

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**LD/VC/OCR/115/2020
Criminal Application No. _____/2020**

Nayantara GuptaApplicant
v/s.
The State of MaharashtraRespondent

Mr. Gaurav Thote a/w. Mr. Mithilesh Mishra and Mr. Advait
Gupta for the Applicant.

Mr. R.M. Pethe, APP for the State.

Mr. Jitendra Mishra for Respondent No.1 – Uol.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

ORDER RESERVED ON :31st July, 2020.

ORDER PRONOUNCED ON: 10th AUGUST, 2020.

P. C. :-

1. The Applicant has challenged the legality of the orders dated 11/5/2020 and 15/05/2020 passed by the learned N.D.P.S. Special Judge, Pune, in CNR No.MHPU01-005675 of 2020.

2. The Applicant is named as an accused in Cr. No.14 of 2019 registered by (Narcotics Cell), Customs Pune. The case of the prosecution, in brief, is that on 12/11/2019 the Narcotic Cell at Pune received specific information that the Applicant herein was engaged in selling Mephedrone (MD) and LSD stamps from the Clover Highland, NIBM Road, (near Dorabjee Stores) Pune to potential customers in

Pune area. On the same day i.e. 22.11.2019, the officers of Customs Narcotics Cell, Pune searched the aforesaid premises under Panchanma and recovered from the applicant transparent plastic pouch containing off white coloured powder like substance and a pouch containing some stamp like substances. The substance was tested using Field Testing Kit and the same tested positive for Mephadrone and LSD Lysergic Acid. The off white coloured substance purported to be Mephadrone weighing 54 gms, valued at Rs.3,24,000/- and 416 perforated stamps purported to be LSD Lysergic Acid valued at Rs.20,80,000/- was seized and FIR was registered against the Applicant for offences under for offences under sections 8 (c), 21 (b), 29 (1) of the Narcotic Drugs and Psychotropic Substances Act,1985 herein after referred as NDPS Act. The Applicant was arrested on 12/11/2019 and was produced before the remand Court on 13/11/2019. She has been remanded to judicial custody from time to time.

3. The period of 180 days, as prescribed under sub section (4) of Section 36A of NDPS Act for completing the investigation/ filing complaint was to expire on 11.05.2019. On 08/05/2020, before the expiry of 180 days of detention, the learned App submitted an application for extension of the period to complete the investigation

and to file the complaint. Extension was sought mainly on the ground of inability to summon and record the statements of the persons alleged to have abetted the accused and for non availability of of Chemical Analyses Report and Call Detail Report due to disruption caused by Covid 19 situation. Reliance was also placed on order dated 23/3/2020 passed by the Hon'ble Supreme Court in Suo Moto Writ Petition (civil) No.3 of 2020 extending the period of limitation w.e.f.23/3/2020 until further orders, to obviate difficulties faced by the litigants due to Covid 19 situation.

4. The learned Spl. Judge considered the prayer for extension on 11.5.2020 and passed the following order: _

"Perused the Application. In suo moto WP (Civil) No(s).3/2020 the Hon'ble Apex Court has extended period of limitation in all proceedings. Therefore, there is no need for passing extension order by this court, since the limitation stands extended by the order of the Hon'ble Apex court."

5. On 12.05.2020, the Applicant filed an Application for Bail No.1710/2020 under Section 167(2)Cr.P.C. r/w Section 36A of the NDPS Act. It was contended that the order of the Hon'be Apex Court in suo moto petition was not applicable in as much as it does not extend the period for filing the charge sheet. It was further contended that the Applicant has right to be heard on the question of extension of period

of investigation.

6. The prosecution resisted the application mainly on the ground that the Applicant was arrested for offences involving commercial quantity of contraband substance. It was further contended that that in view of the directions issued by the Hon'ble Supreme Court, the limitation period for filing the complaint stood extended and hence the application for default bail was not maintainable.

