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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 5481 OF 2024

Bhimaji Parshuram Sabale	.. Applicant
Versus	
Union of India & Anr.	.. Respondents

WITH
BAIL APPLICATION NO. 3233 OF 2025

Shoyeb Saeed Shaikh	.. Applicant
Versus	
Union of India & Anr.	.. Respondents

WITH
BAIL APPLICATION NO. 3256 OF 2025

Ayub Akbarsha Makandar	.. Applicant
Versus	
Union of India & Anr.	.. Respondents

WITH
BAIL APPLICATION NO. 3384 OF 2025

Cynthia @ Favour Ugababang Onyekpe	.. Applicant
Versus	
Union of India & Anr.	.. Respondents

WITH
BAIL APPLICATION NO. 4531 OF 2025

Ankita Narayanchandrda Das	.. Applicant
Versus	
Union of India & Anr.	.. Respondents

WITH
BAIL APPLICATION NO. 1724 OF 2026

Sandeep Hanuman Singh Yadav	.. Applicant
Versus	
Union of India & Anr.	.. Respondents

WITH
BAIL APPLICATION NO. 1746 OF 2026

Devender Ramphool Yadav

.. Applicant

Versus

Union of India & Anr.

.. Respondents

WITH
BAIL APPLICATION NO. 2855 OF 2026

Haider Noor Shaikh

.. Applicant

Versus

Union of India & Anr.

.. Respondents

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- Mr. Tabish Mooman i/b. Mr. Raghav Srivatsa, S.N. Khan, Advocates i/by S N Khan for Applicant in Bail Application No. 3256/2025
- Mr. Nadeem Khan, Advocate i/by S N Khan for Applicant in Bail Application Nos.3233 of 2025 & 3384/2025;
- Mr. Taraq Sayed a/w Mr. Anish Pereira, Ms. Ashwini Achari, Mr. Aryan Kotwal & Mr. Devashish Dhanjode, Advocates for Applicants in Bail Application No. 5481 of 2024;
- Mr. Atul R Patil a/w Tanmay T. Jadhav, Advocates for Applicants in Bail Application Nos. 1724 of 2026 and 1746 of 2026;
- Ms. Sana Raees Khan a/w Mr. Dev Bhosale, Advocates for Applicants in Bail Application Nos. 4531 of 2025 and 2855 of 2026
- Mr. S. K. Halwasia a/w. Ms. S. S. Halwasia, Advocate for Respondents - NCB in Bail Application Nos. 3233 of 2025, 3384 of 2025, 5481 of 2024, 1724 of 2026, 1746 of 2026 & 3256 of 2025
- Mr. Sukanta Karmakar, APP for Respondent No.1 – State.

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 05, 2026.

P.C.:

1. Heard Mr. Mooman, learned Advocate for Applicant in Bail Application Nos. 3256 of 2025; Mr. Khan, learned Advocate for Applicant in Bail Application Nos.3233 of 2025 and 3384 of 2025; Mr. Sayed learned Advocate for Applicant in Bail Application No. 5481 of

2024; Mr. Patil learned Advocates for Applicants in Bail Application Nos. 1724 of 2026 and 1746 of 2026; Ms. Khan learned Advocate for Applicants in BA Nos. 4531 of 2025 and 2855 of 2026; Mr. Halwasia learned Advocate for Respondents - NCB in Bail Application Nos. 3233 of 2025, 3384 of 2025, 5481 of 2024, 1724 of 2026, 1746 of 2026 & 3256 of 2025 and Mr. Karmakar, learned APP for Respondent No.1 – State.

2. This is a group of 8 Bail Applications. All 8 Bail Applications are heard and disposed of by this common order.

2.1. Bail Application No.5481 of 2024 is filed by Applicant – Bhimaji Parushuram Sabale under Section 187(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “**BNSS**”) seeking enlargement on default bail in connection with First Information Report being C.R. No.NCB/MZU/CR-11 of 2024 (earlier N.D.P.S. C.R. No.38 of 2024 Samarth Police Station).

2.2. Bail Application No.3233 of 2025 is filed by Applicant - Shoyeb Saeed Shaikh under Section 167(2) of Code of Criminal Procedure, 1973 (for short “**Cr.C.P.**”) seeking enlargement on default bail in connection with First Information Report being C.R. No. NCB/MZU/CR-11 of 2024 (earlier N.D.P.S. C.R. No.38 of 2024 Samarth Police Station).

2.3. Bail Application No.3256 of 2025 is filed by Applicant – Ayub Akbarsha Makandar under Section 167(2) of Code of Criminal Procedure, 1973 seeking enlargement on default bail in connection with First Information Report being C.R. No. NCB/MZU/CR-11 of 2024 (earlier N.D.P.S. C.R. No.38 of 2024 Samarth Police Station).

2.4. Bail Application No.3384 of 2025 is filed by Applicant – Cynthia alias Favor alias Favour Ugababang Onyekpe under Section 167(2) of Code of Criminal Procedure, 1973 seeking enlargement on default bail in connection with First Information Report being C.R. No.NCB/MZU/CR-11 of 2024 (earlier N.D.P.S. C.R. No.38 of 2024 Samarth Police Station).

2.5. Bail Application No.4531 of 2025 is filed by Applicant – Ankita Narayanchandra Das under Section 187(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking enlargement on default bail in connection with First Information Report being C.R. No.NCB/MZU/CR-11 of 2024 (earlier N.D.P.S. C.R. No.38 of 2024 Samarth Police Station).

2.6. Bail Application No. 1724 of 2026 is filed by Applicant – Sandeep Hanuman Yadav under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking enlargement on bail in connection with First Information Report being C.R. No. 38 of 2024 registered with Samarth Police Station, Pune for the offences punishable under

Section 22(a), 29 and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2.7. Bail Application No.1746 of 2026 is filed by Applicant – Devendra Ramphool Yadav under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking enlargement on bail in connection with First Information Report being C.R. No. 38 of 2024 registered with Samarth Police Station, Pune for the offences punishable under Section 22(a), 29 and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2.8. Bail Application No.4531 of 2025 is filed by Applicant – Haider Noor Shaikh seeking enlargement on bail in connection with First Information Report being C.R. No.NCB/MZU/CR-11 of 2024 (earlier N.D.P.S. C.R. No.38 of 2024 Samarth Police Station).

