, and heard.

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

15. The learned Additional Public Prosecutor, referring to the decisions in **Rambeer Shokeen vs. State [NCT of Delhi]** reported in **(2018) 4 SCC 405** and **M.Ravindran's case** [cited supra], submitted that although the extension period petition was filed on the 174th day, resulting in a delay, this delay does not automatically confer any accrued right to the petitioners on the 180th day. Once the extension period petition has been filed, the petitioners cannot seek or avail the statutory bail under Section 167(2) of the Cr.P.C. The learned Additional Public Prosecutor further submitted that the accused were arrested on 30.01.2024 and the 180th day fell on 28.07.2024. On 22.07.2024, the extension period petition



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was filed on the 174th day, and notice was served on 23.07.2024 on 175th

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day. Both the statutory bail petitions filed by the petitioners on 29.07.2024 and the extension period petition were considered and decided on the same day, 12.08.2024. The trial Court allowed the extension period petition and rightly dismissed the statutory bail petitions, hence, the learned Additional Public Prosecutor sought for dismissal of the Criminal Revision Case.

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



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17. 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.

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



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WEB COPY 19. 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.

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

21. It is mandatory for the accused to be produced before the Court

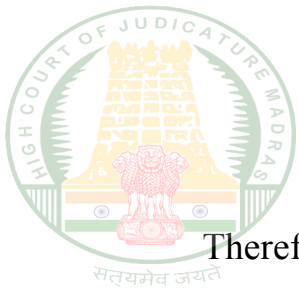


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when considering the petition for extension period to complete investigation. The accused must be informed that the issue of extending the investigation period is being considered. If the accused is not given an opportunity to be heard, the requirement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

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

23. Such a failure is not just an error; it constitutes a gross illegality that infringes upon the constitutional protection guaranteed to the accused.



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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.

24. In this case, the notice was admittedly served on the 183rd day, on 01.08.2024. 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 case, the grant of extension period to complete investigation without adhering to the procedural safeguards established by the Constitution Bench and various decisions of the Hon'ble Apex Court, has deprived the accused of their right to seek default bail, leading to a failure of justice. Hence, the decision to grant an extension period for completing the investigation is improper and vitiated.

25. In view of the above, these Criminal Revision Cases stand



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allowed and the impugned order dated 12.08.2024, is set aside and the

petitioners are entitled to statutory bail with the following conditions:-

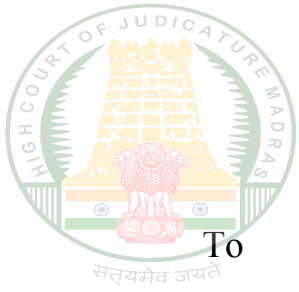
(i) Each of the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only), with two sureties, each for a like sum to the satisfaction of the learned Principal Special Judge, Principal Special Court under EC & NDPS Act cases, Chennai;

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

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
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31.01.2025



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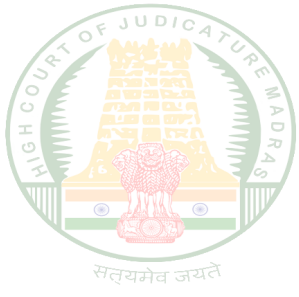
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- 1.The Principal Special Judge,
Special Court for EC and NDPS Act cases,
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- 2.The Inspector of Police,
S-7, Madipakkam Police Station,
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- 3.The Public Prosecutor,
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M.NIRMAL KUMAR, J.

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Pre-delivery common order in
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