7. By the impugned order dated 15/05/2020, the learned Judge dismissed the application for bail. The relevant portion of the impugned order reads thus:

"6. In suo moto, Writ Petition (Civil) No.(3)/2020), the Hon'ble Apex Court has extended the period of limitation. On 06/05/2020 the Inspector of Customs, Pune had made application Exh.5 to the Court for extension of period of limitation for filing the chargesheet. By the order dated 11/05/2020 my brother judge has observed that the Hon'ble Apex Court has extended the period of limitation in all proceedings. Therefore, there is no need for passing extension order by this Court, since the limitation stands extended by the order of the Hon'ble Apex Court. This order clearly implies that impliedly my brother judge has extended the period of limitation for filing charge sheet. If the accused is aggrieved by that order, then he has to challenge it before the appropriate forum. Since the limitation for filing the charge sheet is extended by my brother judge impliedly, the application u/s. 167 (2) of Cr.P.C. is not maintainable. Therefore the application deserves to be rejected."

8. Mr. Gaurav Thote, learned counsel for the Applicant submits that copy of the application for extension of time was not served on the Applicant, and that the learned judge has decided the application in the absence of the applicant, without disclosing the grounds of extension. This is in gross violation of the law laid down by the Hon'ble Supreme Court in the case of ***Sanjay Dutt vs State (1994)5 SCC 410*** and ***Sanjay Kumar Kedia v/s. Narcotics Control Bureau (2009) 17 SCC 631***.

9. He submits that the Application for extension is signed by the Investigating Officer and merely submitted by the Public Prosecutor without due application of mind. He contends that the said application cannot be construed as a report of the public prosecutor as envisaged in the proviso to sub section (4) of Section 36A of the NDPS Act.

10. The learned Counsel for the applicant further submits that the report does not disclose the progress of investigation and does not spell out the reasons for extension. Relying upon the decision of the Apex Court in ***Hitendra Vishnu Thakur and ors. v/s. State of Maharashtra and Ors. (1994) 4 SCC 602***, the learned Counsel for the applicant contends that the report is not a mere formality but requires due application of mind as to the ground for delay and the reasons for

further detention. He submits that the application/report does not meet the requirements envisaged in the proviso to sub section(4) of Section 36A of NDPS Act. He submits that an indefeasible right accrued in favour of the Applicant could not have been defeated and her liberty could not be curtailed in such a casual manner.

11. The learned counsel for the Applicant has relied upon the decision of the Hon'ble Apex Court in ***S. Kasi vs State Through The Inspector Of Police Samaynallur Police Station Madurai District, on 19th June, 2020 in Criminal Appeal No.452 of 2020*** to contend that the order dated 23/3/2020 passed by the Hon'ble Supreme Court in *Suo Moto Writ Petition (civil) No.3 of 2020* has no consequence on the right accrued to the accused under section 167 Cr.PC or 36A NDPS Act. He therefore contends that the time limit for filing the complaint was not extended by virtue of order dated 23.3.2020 in *Suo Moto Writ Petition*. He submits that there cannot be implied extension of period of limitation prescribed under Section 167 Cr.P.C or 36A NDPS Act. The complaint was not filed within the time prescribed under Section 36A of the NDPS Act, hence an indefeasible right had accrued in favour of the applicant. This right, which was availed by the applicant before filing of the charge sheet, could not have been defeated by contending

that there was an implied extension of period.

12. The learned APP submits that the application for extension of time was filed before the expiry of 180 days. The prosecutor has appended his signature at the end of the application. Relying upon the decision of the Apex Court in the ***State of Maharashtra v/s. Surendra Pundlik Gadling and ors. (2019) 5 SCC 178***, he submits that the said application meets the requirement of proviso under Section 36-A(4) of NDPS Act.

13. The learned APP further contends that the learned Judge had not dismissed the application for extension of time, but had refrained from passing an order in view of the order of the Hon'ble Apex Court in *Suo Moto Writ Petition No. 3 of 2020*. He therefore contends that no indefeasible right had accrued in favour of the petitioner and that at the best it was only an inchoate right. He has also relied upon the decision of the Apex Court in ***Rambeer Shokeen vs. State of NCT of Delhi 2018 (2) SCC Cri. 498***, decision of this court in ***Prasad Rama Harmalkar v/s. State of Goa in Criminal Bail Application No.164 of 2009***, and the decision of Delhi High Court in ***Sarjilimum vs. State of NCT Delhi in Criminal M.C. No.1475 of 2020 dated 10/07/2020***. He further submits that the investigation could not be completed and the

complaint could not be filed within the prescribed period due to non availability of the witnesses, as well as non availability of Chemical Analyser's report and Call Detail Report in view of disruption caused by COVID-19 pandemic. He therefore contends that there are reasonable and genuine grounds for extending the time and that the applicant is not entitled for default bail.

14. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

15. The Applicant has questioned the legality and propriety of the impugned order on the ground of infringement of indefeasible right to be released on statutory bail under section 167 (2) Cr.P.C. Before advertng to the facts of the case it would be advantageous to refer to the relevant provisions and the law on the subject. The right to bail is inextricably linked to the right guaranteed under Article 21 of the Constitution of India, which inter alia provides that no person shall be deprived of personal liberty except according to procedure established by law. Whereas Article 22(2) mandates that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty four hours of such arrest

excluding the time necessary for the journey from the place of the arrest to the court and no such person shall be detained beyond the said period without the authority of a magistrate. Section 57 of the Cr.P.C., which creates an embargo on detention of a person arrested without warrant for a period exceeding 24 hours, exclusive of time necessary for the journey from the place of the arrest to the court, in the absence of a special order under section 167 Cr.P.C, secures this constitutional object and mandate. Sub section 2 of Section 167 deals with powers of the Magistrate to detain the accused in custody where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and for 60 days, where the investigation relates to any other offence. The proviso to sub section (2) of Section 167 confers powers on the magistrate to release the accused on bail if the investigation is not completed within this period and the accused makes an application for that purpose and is prepared to furnish bail.

16. In **S. Kasi** (supra), while reiterating the scope and object of Section 167 (2), the Apex Court has observed that the provisions of Section 57 as well as Section 167 are supplementary to each other, which recognize right of personal liberty of a person as enshrined in

the Constitution of India. It has been held that the proviso to sub section 2 of Section 167 is a beneficial provision for curing the mischief of indefinitely prolonging the investigation thereby affecting the liberty of a citizen. The Apex Court has held that the right for default bail is indefeasible right, which cannot be allowed to be frustrated by the prosecution on any pretext. The Apex Court after referring to several earlier judgments, has reiterated that except under special enactments, which have modified the provisions of the Code including section 167 empowering the Court to extend the period, no court can directly or indirectly extend such period of 90 days or 60 days, as the case may be.

17. The NDPS Act is one such special enactment which under sub-section (4) of section 36A has modified the period of 90 days stipulated in sub section (2) of section 167 to 180 days for certain categories of offences and has further empowered the Court to extend such period for further maximum period up to one year. In ***Sanjay Kumar Kedia v/s. Narcotics Control Bureau (2009) 17 SCC 631***, while dealing with the provisions of NDPS Act, the Apex Court has observed as under :-

"Section 167 of the Code deals with the procedure wherein investigation cannot be completed in 24 hours and the various sub-sections provide for the maximum period beyond which a person cannot be detained and this period varies between 60 and 90 days keeping in view the gravity of the offence - the maximum period of 90 days being

provided with respect to offences punishable with death etc. and 60 days for other offences, and if the investigation is not completed within this period, the accused is entitled to bail under [Section 167](#) sub-section (2) if he makes an application for that purpose and is prepared to furnish bail. It will be seen that [Section 167](#) does not envisage an extension of the period of detention of an accused in custody beyond the specified periods. The legislature, however, thought in its wisdom, that certain special categories or situations required that the investigating agencies should be given more time to investigate a matter and to file their complaint or charge-sheets and such provisions have been made under special statutes.

8. The Terrorist and Disruptive Prevention Act, 1987 (hereinafter called the 'TADA') and the Act are two such special legislations. Section 36A (4) of the Act in so far as is relevant, reads as under :-

"Section 36 A.

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

(a) xxxx

(b) xxxx

(c) xxxx

(d) xxxx (2) xxxx (3) xxxx

(4) 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 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

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

(5) xxxx

9. The maximum period of 90 days fixed under [Section](#)

167 (2) of the Code has been increased to 180 days for several categories of offences under the Act but the proviso authorizes a yet further period of detention which may in total go upto one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:

(1) a report of the public prosecutor, (2) which indicates the progress of the investigation, and (3) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and (4) after notice to the accused.”