3. Briefly stated, on 19.02.2024 a police team led Police Inspector Ramesh Tapkir and Police Inspector Shabbir Sayyed of Unit – I Crime Branch, Pune were patrolling in Somwar Peth when a white Ertiga car bearing Registration No. MH-12-UJ-4081 was spotted near Mhasoba Temple, Somwar Peth. Panch witnesses were summoned and two individuals named Vaibhav alias Pintya Mane (Accused No.1) and Ajay Karosiya (Accused No.2) were apprehended along with a bag containing contraband viz; 500 grams of Mephedrone (MD) in their possession and they were arrested. Thereafter based on the statement

of Accused No.1, Police arrested one Haider Noor Shaikh (Accused No.3) at Vishrantwadi, Pune and recovered further 500 grams of MD on him and 750 grams of MD from a tin shed near Wadarwadi at his instance. All three persons were arrested and FIR No.38 of 2024 was registered against them at Samarth Police Station under Section 8(c), 22(c) and 29 of NDPS Act. On interrogation of Accused No.3, he disclosed existence of another of another godown and upon raiding the same, Police recovered 53 zip locked bags containing totally 52.520 kilograms of MD. On the same date i.e. 19.02.2024, Police recorded statements of two tempo drivers being Prahalad Shelke and Sitaram Lokhande who had allegedly transported the above contraband between Kurkumbh MIDC, Dhanori, Sangli and Delhi. Sitaram Lokhande stated that he was offered Rs.60,000/- to transport chemical filled drums from Pune to Delhi and one Shoaib Shaikh (Accused No.13) accompanied him in the tempo and guided the him to Delhi.

3.1. On 20.02.2024, acting on the information given by Accused No.3, Police Officers visited one Earthchem Laboratories situated in Kurkumbh MIDC and recovered 663.8 kilograms of MD and arrested one Bhimaji Sable (Accused No.3) as well as one Yuvraj Bhujbal (Accused No.5). Subsequently, the police team visited New Delhi for further investigation where they conducted raid on House No.1881, Kotla Mubarkpur, Delhi where they arrested Divesh Bhutani (Accused

No.8) and Sandeep Rajpal Kumar (Accused No.7) and recovered 319 kilograms of MD. On the same day, Police also conducted search of House No.323 at Masjid Moth, South Extension Part 2, New Delhi where Sitaram Lokhande had delivered certain drums of chemicals and they recovered a further 651 kilograms MD. Subsequently, Accused No.8 confessed to the police that he merely loaded the drums containing MD onto the tempo which he received from one Sandeep Yadav (Accused No.9) who was arrested on 21.02.2024 along with his office boy Devendra Ramphool Yadav (Accused No.10).

3.2. On 21.02.2024, Accused No.3 recorded another statement stating that he had stored MD at a godown belonging to Ayub Makandar (Accused No.6). The Police raided this godown situated at Balkrishna Nagar, Sangli and recovered 148.748 kilograms of MD. During the course of investigation, certain other accused persons being Sunil Barman, Mohammed Kureshi, Shoaib Shaikh, Cynthia, Ankita Das and Nishant Modi were arrested. Later Respondent No.2 Narcotics Control Bureau took over the investigation from the Police Authorities and arraigned 20 persons as accused in the crime. 1837 kilograms 84 grams and 120 milligrams of contraband narcotic substance viz; MD was recovered by the Investigation Officers in the entire operation. Bail Applications of all Applicants filed before Trial Court were rejected, hence present Applications are filed before this Court.

3.3. Mr. Sayed has argued for Applicant in Bail Application No.5481 of 2024. The other Advocates for Applicants have all adopted his submissions. Mr. Halwasia has represented the Union of India in all 8 Bail Applications. The following table gives the details of arrest and filing of chargesheet by the prosecution *qua* each Applicant for ease of convenience to decide the present Application for grant of bail:-

Sr. No.	Bail Application	Date of Arrest	Date of end of 180 days period as per Section 36(4) of NDPS.	Date of Filing of Chargesheet	Delay argued
1.	5481 of 2024	20.02.2024	19.08.2024	05.02.2025N CBComplaint	170 days
2.	3233 of 2025	22.03.2024	21.09.2024	05.02.2025N CB Complaint	137 days
3.	3256 of 2025	22.02.2024	21.08.2024	05.02.2025N CB Complaint	168 days
4.	3384 of 2025	03.04.2024	02.10.2024	05.02.2025N CB Complaint	126 days
5.	4531 of 2025	12.08.2024	11.02.2025	05.02.2025N CB Complaint	5 days
6.	1724 of 2026	21.02.2024	20.08.2024	05.02.2025N CB Complaint	175 days
7.	1746 of 2026	21.02.2024	20.08.2024	05.02.2025N CB Complaint	175 days
8.	2855 of 2026	19.02.2024	18.02.2024	05.02.2025N CB Complaint	13 days

4. Mr. Sayed, learned Advocate for Applicant would submit that Intelligence Officers from Narcotics Control Bureau, Mumbai Zone filed FIR No. NCB/MZU/CR-11/2024 arising out of F.I.R. bearing No. 38 of

2024 dated 19.02.2024 registered with Samarth Police Station, Pune and subsequently Complaint bearing Special Case No. 227 of 2025 was filed on 05.02.2025 before 13th Additional Sessions Judge Pune. He would submit that present Application is filed under Section 187 (3) of the BNSS read with Section 36-A (4) of the NDPS Act, 1985 seeking grant of default bail. He would submit that on 20.02.2024 Police Officers of Samarth Police Station arrested present Applicant and on 21.02.2024 he was produced before the Magistrate for the first time and was remanded to police Custody. He would submit that on 04.03.2024, Applicant was remanded to judicial custody. He would submit that on 20.05.2024 Director General, Narcotics Control Bureau directed the Joint Secretary, Government of Maharashtra to transfer investigation of the instant matter to the Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai. He would submit that on 09.06.2024 Narcotics Control Bureau took over the investigation in the instant matter and on 29.07.2024 Intelligence Officers of the Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai filed Application under Section 36-A (4) of the NDPS Act before Sessions Court, Pune praying for extension of six months after completion of 180 days for investigation.

4.1. He would submit that on 31.07.2024 a Letter was addressed by Additional Sessions Judge, Pune to the Jail Superintendent, Yerawada Central Prison, Pune directing him to inform the accused persons of the said application filed by the Intelligence Officer and give

them a copy of the same so as to enable them to file their reply on the next date before Additional Sessions Judge, Pune. The accused person refused to accept copy of the said application filed by the Intelligence Officer and on 13.08.2024 Special Counsel Central Government filed his report before the Sessions Court, Pune. He would submit that on 14.08.2024 Additional Sessions Judge, Pune allowed the application moved by the Intelligence Officer and granted extension of 180 days for investigation from the date of expiry of the initial 180 days and on 17.08.2024 statutory period of 180 days for investigation from date of first remand lapsed. On 18.08.2024 Applicants right to default bail accrued and on 31.12.2024 Applicant filed present Application seeking default bail before Special Court which was rejected. On 05.02.2025 Special Case No.227 of 2025 was filed before Sessions Court, Pune.

