IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-3088-2025
Date of decision: 05.02.2026

PARAS THAKUR AND ANOTHER

….Petitioners

Versus

STATE OF PUNJAB

....Respondent

CORAM:- HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present: Mr. Samay Sandhawalia, Advocate
for the petitioners.

Mr. Amrit Pal Singh Gill, DAG, Punjab.

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RUPINDERJIT CHAHAL, J. (ORAL)

CRM-794-2026

This is an application under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 for placing on record Annexure P-2 and Annexure P-3.

For the reasons mentioned the application, the same is allowed.

MAIN CASE

1. The present petition has been filed challenging the impugned order dated 04.11.2025 passed by the Special Court, Gurdaspur whereby the application filed by the petitioners for default bail under Section 187(2) of

Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 in FIR No.29, dated 07.05.2025, registered under Sections 22, 25, 29 of NDPS Act at Police Station Special Operation Cell, District Amritsar, was dismissed.

2. Learned counsel for the petitioners submits that they have been falsely implicated in the present case and were arrested on 07.05.2025 with the alleged contraband and produced before Illaqa Magistrate on 08.05.2025 and have been in custody since then. He submits that it is settled law that in case under NDPS Act, prosecution has to present challan within 180 days after registration of FIR. Since, the prosecution failed to file challan within the stipulated time, an indefeasible right accrued in favour of the petitioner and they were entitled for default bail. He further submits that an application for default bail was filed before the learned trial Court, which was dismissed on the ground that the prosecution has already got extension of one month time to file the challan.

3. Learned counsel for the petitioners submits that it is settled law if the prosecution is unable to file challan within a stipulated time, they have to get the permission of the Court, however, a notice is also to be given to the accused and he should be heard before any such extension is granted. He contends that in the present case the prosecution made an application for extension of time on 30.10.2025 which was allowed on 31.10.2025 whereas, the period of 180 days was to expire on 04.11.2025. He argues that though the application was made by prosecution before the expiry of 180 days, however, no notice was served to the accused and the principles of law have been violated. Thus he prays that the impugned order suffers from grave illegality and be set aside and the petitioners be granted the concession of default bail.

4. Opposing the prayer for bail, learned counsel for the State submits that the offence committed by the petitioners is serious in nature. He submits that the prosecution had filed the application seeing extension of time to file the challan before the expiry of 180 days, which was allowed by the learned trial Court. Hence, there is no illegality in the order passed by the learned trial Court and the present petition lacks merit.

5. Having heard learned counsel for the parties at length and after perusing the record of the case, it is evident that the prosecution had filed an application seeking extension of time to file the challan on 30.10.2025 which was allowed on 31.10.2025, whereas the period of 180 days expired on 04.11.2025. It is established law that right to default bail arises only when the statutory period for filing the challan has expired and no valid extension has been granted. As far as the requirement of giving notice to the accused is concerned the law is well settled by the Hon'ble Supreme Court in ***Sanjay Dutt v. State through C.B.I. Bombay, (1994) 5 SCC 410;*** wherein while examining a similar question under the *pari materia* provision of TADA Act 1987 it was observed as under:-

> *"48. We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4)(bb) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the*

> *challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 CrPC ceases to apply. The Division Bench also indicated that if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in Section 20(4)(bb), both of them should be considered together. It is obvious that no bail can be given even in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer for extension of time, if such a prayer is made. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order."*

6. More recently, the Hon'ble Supreme Court in ***Jigar vs State of Gujarat, (2023) 6 SCC 484***, relying upon its earlier decision in ***Sanjay Dutt (Supra)*** reiterated that while considering request for extension judicial custody, the accused must be produced, either physically or through virtual mode, the presence of the accused is a safeguard as it enables the accused to oppose the request for further remand or extension of time. This requirement is a pre-requisite for legitimate exercise of the Courts power to extend custody. It was further observed that absence of accused while granting extension of time for filing of challan is not a mere procedural irregularity, rather it amounts to violation of his fundamental right conferred under Article 21 of the Constitution. The relevant part of the order of the Hon'ble Supreme Court is reproduced 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."*

7. From the above principles, there remains no doubt that the accused must be present either physically or virtually when the Court considers a request for extension of time to file the challan. Since, extension of time directly affects the accused's right to default bail, an order passed in his absence is a serious violation of his right to personal liberty guaranteed under Article 21 of the Constitution.

8. A bare reading of Annexure P-2 (order granting extension of time for filing of challan) shows that there is no reference whatsoever to the presence or any submission or objection raised by the petitioners. Had the petitioners been present, the order would have reflected that. Such omission is in clear breach of the settled legal requirement and thus, the impugned order is bad in law and liable to be quashed.

9. Keeping in view the facts and circumstances of the present case and the legal principles enunciated by the Hon'ble Supreme Court the impugned order dated 04.11.2025 is quashed qua the petitioners and they are directed to be released on default bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned. It is clarified that nothing stated herein shall be construed as an expression of opinion on the merits of the case.

10. The present petition is disposed off accordingly.

(RUPINDERJIT CHAHAL)
JUDGE

05.02.2026
Gurpreet

i) Whether speaking/reasoned? Yes/No
ii) Whether reportable? Yes/No