18. In ***Hitendra Vishnu Thakur and ors.(supra)***, the Apex Court while considering the scope of the proviso inserted as clause (bb) in sub-section (4) of Section 20 of TADA, which is pari materia with the proviso to Sub-Section (4) of Section 36-A of the NDPS Act, has highlighted the importance of the report of the public prosecutor and emphasized that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. The relevant paragraph reads thus:-

"23. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature

expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before Submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "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 said period" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of

the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release hi on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the Justification, from the report of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes infeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier part of this judgment. We are unable to agree with Mr Madhava Reddy or the Additional Solicitor General Mr Tulsi that even if the public prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the report of the public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution of any

expression in it. We have already dealt with the importance of the report of the public prosecutor and emphasized that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (bb) of sub-section (4) of Section 20. Since the law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid report falls in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether the public prosecutor labels his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (bb) (supra). Even the mere reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report to seek extension of time. In the absence of an appropriate report the Designated Court would have no jurisdiction to deny to an accused his Indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. "

19. In **Hitendra Thakur** (supra) the Apex Court had observed that though Clause (b) or Clause (bb) of Sub section (4) of Section 20 TADA does not specifically provide for the issuance of notice to the accused, such notice must be read into these provisions both in the interest of accused and the prosecution as to do complete justice between the parties. In Sanjay Dutt (supra) the Constitution Bench of the Apex

Court while considering the requirement of notice as well as the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4)(bb) has held that :

" 2)(a) Section 20(4)(bb) of the TADA Act only requires production of the accused before the court in accordance with [Section 167\(1\)](#) of the Code of Criminal Procedure and this is how the requirement of notice to the accused before granting extension beyond the prescribed period of 180 days in accordance with the further proviso to clause (bb) of sub-section (4) of Section 20 of the TADA Act has to be understood in the Judgment of the Division Bench of this Court in Hitendra Vishnu Thakur. The requirement of such notice to the accused before granting the extension for completing the investigation is not a written notice to the accused giving reasons therein. Production of the accused at that time in the court informing him that the question of extension of the period for completing the investigation is being considered, is alone sufficient for the purpose.

(2)(b) The 'indefeasible right' of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with [Section 167\(2\)](#) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which ensures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions [of the Code](#) of Criminal Procedure. The right of the accused to be released on bail after filing on the challan, notwithstanding the default in filing it within the time allowed, as governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at the stage."

20. It is thus certain that under Section 36A of NDPS Act, which is a special legislation, the Court is authorized to detain a person accused

of an offence under Section 19 or 24 or 27A or for offences involving commercial quantity for a period of 180 days. The proviso to sub-Section (4) of Section 36A also enables the Special Court to extend the period of investigation and to detain the accused pending such investigation for a maximum period upto one year. Such extension can be granted only on the report of the public prosecutor indicating the progress of the investigation and setting out the reasons for detention of the accused beyond the period of 180 days. The law as expounded in ***Hitendra Thakur*** (supra) makes it clear that the report is not a mere formality but must indicate due application of mind and subjective satisfaction of the public prosecutor regarding progress of the investigation and specific reasons for the detention of the accused beyond the prescribed period. Satisfaction of this twin condition is therefore a prerequisite of request for extension of time for investigation. Though it is not necessary to issue a written notice to the accused about extension of time, principles of natural justice shall stand complied with on producing the accused and informing him that the question of extension of period of completing the investigation is being considered. Satisfaction of the court in respect of the report of the public prosecutor is a sine qua non for extension of time to complete the investigation.

21. An indefeasible right accrues in favour of the accused for being released on bail when the investigating agency fails to file the challan within the prescribed period, or fails to apply for extension of time to complete the investigation or when the prayer for extension is rejected by the Court. Nevertheless, such right can be enforced only when the accused applies for bail and is ready to furnish surety. In such circumstances, the Court has no other option but to release the accused on bail. The dictum of the Constitution Bench of the Hon'ble Supreme Court in Sanjay Dutt (supra) is that the indefeasible right accrued in favour of the accused is enforceable only prior to the filing of the challan. When such right is already availed of, the accused has indefeasible right to be released on bail notwithstanding subsequent filing of challan. On the other hand, the right for default bail, if not already availed of, would stand extinguished and become unenforceable once the challan is filed. In such a situation the provision under section 167 ceases to apply and the question of grant of bail has to be considered on merits of the case under the provisions relating to grant of bail.