4.2. He would submit that it is well settled position of law that if the law contemplates for any act to be done according to the procedure established by law then it must be done so. He would submit that such principle finds its genesis in a decision of the Privy Council in the case of *Nazir Ahmad Vs. King-Emperor*¹ in which the Privy Council held that *“The rule which applies is a different and not less well recognised rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”*

¹ (1936) 38 BOM LR 987

4.3. He would submit that for offences under the NDPS Act, 1985, Section 36-A (4) contemplates requirement under the statute for circumstances wherein it is not possible to complete the investigation within the requisite number of days and bare perusal of the aforementioned provision would show that for the purpose of seeking an extension of time for filing a chargesheet/complaint it is a mandatory requirement of law that the same shall be done only upon receiving the report of the Public Prosecutor in the present case indicating the progress of the investigation and the specific reasons for the detention of the accused persons beyond the said period of 180 days. He would submit that report of the Public Prosecutor was filed before the Ld. Sessions Court, Pune only on the 13.08.2024. He would submit that that there is nothing on record to show that the Applicant nor the other accused persons were produced before the Ld. Sessions Court, Pune on 13.08.2024 and informed of the report filed by the Public Prosecutor.

4.4. He would submit that Sessions Court, Pune allowed application of the Intelligence Officer on the 14.08.2024 i.e. on the 177th day and there was no hurry to dispose of the matter as there were yet few days remaining for the period of 180 days to lapse.

4.5. He would submit that the Intelligence Officer of the Narcotics Control Bureau Mumbai Zonal Unit, Mumbai filed

application seeking extension for a period of 6 months on the expiry of the initial 6 months so as to investigate into the matter on the 29.07.2024 i.e. 161st day and Sessions Court, Pune passed an order allowing the said application on the 14.08.2024 i.e. on the 178th day. He would submit that on bare perusal of the aforementioned timeline, it is evident to that the necessary formalities required in respect of Section 36-A (4) of the NDPS Act, 1985 were alleged to have been completed much prior to the completion of 180 days. Hence, it is evident that no right had accrued to the applicant at the said time and at best it was an incoherent right until 17.08.2024.

4.6. He would refer to a decision of the Supreme Court in the case of *Jigar alias Jimmy Pravinchandra Adatiya Vs. State of Gujarat*² to contend that that failure to procure the presence of the accused either physically or virtually before the court and the failure to inform him that the application made by the Public Prosecutor for extension of time is not a mere procedural irregularity, in fact it is a gross illegality which violates the rights of the Accused persons, under Article 21. He would refer to and rely upon a decision of the Kerala High Court in the case of *Sabarinath Vs. State of Kerala*³ to contend that in similar facts and circumstances, the Court granted relief as contemplated under Section 167 (2) of Cr.P.C, 1973 and upheld sanctity of the law laid down in the case of *Jigar alias Jimmy Pravinchandra Adatiya (supra)*.

2 (2023) 6 SCC 484

3 2023 SCC OnLine 3666

He would submit that the law laid down in the aforesaid decisions apply squarely to the case of Applicant as he was neither produced before the Sessions Court, Pune on 13.08.2024 nor was he ever informed about the report of the Public Prosecutor, hence the relief sought under Section 187 (3) of the BNSS ought to be granted. He would submit that the decisions of the Supreme Court in the cases of *Hitendra Vishnu Thakur Vs. State of Maharashtra & Ors.*⁴ and *Sanjay Dutt Vs. State through CBI, Bombay (II)*⁵ have well established the procedure as contemplated under section 167 (2) of the CrPC 1973. He would submit that Supreme Court in the decision of *Rakesh Kumar Paul Vs. State of Assam*⁶ held that Accused persons need not necessarily make any application under section 167 (2) in writing but can also transmit the same orally as the said right is embodied with the statute itself and it is the incumbent duty of the Magistrate to inform the Accused persons of their right to default bail.

4.7. He would submit that deprivation of default bail as contemplated under Section 167 (2) of the CrPC, 1973 and now Section 187(3) of BNSS would amount to a gross violation of Article 21 of the Constitution of India, 1950 as it would severely affect the right to life and personal liberty of an individual. He would submit that the Supreme Court and this Court have repeatedly emphasised on the

4 (1994) 4 SCC 602

5 (1994) 5 SCC 410

6 (2017) 15 SCC 67

importance of Article 21 of the Constitution of India, 1950 and that Section 167 (2) flows through it. He would submit that when an accused is deprived of his right to default bail it is incumbent upon a Constitutional Court to examine the said matter as the accused raises an objection to the deprivation of his fundamental right as guaranteed under Article 21 of the Constitution of India, 1950. He would submit that in the present case, there is gross violation of the fundamental right guaranteed to the Applicant under Article 21 of the Constitution of India, 1950 as the investigating agency has turned an absolute blind eye to the law laid down by the Supreme Court which has resulted in deprivation of the accused person's right under Article 21 of the Constitution of India read with section 187 (3) of the B.N.S.S., 2023.

4.8. He would submit that the Supreme Court in the case of *Sundeeep Kumar Bafna Vs. State of Maharashtra*⁷ held that the Sessions Court as well as the High Court have concurrent powers for grant of bail. He would submit that legislature has conferred powers to grant bail on the High Court as well as the Sessions Court for grant of bail and that there is no exclusion of jurisdiction that bail applications are to be filed before the Sessions Court first and then before the High Court. He would submit that the same is clearly concurrent and that a citizen has the right to choose which Court to approach and therefore bail application cannot be rejected merely on the ground that the

7 (2014) 16 SCC 623

accused has directly approached the High Court and failed to approach the Sessions Court. at first instance. He would submit that Applicant is therefore entitled to grant of default bail in light of the aforementioned submissions. Mr. Mooman, Mr. Patil and Ms. Khan appearing for the Applicants in companion matter would adopt the submission of Mr. Sayed, which for the sake of brevity are not reiterated hereinunder.

5. Ms. Khan, learned Advocate for Applicant in Bail Application No.4531 of 2025 would in addition thereto *qua* the Applicant herein would submit that no contraband was recovered from the person of Applicant during search conducted by the Investigation Officers. She would submit that it is prosecution's case that her client was engaged in prostitution and she came in contact with Accused No.17 who induced her to sign as Director in a pharmaceutical company. She would submit that Applicant accepted the offer however unintentionally she was wrapped up in transfer of money through the angadiya system and she had absolutely no knowledge of the same neither is there any evidence or material appended by the prosecution on record to prove her complicity in the offences charged under NDPS Act. She would submit that her client was not arrested after her first statement under Section 67 was recorded on 21.02.2024 and she was arrested only on 11.08.2024. She would submit that charge of Section 29 of NDPS Act cannot be levied against this Applicant since there is no evidence to show any theory of conspiracy between the other

accused and her. She would refer to and rely upon the decision of the Supreme Court in the case of *Ankur Chaudhary Vs. State of Madhya Pradesh*⁸ to contend that prolonged imprisonment arising from delay in trial violated accused person's right to life and liberty under Article 21 of the Constitution of India. She would urge the Court to enlarge Applicant on bail in light of the aforementioned submissions also.

