

PUNJAB AND HARYANA HIGH COURT

SINGLE BENCH

(Before : Virinder Aggarwal, J.)

GURDEV SINGH AND OTHERS

Vs.

STATE OF PUNJAB

CRR-1439-2026 (O&M) and CRR-1445-2026 (O&M)

Decided on : 16-07-2026

A. Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 36-A(4), proviso — Mandatory conditions for extension of investigation period beyond 180 days — The proviso to Section 36-A(4) permits extension of the 180-day period only upon a report of the Public Prosecutor indicating the progress of investigation and specifying compelling reasons for continued detention, after notice to the accused — These are mandatory, not directory, requirements; extension of time is not to be granted as a matter of course, and any deviation from the statutory mandate renders the extension order vulnerable. [Paras 10-12, 16]

B. Narcotic Drugs and Psychotropic Substances Act, 1985 — Report of Public Prosecutor — Independent application of mind — Cannot be substituted by application of Investigating Officer — The Public Prosecutor is required to independently apply his mind while submitting the report under the proviso to Section 36-A(4) and cannot merely act as a forwarding agency for the Investigating Officer — Where the application seeking extension is moved by the Investigating Officer alone and admittedly not forwarded by the Additional Public Prosecutor, the mandatory requirement of a report of the Public Prosecutor stands unfulfilled. [Paras 12-13, 18]

C. Default Bail — Article 21 of the Constitution — Indefeasible right — Cannot be defeated by extension order passed in violation of statutory safeguards — The right to be released on default/statutory bail is not merely a statutory right but an indefeasible right flowing from the constitutional guarantee of personal liberty under Article 21—Once the extension order granting further time for investigation is found unsustainable for non-compliance with the mandatory conditions of Section 36-A(4), the consequential order declining default bail also

cannot be sustained, and the accused acquires an indefeasible right to be released on default bail. [Paras 13-14, 18]

D. Consistency — Co-accused granted default bail on identical extension order — Parity — Where a coordinate Bench, in proceedings arising from the same FIR and challenging the very same extension order, has already held the mandatory requirements of Section 36-A(4) unfulfilled and granted default bail to a co-accused, and no distinguishing feature is shown by the State, the petitioners similarly situated are entitled to the same relief of default bail, subject to appropriate conditions safeguarding the trial. [Paras 17-20]

Counsel for Appearing Parties

Mr. Jashandeep Singh Sandhu, Advocate for the applicants-petitioner(s) in Both CRRs; Mr. Baljinder Singh Sra, Addl.A.G., Punjab.

JUDGMENT

Virinder Aggarwal, J. (Oral) - CRM-24115-2026 in CRR-1439-2026 & CRM-24177-2026 in CRR-1445-2026

These are an applications under Section 5 of the Limitation Act, 1963 seeking condonation of a delay of 59 days in filing the instant revision petitions.

For the reasons mentioned in the applications, the delay of 59 days in filing the present applications, is condoned.

CRR-2922-2018 and CRR-3050-2018

1. By way of this common judgment, this Court shall dispose of both the above mentioned cases, as both the revision petitions arise out of the same FIR, challenge the same order dated 24.12.2025 passed by the learned Judge, Special Court, Tam Taran, whereby the period for completion of investigation and presentation of the final report under Section 173 Cr.P.C. (now Section 193 BNSS) was extended by two months under Section 36-A(4) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act"), as also the consequential order dated 06.01.2026 whereby the applications preferred by the petitioners under Section 187(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 167(2) Cr.P.C.) seeking statutory/default bail came to be dismissed.

2. Since identical questions of fact and law arise for consideration, both the revision petitions are being disposed of together by this common judgment. However, for the sake of brevity, the facts are taken from CRR-1439-2026.

