APHC010311402025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3521]**
(Special Original Jurisdiction)

FRIDAY,THE TWENTY SIXTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL REVISION CASE NO: 1043/2025

Between:

GOLLORI MOHAN RAO,, S/O (L)APPARAO AGE 65 YEARS, R/O GINNEGARUVU VILLAGE INJARI PANCHAYAT, PEDABAYALU MANDAL, ALLURI SITA RAMA RAJU DISTRICT

...PETITIONER

AND

THE STATE OF ANDHRA PRADESH, through Station House officer, Pedabayalu PS, Visakhapatanam City, Rep. by Public Prosecutor, High Court at Amaravati.

...RESPONDENT

Counsel for the Petitioner:

RAMINENI SUDHEER

Counsel for the Respondent:

PUBLIC PROSECUTOR

The Court made the following:

ORDER:

Criminal Revision Case has been preferred under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity 'the BNSS') challenging the judgment dated 08.09.2025 in Crl.M.P.No.956/2025 in Cr.No.11/2025 of Pedabayalu Police Station on the file of the learned I

Additional District & Sessions Judge-cum-Special Judge for Trial of Offences under NDPS Act, Visakhapatnam.

2. Sri Ramineni Sudheer, learned Counsel for the Petitioner while reiterating the grounds of the Revision, argued that the impugned Order dated 08.09.2025 passed in Crl.M.P.No.956 of 2025 in Cr.No.11 of 2025 of Pedabayalu Police Station, rendered by the learned Additional District and Sessions Judge-cum-Special Judge for trial of offences under the NDPS Act, Visakhapatnam, is manifestly illegal, procedurally irregular, and patently unsustainable in law. The said Order warrants judicial interference and is liable to be set aside in the interest of justice. The learned Special Judge has erred in law and on facts by failing to adhere to the binding procedural safeguards enunciated by the Hon'ble Supreme Court, particularly in relation to the production of the accused during consideration of extension petitions under Section 36A(4) of 'the NDPS Act.' The denial of an opportunity to the Petitioner to be heard either through physical presence or via electronic video linkage constitutes a gross violation of the principles of natural justice and is contrary to the ratio laid down by the Hon'ble Apex Court.

3. It is submitted that the prosecution has not placed on record any substantive material or documentary evidence to establish the stage of investigation. The extension petition is bereft of any cogent reasoning or demonstrable progress in investigation, and the learned Special Judge has failed to scrutinize the same with the requisite judicial rigour. The absence of a detailed progress report and failure to articulate specific grounds for seeking

extension renders the petition inherently defective. The Hon'ble Apex Court has unequivocally held that within thirty days of seizure, the investigating agency must move an application under Section 52A of 'the NDPS Act' before the learned jurisdictional Magistrate for certification of inventory, photographs, and samples. The failure to adhere to this statutory mandate renders the entire investigation procedurally infirm and legally untenable.

4. Learned Counsel for the Petitioner further submits that the remand report unequivocally reveals that the samples were drawn at the scene of arrest by the police officer, without any subsequent certification under Section 52A of 'the NDPS Act'. Given the stringent procedural framework of 'the NDPS Act', any extension of time under Section 36A(4) of 'the NDPS Act' in the face of such illegality would amount to judicial endorsement of a flawed and careless investigation, thereby infringing upon the petitioner's fundamental right to a fair trial under Article 21 of the Constitution.

5. Learned Counsel for the Petitioner furthermore submits that the Respondent/Public Prosecutor has failed to discharge the statutory obligation of furnishing a comprehensive written report detailing the progress of investigation and the necessity for further custodial detention. The Petitioner was neither produced nor informed about the pendency of the extension petition, which is in direct contravention of the dictum laid down in **Jigar @ Jimmy Pravinchandra Adatiya v. State of Gujarat**[1], wherein the Hon'ble Apex Court emphasized the imperative of ensuring the accused's participation

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[1] 2022 Supreme (SC) 973

during such proceedings. The learned Special Magistrate at Visakhapatnam has failed to appreciate that the continued detention of the Petitioner, in the absence of procedural compliance and judicial safeguards, constitutes a serious infraction of his substantive rights and a violation of his human dignity protected under Article 21 of the Constitution of India. The impugned Order, if permitted to operate, would occasion a grave miscarriage of justice and subject the Petitioner to undue hardship and irreparable prejudice.