6. Mr. Halwasia, learned Advocate appearing for NCB has drawn my attention to the Affidavit-in-Reply dated 10.03.2026 filed by Mr. Palve Santram Murlidhar, Investigating Officer on behalf of NCB and would submit that the present bail applications seeking statutory/default bail are not maintainable in view of the fact that the charge-sheet has already been filed. He would submit that specific role of every accused is stated in detail in the chargesheet. He would submit that the indefeasible right to default bail under Section 167(2) of the Cr.P.C. is available only when the statutory period has expired and the accused has availed of such right before the filing of the charge-sheet. He would submit that once the charge-sheet is filed the custody of accused is governed by the provisions applicable after filing of the charge-sheet and the question of bail is required to be considered on merits. In support of his submissions he has referred to and relied upon the decision of the Supreme Court in the case of (i) *Sanjay Dutt Vs. The State through C.B.I. Bombay*⁹ ; (ii) *State of*

⁸ Special Leave to Appeal (Crl.) No. 4648 of 2024
⁹ 1994 AIR SCW 3857

*Uttarakhand Vs. Javed Siddiqui and Anr.*¹⁰; (iii) *Shaurya Sunil Kumar Singh Vs. Central Bureau of Investigation*¹¹ ; and (iv) *Central Bureau of Investigation Vs. Kapil Wadhawan and Anr.*¹²

6.1. He would submit that in the present case the application seeking extension of time for completion of investigation was filed before expiry of the initial statutory period of 180 days. He would submit that by order dated 14.08.2024, Trial Court allowed the said application and granted extension of time for filing the charge-sheet. He would submit that the charge-sheet was thereafter filed within the period of extension granted by the Trial Court. He would submit that the accused persons did not challenge the order granting extension of time and the said order continued to remain operative. In support of his submissions he has referred to and relied upon the decision of the Supreme Court in the case of *Rambeer Shokeen Vs. State of NCT of Delhi*¹³ and would submit that unless the prayer for extension of time made by the prosecution is rejected, no indefeasible right to statutory bail can accrue in favour of the accused.

6.2. He would submit that the order granting extension of time under Section 36A of the NDPS Act read with Section 167 of the Cr.P.C. was never challenged by the accused and consequently remained in force. He would submit that when the application for

¹⁰ 2026 SCC 503

¹¹ 2026 SCC 738

¹² 2024 SCC 72

¹³ (2018) 4 SCC 405

default bail was considered by the Court below there was already a valid order extending the period for completion of investigation. He would submit that the charge-sheet was filed within the extended period and therefore no right to default bail survived in favour of the accused persons. In support of his submissions, he has placed reliance on the decision of the Supreme Court in the case of *Qamar Ghani Usmani Vs. State of Gujarat*¹⁴ and submit that where an order granting extension of time is in existence and the charge-sheet is filed within the extended period, the accused cannot claim statutory bail merely on the ground of expiry of the original period.

6.3. He would submit that the present proceedings cannot be permitted to be converted into a collateral challenge to the order granting extension of time. He would submit that an application under Section 439 of the Cr.P.C. or Section 483 of the BNSS cannot be treated as a revision application under Sections 397 and 401 of the Cr.P.C. or the corresponding provisions of the BNSS. He would submit that the accused persons had an opportunity to challenge the order granting extension of time in accordance with law but no such challenge was preferred within the prescribed period. He would therefore submit that the validity of the extension order cannot now be indirectly questioned in the present bail proceedings.

¹⁴ Criminal Appeal Nos.1045-1046/2023; SLP(Cr.) Nos. 011196 -011197/2022 decided on 23.09.2022

6.4. He would submit that the order granting extension of time was passed after due consideration of the material placed before the Trial Court. He would submit that the report of the APP was considered by the Trial Court and the accused persons were given an opportunity to place their say. He would submit that Accused Nos. 1 and 2 had in fact filed their say and were represented through Advocates. He would submit that the record would further demonstrate that as many as seven groups of Advocates appeared on behalf of the accused persons before the Trial Court as recorded in paragraph No.10 of the order dated 14.08.2024. He would submit that notices were issued to all the accused persons by the Sessions Court and despite such opportunity the Senior Jailor of Yerawada Central Prison informed the Trial Court that fourteen (14) accused had refused to give their say.

6.5. He would submit that the magnitude and gravity of the alleged offence also cannot be lost sight of while considering the present applications. He would submit that the prosecution case concerns recovery of high quantity of MD which according to the prosecution has an extremely high commercial value. He would submit that the quantity involved is enormous and the alleged offence has serious ramifications for society. He would submit that the Supreme Court in the case of *Harpreet Singh Talwar Vs. State of Gujarat*¹⁵ has

¹⁵ 2025 SCC 895

emphasised that the magnitude of the crime and its impact upon society are relevant considerations while dealing with offences involving commercial quantities of narcotic substances. He would therefore submit that the nature and magnitude of the alleged offence as well as the statutory scheme under the NDPS Act are relevant circumstances which ought to be considered while deciding the prayer for bail on merits.

7. I have heard Mr. Mooman, learned Advocate for Applicant in Bail Application No.3256 of 2025; Mr. Khan, learned Advocate for Applicant in Bail Application Nos.3233 of 2025 and 3384 of 2025; Mr. Sayed, learned Advocate for Applicant in Bail Application No.5481 of 2024; Mr. Patil, learned Advocates for Applicants in Bail Application Nos.1724 of 2026 and 1746 of 2026; Ms. Khan, learned Advocate for Applicants in BA Nos. 4531 of 2025 and 2855 of 2026; Mr. Halwasia, learned Advocate for Respondents - NCB in Bail Application Nos.3233 of 2025, 3384 of 2025, 5481 of 2024, 1724 of 2026, 1746 of 2026 & 3256 of 2025 and Mr. Karmakar, learned APP for Respondent No.1 – State.

8. At the outset, it is seen that the principal contention advanced on behalf of the Applicants is with regard to the extension of the period of investigation granted by the Trial Court by order dated 14.08.2024 which cannot enure to the benefit of the prosecution since

the mandatory procedure contemplated under Section 36-A(4) of NDPS Act read with Section 187(3) of the BNSS 2023 has not been followed. Mr. Sayed would submit that although the Application seeking extension of the period of investigation was filed by the Investigating Officer on 29.07.2024 and the report of the SPP was tendered on 13.08.2024 there is nothing on record to demonstrate that Applicants were produced either physically or through Video Conferencing before the Trial Court when the Application for extension was considered. It is further submitted that there is no material to establish that Applicants were informed of the report submitted by the prosecution or that they were kept present before the Court when the extension was granted. He would therefore submit that the order dated 14.08.2024 cannot have the effect of extending the statutory period and upon expiry of the initial period of 180 days the Applicants acquired an indefeasible right to statutory/default bail under Section 187(3) of the BNSS read with Section 36-A(4) of the NDPS Act.