22. It is also well settled that if the prayer for extension of time to complete investigation is made before the expiry of the prescribed

period and the accused also files application for bail, both applications should be considered together. The right of the accused remains to be inchoate till the application for extension is decided and the grant of bail is subject to rejection of prayer for extension of time to complete the investigation.

23. In the instant case, the records indicate that the applicant was arrested on 12.11.2019 for offences under NDPS Act involving commercial quantity. She had been produced before the Court on 13.11.2019 and pending investigation remanded to judicial custody from time to time. The statutory period of 180 days, as prescribed in Section 36A of the NDPS Act was to expire on 11.5.2020. Even before expiry of the said period, an application was filed under proviso to sub section (4) of Section 36A of the NDPS Act for extension of period to complete the investigation. It is seen that the Applicant was not produced before the court and was not informed of the grounds of extension. Furthermore, a perusal of the order dated 11.05.2020 reveals that the application was neither granted nor rejected on merits but the learned judge had refrained from passing any order on the said application in view of the order passed by the Apex Court in suo moto WP (Civil) No.3 of 2020 extending the period of limitation.

24. On the very next day, i.e on 12.05 2020, the applicant filed an application for bail under section 167(2) of Cr.P.C. contending that the order of the Apex Court in Suo Moto WP (Civil) NO.3 of 2020 was not applicable and that there was no extension of time to file the challan. The application for extension of time was not expressly granted or rejected. Hence, in view of the dictum in Sanjay Dutt (supra) the concerned Court could not have assumed jurisdiction to consider the prayer for grant of statutory bail, which was filed during the pendency of the application for extension of time to complete investigation. Since the application for grant of statutory bail was dependent on rejection of prayer for extension of time, it was the duty of the Court to consider the prayer for extension of time and decide the same on merits. It was only upon extension of time for investigation that the Court could reject the application for statutory bail. By the impugned order dated 15.05.2020, the learned judge dismissed the said application on the ground that the Apex Court has already extended the period of limitation in all proceedings. Referring to the order dated 11.05.2020, the learned judge has observed that the predecessor judge has impliedly extended the period of limitation for filing the charge sheet and hence the application for bail under section 167(2) Cr.P.C. was not

maintainable.

25. It is pertinent to note that in S. Kasi (supra) the Apex Court has held that the order dt. 23.3.2020 in Suo Moto Wp (Civil) NO.3 of 2020 never meant to curtail any provision of the Code of Criminal procedure or any other statute which was enacted to protect the personal liberty of a person. It has been held that the right of prosecution to file a charge sheet even after a period of 60 days/90 days is not barred. The prosecution can very well file a chargesheet after 60 days/90 days but without filing a charge sheet they cannot detain an accused beyond a said period when the accused prays to the court to set him at liberty due to non-filing of the charge sheet within the period prescribed. The right of prosecution to carry on investigation and submit a chargesheet is not akin to right of liberty of a person enshrined under Article 21 and reflected in other statutes including Section 167 Cr.P.C. The Apex Court has concluded that

"We thus, are of the view that neither this Court in its order dated 23.3.2020 can be held to have eclipsed the time prescribed under Section 167(2) of Cr.P.C. nor the restriction which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-submission of charge sheet within the time prescribed."

26. It is thus well settled that the extension of limitation vide order in Suo Moto WP (Civil) No.3 of 2020 has no application to period contemplated in section 167 Cr.P.C. It is pertinent to note that the impugned order dated 11/5/2020 was passed in the absence of the applicant without informing her the grounds of extension. In the bail application filed on the very next date, the applicant had raised the issue of applicability of order in suo moto Writ Petition No.3 of 2020 to the period contemplated in Section 167 of Cr.P.C. The learned Judge has brushed aside this issue by observing that the predecessor judge has impliedly extended the period of investigation. Suffice it to say that the law does not recognize implied extension of time envisaged under sub section (4) of Section 36A of the NDPS Act. Moreover, personal liberty guaranteed by the Constitution of India is too precious a right to be tinkered with or defeated by implied extension of time for investigation.