BACKGROUND FACTS

3. Briefly stated, FIR No.124 dated 01.07.2025 was registered at Police Station Sadar Patti, District Tam Taran under Section 15 of the NDPS Act. During investigation, Section 29 of the NDPS Act also came to be added. The prosecution case is that acting upon secret information, the investigating agency intercepted a truck allegedly carrying

510 kilograms of poppy husk and apprehended the present petitioners along with two other co-accused. The petitioners were arrested on 01.07.2025 and have remained in judicial custody thereafter. The statutory period prescribed for completion of investigation in offences involving commercial quantity under the NDPS Act was to expire on 28.12.2025.

4. Before expiry of the said period, an application dated 24.12.2025 was moved by the Investigating Agency seeking extension of time on the ground that although the samples had been sent to the Forensic Science Laboratory, the report of the Chemical Examiner had not yet been received despite repeated reminders, and therefore the challan could not be presented within the prescribed period. The learned Special Court, vide impugned order dated 24.12.2025, allowed the application and granted extension of two months for completion of investigation and presentation of the challan. After expiry of the statutory period, the petitioners claimed the benefit of statutory/default bail by filing applications under Section 187(3) BNSS. The learned Special Court, however, dismissed the said applications vide order dated 06.01.2026 solely on the premise that since extension of time had already been granted on 24.12.2025, the right of default bail no longer survived. Aggrieved against both the aforesaid orders, the present revision petitions have been preferred.

CONTENTIONS

5. Learned counsel appearing on behalf of the petitioners contends that the impugned order dated 24.12.2025 is ex facie contrary to the mandatory requirements contained in the proviso to Section 36-A(4) of the NDPS Act. It is submitted that extension beyond the statutory period of 180 days can be granted only upon a report submitted by the Public Prosecutor indicating the progress of investigation and specifying the compelling reasons necessitating detention of the accused beyond the prescribed period. Learned counsel submits that admittedly no such report was ever submitted by the Public Prosecutor. Rather, the application seeking extension was moved by the Investigating Officer and the learned Special Court itself recorded that the application had not even been forwarded by the learned Additional Public Prosecutor. Thus, according to learned counsel, one of the mandatory statutory conditions stood completely violated.

6. It is further argued that the petitioners were never served with any notice of the application seeking extension of time. Learned counsel further submits that the only reason cited in the application for extension was pendency of the report of the Chemical Examiner. Such a ground, by itself, neither reflects the progress of investigation nor constitutes a compelling reason within the meaning of the proviso to Section 36-A(4) of the NDPS Act. Learned counsel has further pointed out that one of the co-accused, namely Gursewak Singh, challenged the very same extension order dated 24.12.2025 and the consequential rejection of default bail before this Court in CRR No. 177 of 2026. This Court, vide judgment dated 21.04.2026, allowed the said revision petition, set aside both the impugned orders and directed release of the petitioner on default bail after holding that the mandatory requirements of Section 36-A(4) of the NDPS Act had not been complied with. It is argued that the present petitioners stand on identical footing and are entitled to the same relief.

7. Per contra, learned State counsel has supported the impugned orders by contending that the extension had been granted prior to expiry of 180 and, therefore, the petitioners did not acquire any indefeasible right to seek default bail. It is submitted that the report of the Chemical Examiner was awaited despite repeated reminders and the Special Court rightly exercised jurisdiction under Section 36-A(4) of the Act.

OBSERAVTIONS AND FINDING

8. I have heard learned counsel for the parties and have carefully perused the record.

9. The controversy involved in the present revision petitions lies in a narrow compass. The question that falls for consideration is whether the learned Special Court was justified in extending the period of investigation under the proviso to Section 36-A(4) of the NDPS Act and, consequently, in declining the petitioners' claim for default bail.

10. Before examining the rival submissions, it would be appropriate to notice the statutory framework governing extension of time under the NDPS Act. The Section 36-A(4) of the NDPS Act reads as under:

"In respect of persons accused of an offence punishable under Sections 19, 24, 27-A or for offences involving commercial quantity, the references in sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 to "ninety days" 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. "

11. The language employed by the legislature leaves no manner of doubt that extension of time is not to be granted as a matter of course. The proviso engrafts specific statutory safeguards before the valuable right accruing to an accused under Section 167(2) Cr.P.C. (now Section 187 BNSS) can be defeated. Four requirements emerge from a plain reading of the proviso:

(i) the investigation could not be completed within one hundred and eighty days;

(ii) there must be a report of the Public Prosecutor;

(iii) such report must indicate the progress of investigation; and

(iv) it must disclose the specific reasons necessitating continued detention of the accused beyond the prescribed statutory period.