6. Learned Counsel for the Petitioner further submits that petition filed for extension of remand before the learned Trial Court is not maintainable that Section 52(A) of 'the NDPS Act' was not complied with. He further contended that the Accused/Petitioner was not produced either physically or vide conferencing mode while the remand extension for 300 days was ordered by the learned Trial Court. Hence the impugned order of extension of the remand of the Petitioner is vitiated and it is urged to enlarge the Petitioner on bail.

7. On the other hand, Ms. P.Akhila Naidu, learned Assistant Public Prosecutor would argue that the learned Trial Court had rightly appreciated the material available. There was no flagrant miscarriage of justice. There were no perverse findings. There was no irregularity let alone material irregularity. The order impugned is not vitiated by manifest error of law or procedure which had resulted in miscarriage of justice. The impugned order doesn't suffer from any illegality or infirmity. Hence, it is urged to dismiss the criminal revision case.

8. Thoughtful consideration is bestowed on the arguments advanced by the learned Counsel for both sides. I have perused the entire record.

9. Now the point for consideration is:

> "*Whether the order in Crl.M.P.No.956/2025 dated 08.09.2025, passed by the learned I Additional District & Sessions Judge-cum-Special Judge for Trial of Offences under NDPS Act, Visakhapatnam, is correct, legal, and proper with respect to its finding or judgment, and there are any material irregularities? And to what relief?"*

10. In fact the learned I Additional District Judge, Visakhapatnam on 08.09.2025 in Crl.M.P.No.956/2025 in Cr.No.11/2025 of Peddabayalu Police Station extended the remand period for 300 days from the date he was remanded to the judicial custody for the first time. In this regard it is apposite to refer the judgment of the Hon'ble Apex Court in **Jigar** *supra* wherein at paragraph No.30 it is held as under:

> *"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."*

11. On a careful perusal of the observations of the Hon'ble Apex Court, it could be clearly gleaned that when the accused was neither physically produced before the learned Trial Court nor produced through electronic video conferencing, it violates fundamental right enshrined under Article 21 of the Constitution of India. The order of the learned I Additional District Judge is also

silent in this regard about production of the Petitioner before extending remand period. When the Petitioner was not produced either virtually or physically it violates the Petitioner's fundamental right guaranteed under Article 21 of the Constitution of India, inasmuch as it is not a mere procedural irregularity. It is gross violation of the fundamental right of the accused.

12. The Hon'ble Apex Court in a decision relied on by the learned Counsel for the Petitioner in **Union of India v. Mohanlal**[2], at paragraph No.20 & 31 held as under:

> *"20. The Narcotic Drugs and Psychotropic Substances Act, 1985 does not make any special provision regulating storage of the contraband substances. All that Section 55 of the Act envisages is that the officer-in-charge of a police station shall take charge of and keep in safe custody the seized article pending orders of the Magistrate concerned. There is no provision nor was any such provision pointed out to us by the learned counsel for the parties prescribing the nature of the storage facility to be used for storage of the contraband substances. Even so the importance of adequate storage facilities for safe deposit and storage of the contraband material has been recognised by the Government inasmuch as Standing Order No. 1 of 1989 has made specific provisions in regard to the same. Section III of the said Order deals with "Receipt of Drugs in Godowns and Procedure" which inter alia provides that all drugs shall invariably be stored in "safes and vaults" provided with double-locking system and that the agencies of the Central and the State Governments may specifically designate their godowns for storage purposes and such godowns should be selected keeping in view their security angle, juxtaposition to courts, etc. We may usefully extract Paras 3.2 to 3.9 comprising Section III supra at this stage for ready reference:*
> *"3.2. All drugs invariably be stored in safes and vaults provided with double-locking system. Agencies of the Central and State Governments, may specifically, designate their godowns for storage purposes. The godowns should be selected keeping in view their security angle, juxtaposition to courts, etc.*
> *3.3. Such godowns, as a matter of rule, shall be placed under the overall supervision and charge of a gazetted officer of the respective enforcement agency, who shall exercise utmost care, circumspection and personal supervision as far as possible. Each seizing officer shall deposit the drugs fully packed and sealed in the godown within 48 hours of such seizure, with a forwarding memo indicating NDPS crime number as per Crime and Prosecution (C&P Register) under the new law, name of the accused, reference of test memo, description of the drugs, total number of packages/containers, etc.*