27. It is pertinent to note that Section 167 Cr.P.C. vests powers in the court to detain a person accused of offences for a maximum period of 90 or 60 days as specified therein. Section 167 does not authorize extension of the period of detention beyond the specified period. Whereas, in respect of offences referred to in Section 36A, the

maximum period of detention is 180 days, with further powers to extend such period upto one year. This procedural safeguard of stipulating the maximum period of detention is to protect the accused from indefinite incarceration and to have the investigation completed with utmost promptitude. However, taking note of the fact that certain categories of offences require more time for investigation, the legislature has made provision for extension of time in certain special statutes. The object of conferment of such power is to strike a balance between the rights of the accused and the societal interest.

28. The NDPS Act is a special enactment, enacted to curb the wide spread menace of clandestine smuggling and illegal trafficking of narcotic drugs and psychotropic substance. Proviso to sub section (4) of Section 36-A NDPS Act, is one of such specific provisions, which enables the Court to extend the period of detention for a further period up to one year. Undisputedly, such extension, which tends to curtail personal liberty, cannot be mechanical but has to be with due application of mind and on being satisfied about the progress of the investigation and the reasons for detention as spelt out in the report of the prosecutor justifying such extension. The learned Judge has therefore grossly erred in holding that the time to complete the

investigation has been extended by the order of the Supreme Court or that the same was impliedly extended by the predecessor Judge.

29. The Id. APP concedes that the order of the Apex Court in Suo Moto Application NO.3 of 2020 has no application in the matter of extension of time to complete the investigation. The learned APP also concedes that there cannot be implied extension of the time to complete the investigation. He submits that the matter be remitted to the Special Court for a proper decision on the report.

30. Undoubtedly, remitting the matter is one of the options available. However, considering the factual matrix and with a view to obviate further delay in the matter involving the issue of personal liberty, the parties were heard on the merits of the report for extension of time, which reads thus:

"BEFORE THE HON'BLE SPECIAL JUDGE, NDPS, PUNE AT PUNE
Customs C.R.No.14/2019
Inspector of Customs (Prev.) ..Complainant
V/s.
Nayantara Gupta
..Accused.

2. *Based on the information received Narcotics Customs Pune, the complainant most respectfully submits before the Hon'ble Court as under:*
Narcotics Cell Customs Pune, conducted search operation on 12th

November, 2019, at the Clover high land, NIBM Road, (near Dorabji Stores) Pune.

3. During the search at the Clover high Land NIBM Road (Near Dorabji Stores, Pune). Accused was selling drugs from mentioned premises and recovered 54 grams of offwhite coloured powder purported to be Mephedrone (MD) valued at Rs,3,24,000/- was seized and 416 numbers of stamp shaped papers, purported to be "LSD", valued at Rs.20,80,000/- total valued at Rs.24,04,000/- was seized under panchanama dated 12.11.2019 from the place of selling drugs Clover high land, NIBM Road, (near Dorabji Stores) Pune.

4. The due date for filing the complaint in the present case is 10.05.2020. However, the investigation in the present case is incomplete as on today for the reasons as below.

i) Chemical Analysis report of the purported Narcotic substance seized in the case is awaited fromm CSFL Hyderabad for the reasons that they are not functioning due to lock down orders all over the country because of COVID 19 virus.

ii) The interrogation and recording of statement of persons alleged to have abetted the accused no.2 is still pending as the persons could not be summoned due to lock down orders all over the country because of COVID 19 virus.

iii) Obtaining of call detail report and related investigation is incomplete till date due to lock down orders all over the country because of COVID 19 virus.

iv) Attention is also invited to an order issued Suo Moto WP (Civil) No.3 of 2020 by Hon'ble Supreme Court dt. 23.03.2020 allowing extension to period of limitation in all such matters under general law of limitation w.e.f. 23.03.2020 till further orders to be passed by Hon'ble Supreme Court.

5. It is humbly submitted that the last date of filing complaint is 10.5.2020. In view of the points discussed above and Hon'ble Supreme Courts order referred to, the provisions of Section 36(4) of NDPS Act, 1985 are applicable in the present case for extension for filing the complaint in the present case.