12. The proviso to Section 36-A(4) of the NDPS Act permits extension of the period of investigation beyond 180 days only upon a report of the Public Prosecutor indicating the progress of investigation and specifying the compelling reasons for continued detention of the accused. The requirement is mandatory and not directory. Equally settled is the proposition that the Public Prosecutor is required to independently apply his mind and cannot merely act as a forwarding agency for the Investigating Officer. Further, before

such extension is granted, the accused is entitled to notice and an opportunity of hearing.

13. The Hon'ble Supreme Court has consistently held that the right to be released on default bail under Section 167(2) of the Code of Criminal Procedure, now embodied in Section 187 of the Bharatiya Nagarik Suraksha Sanhita, is not merely a statutory right but an indefeasible right flowing from the constitutional guarantee of personal liberty under Article 21 of the Constitution. Although Section 36-A(4) of the NDPS Act extends the period of investigation from ninety days to one hundred and eighty days in cases involving commercial quantity, such extension beyond one hundred and eighty days can be granted only upon strict compliance with the conditions stipulated in the proviso thereto. In **Sanjay Kumar Kedia @ Sanjay Kedia v. Intelligence Officer, Narcotic Control Bureau, (2009) 17 SCC 631**, while interpreting Section 36-A(4) of the NDPS Act, it was held that the Special Court can extend the period of investigation only if the twin statutory requirements are fulfilled, namely:-

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

14. The Apex Court categorically observed that these statutory safeguards cannot be diluted and that the report of the Public Prosecutor cannot be substituted by an application moved by the investigating agency. Further, the constitutional importance of the right to default bail has thereafter been reiterated in **M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence, (2021) 2 SCC 485**, wherein it was held that once the indefeasible right accrues and is availed of by the accused before filing of the charge-sheet, such right cannot subsequently be defeated. The Court observed that the right to default bail is intrinsically connected with the guarantee of personal liberty under Article 21 of the Constitution and therefore deserves strict protection. Similarly, this Court also finds considerable guidance from the Division Bench judgment of this Court in **Satpal Singh @ Satpala v. State of Haryana, ILR Punjab and Haryana 2022 (2) 1546**.

15. Apart from the above, the impugned order neither records issuance of notice to the petitioners nor reflects that they were afforded an opportunity of hearing before extension of time was granted. The order merely notices the submissions of the prosecution and proceeds to grant extension on the ground that the report of the Chemical Examiner had not been received. Such a course is clearly contrary to the law laid down by the Hon'ble Supreme Court and this Court. It is equally significant that the only reason assigned for extension was the non-receipt of the FSL report. Mere pendency of the Chemical Examiner's report, in the absence of an independent report of the Public Prosecutor indicating the progress of investigation and compelling reasons for further detention, cannot satisfy the mandatory requirements of Section 36-A(4) of the NDPS Act.

16. Thus, the legal position is now settled beyond controversy that while considering an application under the proviso to Section 36-A(4) of the NDPS Act, the Special Court is required to satisfy itself regarding strict compliance with each of the mandatory conditions contained therein. Any deviation from the statutory mandate would render the extension order vulnerable. Examined in the light of the aforesaid legal position, the impugned order dated 24.12.2025 cannot be sustained. A perusal thereof reveals that the application seeking extension of time had not been forwarded by the learned Additional Public Prosecutor, a fact specifically recorded by the learned Special Court itself. Thus, the mandatory requirement of a report of the Public Prosecutor under the proviso to Section 36-A(4) of the NDPS Act admittedly stood unfulfilled.