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[2] (2016) 3 SCC 379

3.4. The seizing officer, after obtaining an acknowledgement for such deposit in the format (Annexure I), shall hand over such acknowledgment to the investigating officer of the case along with the case dossiers for further proceedings.
3.5. The officer in charge of the godown, before accepting the deposit of drugs, shall ensure that the same are properly packed and sealed. He shall also arrange the packages/containers (case wise and lot wise) for quick retrieval, etc.
3.6. The godown-in-charge is required to maintain a register wherein entries of receipt should be made as per format at Annexure II.
3.7. It shall be incumbent upon the inspecting officers of the various departments mentioned at Annexure II to make frequent visits to the godowns for ensuring adequate security and safety and for taking measures for timely disposal of drugs. The inspecting officers should record their remarks/observations against Column 15 of the Format at Annexure II.
3.8. The Heads of the respective enforcement agencies (both Central and State Governments) may prescribe such periodical reports and returns, as they may deem fit, to monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs.
3.9. Since the early disposal of drugs assumes utmost consideration and importance, the enforcement agencies may obtain orders for pre-trial disposal of drugs and other articles (including conveyance, if any) by having recourse to the provisions of sub-section (2) of Section 52-A of the Act."
(emphasis in original)
31. To sum up we direct as under:
31.1. No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A, as discussed by us in the body of this judgment under the heading "seizure and sampling". The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15 to 19 of this order.
31.2. The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized narcotic drugs and psychotropic and controlled substances and conveyances duly equipped with vaults and double-locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1 of 1989 to ensure proper security against theft, pilferage or replacement of the seized drugs.
31.3. The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.
31.4. Disposal of the seized drugs currently lying in the Police Malkhanas and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading "disposal of drugs"."

13. In this case also the procedure contemplated under Section 52(A) of 'the NDPS Act' ex-facie is not followed. The learned Single Judge of High Court of Madras in **Ramesh v. State of Tamilnadu**[3], it is held that while extending the remand period the Trial Court must safeguard the fundamental rights of the accused guaranteed under Article 21 of the Constitution of India.

14. The Hon'ble Apex Court in **Arif Khan v. State of Uttarakhand**[4], it is held at paragraph Nos.24 & 26 held as under:

> *"24. We do not agree to this finding of the two courts below as, in our opinion, a search and recovery made from the appellant of the alleged contraband "charas" does not satisfy the mandatory requirements of Section 50 as held by this Court in Vijaysinh Chandubha Jadeja [Vijaysinh Chandubha Jadeja v. State of Gujarat, (2011) 1 SCC 609 : (2011) 1 SCC (Cri) 497] . This we say for the following reasons:*
> *24.1. First, it is an admitted fact emerging from the record of the case that the appellant was not produced before any Magistrate or gazetted officer.*
> *24.2. Second, it is also an admitted fact that due to the aforementioned first reason, the search and recovery of the contraband "charas" was not made from the appellant in the presence of any Magistrate or gazetted officer.*
> *24.3. Third, it is also an admitted fact that none of the police officials of the raiding party, who recovered the contraband "charas" from him, was the gazetted officer and nor they could be and, therefore, they were not empowered to make search and recovery from the appellant of the contraband "charas" as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or a gazetted officer.*
> *24.4. Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a gazetted officer.*
> *26. For the aforementioned reasons, we are of the considered opinion that the prosecution was not able to prove that the search and recovery of the contraband (charas) made from the appellant was in accordance with the procedure prescribed under Section 50 of the NDPS Act. Since the non-compliance of the mandatory procedure prescribed under Section 50 of the NDPS Act is fatal to the prosecution case and, in this case, we have found that the prosecution has failed to prove the compliance as required in law, the appellant is entitled to claim its benefit to seek his acquittal."*

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[3] 2025 Supreme (Mad) 4322

[4] (2018) 18 SCC 380

15. The Hon'ble Apex Court in **Arif Khan** *supra* observed that when search and recovery was made by the police officers not in the presence of the gazetted officer and the accused therein was not either produced before the Magistrate or a gazetted officer it is held that Section 50 of 'the NDPS Act' was not complied with.