9. In that view of the matter, I am of the opinion that in order to appreciate the aforesaid submission it would be necessary to reproduce the relevant statutory provisions. Section 36-A(4) of the NDPS Act reads as under:

“36A. Offences triable by Special Courts.—

(1) xxxxxx

(2) xxxxxx

(3) xxxxxx

(4) *In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A 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 the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.*

(5) xxxxxx”

10. Section 187(3) of the BNSS which corresponds to Section 167(2) of the Cr.P.C and Section 187 (4) of BNSS are reproduced as under:

“187. Procedure when investigation cannot be completed in twenty-four hours.

(1) xxxxxx

(2) xxxxxx

(3) *The Magistrate may authorise the detention of the accused person, 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 sub-section for a total period exceeding—*

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;

(ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.

(4) *No Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in*

judicial custody on production of the accused either in person or through the audio-video electronic means.

(5) xxxxxx”

11. A plain reading of the aforesaid provisions makes it clear that the legislature has prescribed a period of 180 days for completion of investigation in cases falling within Section 36-A(4) of the NDPS Act. The further period of investigation beyond 180 days is not available to the prosecution as a matter of right. The Special Court is empowered to extend the said period only upon being satisfied on the basis of the report of the prosecution which must indicate the progress of the investigation and the specific reasons for detention of the accused beyond the period of 180 days. The order of extension therefore is not a mere administrative continuation of the original period. It is an order which directly affects the personal liberty of the accused and permits the prosecution to continue the investigation and detention of the accused beyond the period fixed by the legislature. The statutory requirements governing such extension must therefore be strictly complied with. In the present case the filing of the Application for extension before expiry of the initial period of 180 days is not by itself sufficient to answer the question which arises for consideration. What has to be examined is whether the extension granted on 14.08.2024 was a valid extension in the eye of law and whether the procedure prescribed by the statute and the law laid by the Supreme Court in various judgments was followed when the Trial Court

considered and allowed the said application.

12. The aforesaid issue has been considered by the Supreme Court in a series of decisions. At this stage it would be appropriate to first consider the decision of the Constitution Bench in the case of *Sanjay Dutt (supra)* which has also been relied upon by the NCB. The relevant paragraph No.53(2)(a) of the said decision is reproduced as hereunder:

‘53. xxxxxx

(1) xxxxxx

(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 [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087 : JT (1994) 4 SC 255] . 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.”

13. The aforesaid judgment makes a distinction between a written notice to the accused containing the reasons for seeking extension and the requirement of keeping the accused present before the Court. The Constitution Bench has held that a separate written notice setting out the reasons for extension is not necessary. However the same judgment recognises the requirement of production of the accused before the Court when the prayer for extension is considered.

Thus the submission that the accused is entitled in every case to a separate written notice containing the reasons for extension cannot be accepted. At the same time the absence of a requirement of written notice cannot be understood to mean that the presence of the accused before the Court is unnecessary. The distinction is material. The statutory safeguard is not founded upon a requirement of formal written notice alone but upon the accused being before the Court when an order is sought which would have the effect of continuing his detention beyond the period ordinarily prescribed by law.

14. The aforesaid principle was subsequently considered by the Supreme Court in *Jigar alias Jimmy Pravinchandra Adatiya (supra)*. It is seen that the Supreme Court considered the earlier judgments including *Hitendra Vishnu Thakur (supra)* and *Sanjay Dutt (supra)* and reiterated the significance of production of the accused at the stage when an Application for extension of the period of investigation is considered. The failure to produce the accused either physically or through Video Conferencing and the failure to inform him that the application made by the Public Prosecutor for extension of time is being considered was held to be more than a mere procedural irregularity. The principle emerging from the said judgment is that the procedure adopted while extending the period of investigation cannot be divorced from the right of the accused to personal liberty. Where the Court is called upon to permit the prosecution to continue the

investigation beyond the period prescribed by statute the safeguards recognised by the Supreme Court must necessarily be borne in mind.

15. The aforesaid principle has also been considered by the Kerala High Court in the case of *Sabarinath (supra)*. In the said case the Court considered the effect of non-production of the accused when extension of the period of investigation was sought and followed the principle laid down by the Supreme Court in the case of *Jigar alias Jimmy Pravinchandra Adatiya (supra)*. The decision is of persuasive value for the present case before me. It reinforces the principle that the production of the accused at the stage when the Court is called upon to extend the period of investigation cannot be reduced to an empty procedural formality. The consequence of an extension order is the continuation of custody beyond the period otherwise prescribed by law and therefore the safeguards surrounding such an order have to be viewed in that context.

16. It would now be necessary to consider the subsequent judgment of the Supreme Court in *Qamar Ghani Usmani (supra)* decided on 10.04.2023 upon which considerable reliance has been placed by the learned Special Public Prosecutor. It is significant that *Qamar Ghani Usmani (supra)* was decided after *Jigar alias Jimmy Pravinchandra Adatiya (supra)* and that the Supreme Court was therefore dealing with the very line of authorities which is relied upon

by the Applicants. The Supreme Court reconciled all the aforesaid judgments and held that the sum and substance of the law laid down in *Sanjay Dutt (supra)* and *Jigar alias Jimmy Pravinchandra Adatiya (supra)* is that while considering an application by the Investigating Agency for extension of the period of investigation beyond the period prescribed under Section 167(2) of the Cr.P.C. the accused is to be given notice and/or is to be kept present before the Court so that the accused has knowledge that the extension is sought and granted.

17. In my considered opinion it is necessary to clarify the effect of *Qamar Ghani Usmani (supra)* at this stage since considerable reliance has been placed upon the said judgment by the prosecution. The subsequent decision in *Qamar Ghani Usmani (supra)* cannot be construed as having overruled or diluted the principle laid down in *Jigar alias Jimmy Pravinchandra Adatiya (supra)*. On the contrary the Supreme Court expressly considered *Jigar alias Jimmy Pravinchandra Adatiya (supra)* along with *Sanjay Dutt (supra)* and the other judgments and reconciled the principles emerging from them. The Supreme Court reiterated that while an application for extension is being considered the accused is to be given notice and/or is to be kept present before the Court so that he has knowledge that the extension is sought and granted. Therefore *Qamar Ghani Usmani (supra)* does not lay down that production of the accused before the Court at the stage of consideration of the extension application is unnecessary. What the

judgment does is to examine whether in the peculiar facts of that case the initial failure to keep the accused present was sufficient by itself to entitle him to default bail.

18. The distinction becomes apparent from the facts considered by the Supreme Court in *Qamar Ghani Usmani (supra)*. In that case the accused was admittedly not kept present when the first extension was granted. However the accused was informed about the extension on the very next day. Despite such knowledge he did not challenge the extension. He thereafter remained present when the second extension was sought and granted and no objection was raised either to the first extension or to the subsequent extension. The default bail application was filed while the first extension was already in existence and the charge-sheet was subsequently filed within the extended period. It was in these peculiar circumstances the Supreme Court declined to grant statutory/default bail. Thus the refusal of relief in *Qamar Ghani Usmani (supra)* was not founded upon a proposition that the presence of the accused at the stage of extension is immaterial. It was founded upon the subsequent events and the conduct of the accused in that particular case.