6. It is therefore prayed that

(a) The extension for admissible time period for filing the complaint may please be granted to the complainant.

(b) Any other just and equitable order may be passed in the interest of justice.

06.05.2020

Sd/-
A.G.Sakpal. SPP.

Sd/-

Inspector of Customs, Pune.

8.5.2020

31. The Application dated 06.05.2020, purported to be the report under the proviso to sub-section (4) of Section 36 A is signed by the complainant/Investigating Officer. The said application was submitted to the Court by the learned APP on 08.05.2020 by merely appending his signature at the bottom of the page, without even making an endorsement that he had perused the grounds and that he was satisfied about the progress of the investigation and the reasons set out for extension of time to complete the investigation. The decision in **Surendra Pundalik Gadling**(supra)is not applicable to the facts of the case as in the present case the application does not even remotely reflect independent application of mind by the public prosecutor. The application dated 6.5.2020 is nothing but a transmission of the request of an Investigating Officer for extension of time. Such request, which is submitted without being satisfied of the progress of the investigation and the reasons of detention, cannot be construed as a report of the public prosecutor as envisaged by proviso to Sub-section (4) of Section 36(A) of the NDPS Act.

32. It is also pertinent to note that the reasons stated in the application for extension of time are that the persons involved in

abetting the accused no.2 could not be summoned and their statements could not be recorded, Chemical Analysis Report and Call Details Report could not be obtained and related investigation could not be completed due to lock down declared in the country in view of Covid 19 pandemic. Thus, the main reason for seeking extension is inability to complete the investigation due to lockdown declared because of Covid 19 pandemic.

33. The application/report dated 6.5.2020 only gives the details of investigation carried out on 12.11.2019 viz. the arrest of the applicant and the seizure of the contraband substances allegedly recovered from the applicant. The report does not disclose the progress of investigation, which is one of the requirements of report for extension, under proviso to sub section (4) of Section 36A of NDPS Act. It is also pertinent to note that the Applicant was arrested on 12.11.2019, whereas the lockdown was declared on 23.03.2020. The application/report does not disclose the progress of the investigation conducted during this four and half months period i.e. from the date of the arrest till the date of the lock down. The report does not reflect steps taken for recording the statements of the witnesses and calling for the CDR and Chemical Analysis report during this period of four and

half months. Under the circumstances, the reasons stated in the application cannot be considered as genuine. There are no justifiable reasons for extending the time for completing the investigation. Suffice it to say that the prayer for extension of time, which directly affects the liberty of the applicant, cannot be granted on the basis of an application/report which is not in conformity with the requirements of proviso to sub section (4) of Section 36A of the NDPS Act. As a necessary corollary thereof, the applicant is entitled for bail under Section 167(2) of Cr.P.C.

34. It is pertinent to observe here that with grant of bail, liberty of the applicant-accused stands protected but with casual approach of the investigating officer and the public prosecutor in discharging their statutory duties, the societal interest stands dented. It is not for the court to conjecturise the reasons or causes for such lackadaisical investigation or mechanical approach of the public prosecutor. Suffice it to say that such lapses tend to render the stringent provisions of bail nugatory and thereby deflect the criminal justice system. It is therefore necessary that the concerned authorities look into the above noted serious lapses, fix accountability, and take corrective measures in the matter.

35. For the reasons stated above, the impugned order dated cannot be sustained. Hence, the following order :-

- (a)The application is allowed.
- (b)The impugned orders dated 11/5/2020 and 15/5/2020 passed by the learned Special judge, Pune are set-aside.
- (c) The Applicant, arrested in C.R.No.14/2019 registered with Anti Narcotic Cell, Customs Pune, is directed to be released from jail on executing PR bond in the sum of Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties in the like amount.
- (d)The Applicant shall deposit the passport, if any, with the Investigating Officer within a week from the date of his release.
- (e)The Applicant shall not leave the State without prior permission of the Court.
- (f) The Applicant shall furnish her permanent residential address and contact details to the Investigating Officer within seven days from her release.
- (g)The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any other person in any manner.

36. Learned APP to forward copy of this judgment to the Commissioner of Customs, Pune, Narcotic Cell.

37. Application stands disposed of in the above terms.

(SMT. ANUJA PRABHUDESSAI, J.)