16. In the instant case even though a counter was filed by the learned Counsel for the Petitioner before the learned Trial Court in an application filed for extension of the remand and the order for extension of the remand for 300 days was passed after hearing both sides, the Petitioner was not heard either physically or virtually and he was not produced before the learned Trial Court at the time of passing the order of extension of the remand. Therefore, the fundamental right guaranteed under Article 21 of the Constitution of India is infringed.

17. A learned Single Judge of the High Court of Telangana in **Suresh Shyamrao Pawar v. Union of India**[5], at paragraph No.15 while issuing certain guidelines in guideline No.16 held that an application seeking for extension of the remand shall necessarily be filed at the earliest at least by 160th day. In the instant case petition filed for extension of remand was filed on 165th day.

18. Learned Assistant Public Prosecutor relied on a decision of a leaned Single Judge of this Court in Crl.P.No.1642/2022 dated 22.03.2022 wherein at paragraph No.10 it was observed that when an application was filed seeking for extension of remand beyond 180 days, the Trial Court was justified in

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[5] 2022 (2) ALD (Crl.) 348 (TS)

dismissing the application for grant of default bail under Section 167(2) of 'the Cr.P.C.'

19. In the above-mentioned case, there was no reference about the accused therein was either physically or virtually produced before the learned Trial Court at the time of extension of the judicial remand beyond 180 days.

20. Learned Counsel for the Petitioner relied on a decision of the High Court of Telangana in **Chamakuri Madhavi v. State of Telangana**[6] at paragraph No.8 while extracting the relevant portion of the judgment of the Hon'ble Apex in **Mohanlal** *supra* at paragraph No.15 benefit of doubt was given to the accused therein and allowed the Criminal Petition setting aside the conviction of the accused for want of drawing samples in the presence of the Magistrate.

21. Initially the Petitioner has filed a Criminal Petition seeking under Sections 480 & 483 of 'the BNSS' for grant of regular bail, later it was amended by virtue of the order of this Court dated 17.09.2025 to convert the Criminal Petition to Criminal Revision Case, as the remand extension petition was not ordered in accordance with the judgments of the Hon'ble Apex Court and also in violation of the Article 21 of the Constitution of India.

22. Considering the entire gamut of the case, this Court is inclined to enlarge the Petitioner on bail.

23. In the result, the Criminal Revision Case is allowed with the following conditions:

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[6] Crl.A.No.32/2022 dated 11.09.2023

i. The petitioner/Accused No.1 shall be enlarged on bail subject to he executing a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only), with two sureties each for the like sum each to the satisfaction of the I Additional District & Sessions Judge-cum-Special Judge for Trial of Offences under NDPS Act, Visakhapatnam.

ii. The petitioner/Accused No.1 shall appear before the Station House Officer, Pedabayalu Police Station, Alluri Sitharama Raju District, on every Saturday in between 10:00 am and 05:00 pm, till cognizance is taken by the learned the Trial Court.

iii. The petitioner/Accused No.1 shall not leave the limits of the State of Andhra Pradesh without prior permission from the Station House Officer concerned.

iv. The petitioner/Accused No.1 shall not commit or indulge in commission of any offence in future.

v. The petitioner/Accused No.1 shall cooperate with the investigating officer in further investigation of the case and shall make themselves available for interrogation by the investigating officer as and when required.

vi. The petitioner/Accused No.1 shall not, directly or indirectly, make any inducement, threat or promise to any person

acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the court or to any police officer.

vii. The petitioner/Accused No.1 shall surrender his passport, if any, to the investigating officer. If he claim that he do not have a passport, he shall submit an affidavit to that effect to the Investigating Officer.

24. With the above observations and directions, this Criminal Revision Case is allowed. No order as to costs.

As a sequel, interlocutory applications, if any pending, shall stand closed.

Dr. Y. LAKSHMANA RAO, J

Dt: 26.09.2025
Note: Issue C.C. by today
B/o
VTS