17. This Court also cannot overlook that a Coordinate Bench, while deciding **CRR No.177 of 2026 (Gursewak Singh v. State of Punjab)** arising out of the same FIR and challenging the very same extension order dated 24.12.2025, has already held that the mandatory requirements of Section 36-A(4) of the NDPS Act were not complied with and consequently granted the concession of default bail to the co-accused. The State has not been able to point out any distinguishing feature which would warrant a different view in the present petitions.

18. In view of the foregoing discussion, this Court is of the considered opinion that the order dated 24.12.2025 granting extension of time is unsustainable in law, having been passed in violation of the mandatory requirements of the proviso to Section 36-A(4) of the NDPS Act. Consequently, the order dated 06.01.2026 declining the petitioners' prayer for default bail, being founded upon the said illegal extension order, also cannot be sustained. The petitioners had, therefore, acquired an indefeasible right to be released on default bail.

19. Consequently, both the revision petitions are allowed. The impugned order dated 24.12.2025 passed by the learned Judge, Special Court, Tam Taran, extending the period of investigation under the proviso to Section 36-A(4) of the NDPS Act, as well as the consequential orders dated 06.01.2026 dismissing the petitioners' applications for default bail, are hereby set aside.

20. Accordingly, the both petitioners are held entitled to the concession of statutory/default bail and shall be released on bail in FIR No. 124 dated 01.07.2025, registered under Sections 15 and 29 of the NDPS Act at Police Station Sadar Patti, District Tam Taran, subject to their furnishing requisite bail and surety bonds to the satisfaction of the learned Trial Court/Duty Magistrate concerned, and shall abide by the following conditions:

1. The petitioners shall not, directly or indirectly, make any inducement, threat, or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts before the Court or to the investigating agency.
2. The petitioners shall not tamper with the prosecution evidence in any manner whatsoever, nor shall they attempt, directly or indirectly, to influence, intimidate, or contact any prosecution witness.

3. The petitioners shall not leave the territorial limits of India without obtaining the prior permission of the learned Trial Court. In the event they are in possession of a passport, they shall furnish its particulars before the Investigating Officer as well as the learned Trial Court.

4. The learned Illaqa Magistrate/Duty Magistrate, before accepting the bail and surety bonds, shall obtain from the petitioners their respective permanent residential address as well as present correspondence address, duly supported by appropriate documentary proof. The Investigating Officer shall verify the correctness of the said addresses within 48 hours from the acceptance of the bail bonds and shall place a verification report on the record. In the event either of the addresses is found to be false, fictitious, or incorrect, it shall be open to the prosecution to seek cancellation of the concession of bail in accordance with law.

5. The petitioners shall furnish before the learned Trial Court, either at the time of furnishing the bail bonds or within such period as may be specified by the Court, their respective Permanent Account Number (PAN), Aadhaar Number, particulars of all operative bank accounts, and a declaration disclosing details of their respective immovable properties, if any. Any concealment of material particulars or furnishing of false information shall constitute a valid ground for seeking cancellation of bail in accordance with law.

6. The petitioners shall intimate the Investigating Officer as well as the learned Trial Court, in writing, of any change in their respective residential address or mobile number within seven days from the date of such change.

7. The petitioners shall not commit any offence of a similar nature during the pendency of the trial and shall remain present before the learned Trial Court on each and every date fixed, unless their personal appearance is exempted in accordance with law. They shall not absent themselves from the proceedings without obtaining prior permission of the learned Trial Court. In the event of any violation of the aforesaid conditions or their unauthorized absence from the trial proceedings, it shall be open to the learned Trial Court to proceed in accordance with law, including cancellation of the concession of bail and issuance of appropriate coercive process, including warrants of arrest.

21. It is made abundantly clear that in case there is any breach of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail.

22. It is clarified that the observations made herein are confined to the adjudication of the present revision petitions and shall not be construed as an expression on the merits of the case.

23. Pending miscellaneous application(s), if any, also stand disposed of.