19. The distinction between the present case and *Qamar Ghani Usmani (supra)* is therefore material. In the present case Applicants are challenging the validity of the extension itself on the ground that

they were not produced before the Trial Court when the application for extension and the report of the learned Public Prosecutor were considered. There is no material placed before this Court to demonstrate circumstances comparable to those in *Qamar Ghani Usmani (supra)* where the accused was informed immediately after the first extension and thereafter was present when a second extension was granted without raising any objection to the validity of the earlier order. There is also no material to show that the Applicants subsequently accepted or acquiesced in the extension in the manner noticed by the Supreme Court in *Qamar Ghani Usmani (supra)*. The decision therefore cannot be applied mechanically merely because in that case also the accused had not been kept present when the first extension was granted.

20. It would now be appropriate to consider the submissions advanced by Mr. Halwasia, learned Special Public Prosecutor appearing for the NCB. He would submit that the present Applications seeking statutory/default bail are not maintainable since the chargesheet / challan has already been filed on 05.02.2025. He would submit that the indefeasible right under Section 167(2) of the Cr.P.C. is available only when the statutory period has expired and the accused has availed of such right before filing of the chargesheet. According to him once the chargesheet is filed within the period of extension granted by the Court the custody of the accused is governed by the

provisions applicable after filing of the chargesheet and the question of bail has to be considered on merits. He would further submit that the application seeking extension was filed before expiry of the initial period of 180 days and the Trial Court by order dated 14.08.2024 granted extension for a further period of 180 days. He would submit that the said order was never challenged by Applicants and continued to remain operative. He has placed reliance on various judgements to contend that once an extension order is in existence and the chargesheet is filed within the extended period no indefeasible right to statutory bail survives.

21. The first question which arises for consideration is whether the filing of the complaint on 05.02.2025 has by itself extinguished the right claimed by the Applicants. In my considered opinion the submission of the prosecution proceeds on the assumption that the period between expiry of the initial statutory period and filing of the chargesheet stood validly extended by the order dated 14.08.2024. The validity of that extension is therefore fundamental to the determination of the present Applications. If the extension was validly granted then the subsequent filing of the chargesheet within the extended period would undoubtedly assume significance. However if the extension itself is found not to have been granted in accordance with the statutory scheme and the law laid down by the Supreme Court then the prosecution cannot rely upon such extension to defeat a right

which had accrued upon expiry of the valid statutory period.

22. With regard to the contention that the application for extension was filed before expiry of 180 days it is necessary to observe that the filing of an application before expiry of the statutory period does not by itself extend the period prescribed by law. The Court must consider the application and pass an order in accordance with the requirements of Section 36-A(4) of the NDPS Act. The prosecution therefore cannot contend that because the application was filed on 29.07.2024 the statutory period automatically stood extended from the date of its expiry. The order of extension is the act which is required to be tested in accordance with the statutory requirements. The mere pendency of an application does not by itself confer upon the prosecution an enlarged period of investigation.

23. In the present case, the application for extension was filed on 29.07.2024. The report of the learned Special Public Prosecutor was filed on 13.08.2024 and the Trial Court allowed the application on 14.08.2024. Applicants contend that there is nothing in the record to establish that they were produced before the Court on 13.08.2024 when the report of the learned Public Prosecutor was tendered or on 14.08.2024 when the extension was granted. The prosecution relies upon the communication addressed to the Jail Superintendent on 31.07.2024 and upon the fact that copies of the application were

sought to be furnished to the accused persons. However the question before the Court is not whether the Jail Superintendent was directed to inform the accused persons about the extension application. The question is whether the Applicants were actually produced before the Court when the application for extension was considered and the order extending their detention beyond the statutory period was passed.

24. It is seen from the material placed before this Court that the Trial Court on 31.07.2024 addressed a communication to the Jail Superintendent Yerawada Central Prison directing that the accused persons be informed about the application filed by the Investigating Officer and that copies of the same be furnished to them so as to enable them to file their reply. It is further seen that the accused persons allegedly refused to accept the copies. The report of the learned Special Public Prosecutor was thereafter filed on 13.08.2024 and the extension application was allowed on 14.08.2024. However with regard to the crucial requirement of production of the Applicants the order dated 14.08.2024 as presently placed before this Court does not record that Applicants were produced before the Trial Court either physically or through Video Conferencing when the extension application was considered. The fact that Advocates appeared for some accused persons or that certain accused persons submitted their say cannot by itself establish compliance with the requirement recognised in *Jigar alias Jimmy Pravinchandra Adatiya (supra)* along with *Sanjay*

Dutt (supra) and subsequently explained in *Qamar Ghani Usmani (supra)*.

25. The submission that certain accused persons refused to give their say also does not alter the position. The question is not merely whether an opportunity to submit a written say was offered to the accused. The requirement recognised by the Supreme Court is concerned with the presence of the accused when the Court considers the request to extend the period of investigation and thereby permits the continued detention of the accused beyond the statutory period. A communication addressed to the Jail Superintendent and an opportunity to submit a written reply cannot automatically be equated with production of the accused before the Court. The distinction assumes significance in view of the law laid down in *Sanjay Dutt (supra)* where the Constitution Bench specifically distinguished the requirement of written notice from the requirement of production of the accused before the Court.

26. In this context, the submission that Applicants did not challenge the extension order by way of an independent proceeding also requires consideration. Applicants are not seeking in the present proceedings to challenge the order dated 14.08.2024 in isolation. Their contention is that the prosecution cannot rely upon the said order for the purpose of defeating their statutory right since the extension was

granted without following the procedure prescribed by law. The validity of the extension is therefore directly connected with the determination of whether the Applicants acquired an indefeasible right to statutory/default bail. The Court is not being called upon to examine the extension order for an unrelated purpose. It is required to determine whether the prosecution can rely upon that order as the source of authority for continuing Applicants' detention beyond the original statutory period.

27. In my view therefore the present proceedings cannot be characterised as a mere collateral challenge to the extension order. The question whether the statutory period was validly extended is a necessary question which arises while determining Applicants' entitlement under Section 187(3) of the BNSS read with Section 36-A(4) of the NDPS Act. If the order dated 14.08.2024 is legally valid then Applicants cannot claim that the original period of 180 days alone governs their detention. However if the order cannot be relied upon because the procedure governing extension was not followed then the prosecution cannot take advantage of an invalid extension for the purpose of defeating a statutory right.

28. It is seen that the Supreme Court in *Qamar Ghani Usmani (supra)* itself considered the decision in *Rambeer Shokeen (supra)* and distinguished the same on facts. In *Rambeer Shokeen (supra)* the

application seeking extension was pending consideration when the accused applied for default bail. The Supreme Court held that the pending application for extension was required to be considered first. The present case is materially different since the extension application has already been allowed and the question before this Court is whether the order granting extension was validly passed in accordance with the statutory scheme and the law declared by the Supreme Court.

29. Similarly the judgements relied upon by the learned Special Public Prosecutor for the proposition that the filing of the chargesheet within the extended period defeats a claim for default bail necessarily proceed on the existence of a valid extension. The subsequent filing of the chargesheet cannot by itself cure a defect in the very order which is relied upon by the prosecution to enlarge the statutory period. The prosecution cannot derive an advantage from an extension order without first demonstrating that the order was validly passed in accordance with the statutory conditions and the binding principles governing such extension.

30. With regard to the high quantity of contraband recovered, the Court is conscious of the gravity of the allegations. The alleged recovery of approximately 1837 kg 84 g 120 mg of MD is undoubtedly a large commercial quantity. The allegations are serious and the societal ramifications urged by the prosecution cannot be ignored.

However the present Applications are not applications for regular bail on merits. Applicants invoke a statutory right to default bail. The considerations which may be relevant while considering regular bail under the NDPS Act including the quantity of contraband and the restrictions contained in Section 37 cannot be permitted to override a statutory right where the statutory conditions for its accrual are satisfied.

31. The distinction between regular bail and statutory/default bail assumes significance in the present case. A Court considering regular bail is required to examine the nature of the allegations the material collected during investigation, the possibility of the accused committing a further offence and the statutory restrictions applicable under the NDPS Act. In a case of default bail the principal consideration is different. The Court is required to determine whether the prosecution has completed the investigation within the period prescribed by law or has obtained a legally valid extension of that period. The seriousness of the offence cannot by itself enlarge the period which the legislature has prescribed for completion of investigation.

32. In the present case it is seen that Applicants are challenging the extension itself. The material placed before this Court does not demonstrate that after the order dated 14.08.2024, Applicants were

subsequently produced before the Court in relation to the extension and consciously accepted the continuation of the extended period. There is also no material to establish circumstances analogous to those in *Qamar Ghani Usmani (supra)* where the accused was informed on the very next day and thereafter remained present when the second extension was granted without raising any objection to the earlier extension. The factual foundation upon which the Supreme Court declined to grant default bail in *Qamar Ghani Usmani (supra)* is therefore absent in the present case.

33. Attention is also invited to paragraph No.9 of the decision in the case of *PadmaSundara Rao (Dead) and Ors. Vs. State of T.N. and Ors.*¹⁶ in this regard, paragraph No.9 reads thus:-

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

33.1. Hence, I am not inclined to accept the reliance placed by Mr. Halwasia on the decision in the case of *Qamar Ghani Usmani (supra)*.

34. Hence, in view of the law laid down in *Sanjay Dutt (supra)* as subsequently considered in *Jigar alias Jimmy Pravinchandra Adatiya*

¹⁶ (2002) 3 SCC 533

(supra) and reconciled in *Qamar Ghani Usmani (supra)* this Court is of the view that production of the accused before the Court at the stage of consideration of the application for extension is a necessary safeguard. The requirement is not an empty formality. The order of extension directly affects the personal liberty of the accused because it permits the prosecution to continue investigation and the accused to remain in custody beyond the period ordinarily prescribed by law. The Court while exercising such power must therefore ensure compliance with the procedure recognised by the Supreme Court.

35. In the facts of the present case the material before this Court does not establish that Applicants were produced before the Trial Court either physically or through Video Conferencing when the application seeking extension of the period of investigation was considered. The order dated 14.08.2024 as presently placed before this Court does not record such production of Applicants. The issuance of a communication to the Jail Superintendent, the refusal by certain accused persons to accept copies and the appearance of Advocates cannot in the facts of the present case be equated with actual production of the concerned Applicants before the Court when the prayer for extension was considered and order was passed. The statutory safeguard therefore cannot be said to have been complied with merely on the basis of these circumstances.

36. In view of the above attention is invited to the decision of the Supreme Court in the case of *Jigar alias Jimmy Pravinchandra Adatiya (supra)*. Relevant paragraph Nos.44, 45 and 48 to 51 read as under:-

‘44. As noted earlier, the only modification made by the larger Bench in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] to the decision in Hitendra Vishnu Thakur [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] is about the mode of service of notice of the application for extension. In so many words, in para 53(2)(a) of the judgment, this Court in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] held that it is mandatory to produce the accused at the time when the Court considers the application for extension and that the accused must be informed that the question of extension of the period of investigation is being considered. The accused may not be entitled to get a copy of the report as a matter of right as it may contain details of the investigation carried out. But, if we accept the submission of the respondents that the accused has no say in the matter, the requirement of giving notice by producing the accused will become an empty and meaningless formality. Moreover, it will be against the mandate of clause (b) of the proviso to sub-section (2) of Section 167CrPC. It cannot be accepted that the accused is not entitled to raise any objection to the application for extension. The scope of the objections may be limited. The accused can always point out to the Court that the prayer has to be made by the Public Prosecutor and not by the investigating agency. Secondly, the accused can always point out the twin requirements of the report in terms of the proviso added by sub-section (2) of Section 20 of the 2015 Act to sub-section (2) of Section 167CrPC. The accused can always point out to the Court that unless it is satisfied that full compliance is made with the twin requirements, the extension cannot be granted.

45. The logical and legal consequence of the grant of extension of time is the deprivation of the indefeasible right available to the accused to claim a default bail. If we accept the argument that the failure of the prosecution to produce the accused before the Court and to inform him that the application of extension is being considered by the Court is a mere procedural irregularity, it will negate the proviso added by sub-section (2) of Section 20 of the 2015 Act and that may amount to violation of rights conferred by Article 21 of the Constitution. The reason is the grant of the extension of time takes away the right of the accused to get default bail which is intrinsically connected with the fundamental rights guaranteed under Article 21 of the Constitution. The procedure contemplated by Article 21 of the Constitution which is required to be followed before the liberty of a person is taken away has to be a fair and reasonable procedure. In fact, procedural safeguards play an

important role in protecting the liberty guaranteed by Article 21. The failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him that the application made by the Public Prosecutor for the extension of time is being considered, is not a mere procedural irregularity. It is gross illegality that violates the rights of the accused under Article 21.

46. *xxxxxx*

47. *xxxxxx*

48. *In the facts of the cases in hand, when the Special Court considered the reports submitted by the Public Prosecutor for grant of extension of time, the presence of the appellants was admittedly not procured before the Special Court either personally or through videoconference. It is also an admitted position that information about the filing of such reports by the Public Prosecutor was not provided to the accused. It is mentioned in the impugned judgment that due to COVID-19, it was not permissible to physically produce the accused before the Special Court. Moreover, the accused were in different prisons and, therefore, the production through videoconference would have been very slow. Assuming that the process of production would have been slow, that is no excuse for not procuring the presence of the accused through videoconference.*

49. *Nothing is placed on record either before this Court or the High Court to show that as per the standard operating procedure applicable to the court concerned in January 2021 when the impugned orders were passed granting the extension, it was not permissible to physically produce the accused before the Special Court. There is no material placed on record to show that technical reasons/difficulties prevented the prosecution from producing the accused before the Special Court through videoconference. It is not possible to accept that in January 2021 in the Court at Rajkot in the State of Gujarat, there was any connectivity issue. In fact, admittedly, no such case was pleaded before the High Court in the pleadings of the respondents.*

50. *We must note here that the reports were submitted by the Public Prosecutor nearly a week before the expiry of the period of 90 days. In every case, period of seven days or more was available for completion of the period of ninety days. The orders were passed by the Special Court on the reports of the Public Prosecutor on the very day on which reports were submitted. There was no reason for such hurry. The Special Court could have always granted time of a couple of days to the prosecution to procure the presence of the accused either physically or through videoconference. The accused may not be entitled to know the contents of the report but he is entitled to oppose the grant of extension of time on the grounds available to him in law. In the facts of the present case, the grant of extension of time without complying with the requirements laid down by the Constitution Bench has deprived the accused of their right to seek default bail. It has resulted in the failure of justice.*

51. The orders passed by the Special Court of extending the period of investigation are rendered illegal on account of the failure of the respondents to produce the accused before the Special Court either physically or virtually when the prayer for grant of extension made by the Public Prosecutor was considered. It was the duty of the Special Court to ensure that this important procedural safeguard was followed. Moreover, the oral notice, as contemplated by this Court in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] , was also not given to the accused.”

37. Consequently the order dated 14.08.2024 cannot be relied upon by the prosecution for defeating the statutory right of Applicants where the foundational procedural requirement governing the grant of extension has not been complied with. The subsequent filing of the Chargesheet on 05.02.2025 cannot retrospectively validate an extension which was not validly granted in accordance with law. Once the original statutory period expired without a legally sustainable extension the right contemplated under Section 187(3) of the BNSS read with Section 36-A(4) of the NDPS Act would operate in favour of Applicants subject to the other requirements of law.

38. This Court is conscious that the prosecution has relied upon the magnitude of the alleged offence and the large quantity of contraband involved. Those circumstances may assume considerable importance when an application for regular bail is considered on merits. However they cannot be permitted to determine the question whether the statutory period for completion of investigation stood validly extended. The right to statutory/default bail arises from the failure of the prosecution to comply with the time limit prescribed by

law. The seriousness of the allegations cannot be used to cure non-compliance with the procedure governing extension of that period.

39. In view of the aforesaid observations and findings this Court is satisfied that Applicants have made out a case for grant of statutory/default bail. The extension granted by the Trial Court by order dated 14.08.2024 cannot be relied upon against Applicants for the purpose of defeating their statutory right in view of the failure to establish compliance with the requirement of keeping the concerned accused present before the Court at the stage of consideration of the application for extension.

40. Hence, in view of above *prima facie* observations and findings, Bail Applications of Applicants are allowed for default bail subject to the following terms and conditions:-

- (i) Applicants – (1) Bhimaji Parshuram Sabale; (2) Shoyeb Saeed Shaikh; (3) Ayub Akbarsha Makandar; (4) Cynthia @ Favour Ugababang Onyekpe; (5) Ankita Narayanchandrda Das; (6) Sandeep Hanuman Singh Yadav; (7) Devender Ramphool Yadav; and (8) Haider Noor Shaikh are directed to be immediately released from prison in connection with C.R. No. NCB/MZU/CR-11 of 2024 (earlier N.D.P.S. C.R. No.38 of 2024 Samarth Police Station). With regard to Applicant -

Cynthia @ Favour Ugababang Onyekpe, it is clarified that no bail bond in respect of an accused of a non-bailable offence who is a foreign national such as in the present case, shall be executed by a Licensed Professional Bail Bondspersons save with the express permission of the concerned Court accepting bail and surety bond. This condition is added in view of the decision of the Supreme Court in the case of ***Union of India Vs. Chidiebere Kingsley Nawchara & Ors.***¹⁷.

- (ii) With regard to Applicant – Cynthia @ Favour Ugababang Onyekpe, the concerned prosecuting Agency shall immediately communicate this order of grant of bail to the concerned Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992 within the meaning of the Foreigners Act, 1946. This condition is added in view of the decision of the Supreme Court in the case of ***Frank Vitus v. Narcotics Control Bureau & Ors.***¹⁸.

- (ii) All Applicants are directed to be released on bail on furnishing P.R. Bond of Rs.1,00,000/- each (Rs. One Lakh only) with one or two sureties in the like amount;

¹⁷ SLP (Cri) No(s). 14185 of 2025

¹⁸ Criminal Appeal No.2814-2815 of 2024 decided on 06.01.2025.

- (iii) All Applicants shall report to the Investigating Officer at concerned Police Station, once every month, on the first Monday of the month between 10:00 a.m. to 12:00 p.m. until commencement of trial and thereafter shall attend all dates of hearing before the Trial Court;
- (iv) All Applicants shall cooperate with the conduct of the trial and remain present before the Trial Court on all dates, unless specifically exempted. Applicants shall not seek unnecessary adjournments. Any such conduct shall entitle the prosecution to apply for cancellation of bail;
- (v) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vii) All Applicant shall deposit their passports with the Trial Court within a period of one week from their release from prison;
- (viii) Applicants shall keep the Investigating Officer informed of their current residential address and mobile telephone number and shall forthwith inform the Investigating Officer of any change in their residential

address or mobile telephone number, as and when such change occurs; and

(ix) Any breach or infraction of any of the aforesaid conditions shall entail cancellation of the bail granted to the Applicant.

41. It is clarified that the observations made in this order are limited for the purpose of granting bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made hereinabove in this order.

42. Bail Applications are allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

43. After this order is pronounced in open Court, Mr. Halwasia, learned Special Counsel appearing on behalf of Narcotics Control Bureau would persuade me to stay the validity and effect of this order for a period of four weeks to enable the Narcotics Control Bureau to approach the Supreme Court to challenge this order. I have considered the submissions made by Mr. Halwasia and especially when he has persuaded me to stay the effect of the order in view of substantial

quantity of contraband having been seized in the present case and passionately persuaded me to stay the order.

44. I have considered every submission made by Mr. Halwasia and repercussion it may have otherwise in the Society and the substantial question of law which was argued by him but considering the fact that this case has been decided on the ground of personal liberty of Applicants before me, I am not inclined to accept the request of stay of this order made by Mr. Halwasia and decline the same.

45. In that view of the matter, the request made for stay of the present order for grant of bail to the Applicants is respectfully denied.

46. I would also like to put in a word of appreciation in these cases for the two learned respected Senior Advocates at the bar namely Mr. Sayed and Mr. Halwasia, both of whom have been erudite in arguing the matter and citing case laws before the Court for its proper appreciation which have been dealt with by me in this order.

[MILIND N. JADHAV, J.]

Ajay

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by AJAY
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