



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 233/2022

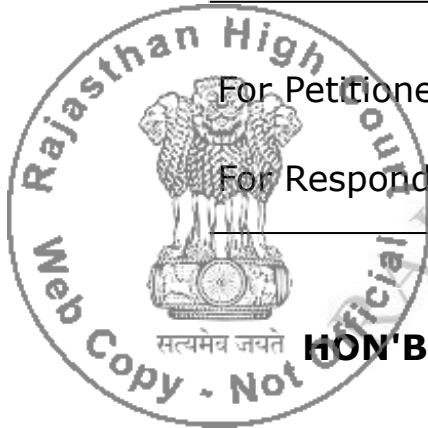
Akheraj

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent



For Petitioner(s) : Mr. S.S. Ladrecha with
Mr. Devendra Singh
For Respondent(s) : Mr. Gaurav Singh PP

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reportable

24/03/2022

1. In the wake of instant surge in COVID – 19 cases and spread of its highly infectious Omicron variant, abundant caution is being maintained, while hearing the matters in the Court, for the safety of all concerned.
2. The present case, originally, was filed as criminal misc. third bail application. However, upon an application being moved on behalf of the petitioner seeking to treat the bail application as criminal revision petition, the same was allowed by this Hon'ble Court order dated 14.03.2022. Accordingly, the said bail application was treated and registered as criminal revision petition, which is listed before this Court for consideration.
3. The prayer made in the present case, as originally filed, reads as under:



“It is, therefore, most respectfully and humbly prayed that this bail application under Section 167 (2) Crpc. may kindly be allowed and the petitioners may kindly be ordered to be release on bail in FIR no. 273/2021 registered on 16.10.2021 Police Station Osiyan at district Jodhpur.”

4. Learned counsel for the petitioner submits that an F.I.R., bearing No. 273/2021 was lodged on 16.10.2021 under Section 363 I.P.C., by one Chhoturam S/o Ramnarayan stating that his brother's daughter, Sumitra was abducted by the present accused-petitioner alongwith other persons; whereafter, the petitioner was taken into custody on 19.10.2021, and remained as such for one day, until ordered to be released by the competent court on 20.10.2021; however, subsequently the petitioner was again arrested and took into custody. As per learned counsel, the total period of the petitioner's custody was beyond the mandated time period, as prescribed under Section 167(2) Cr.P.C.

Relevant portion of Section 167 Cr.P.C reads as follows: -

167. Procedure when investigation cannot be completed in twenty-four hours.—

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that —

[(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is



satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph 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 not less than ten years;

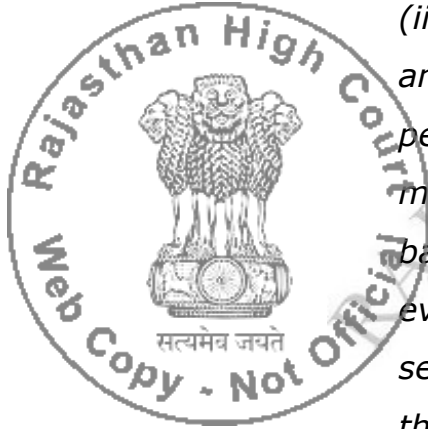
(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

[(b) 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 medium of electronic video linkage;]

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

[Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.]

[Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the





accused person through the medium of electronic video linkage, as the case may be.]

[Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.]

5. Learned counsel for the petitioner further submits that the petitioner is entitled to statutory / default bail, and that his right to seek the same has accrued on the ground that the period, as laid down in Section 167 (2) Cr.P.C., of 90 days, was exceeded and he was kept in custody for a total period of 92 days.

5.1 Learned counsel also submits that the petitioner was arrested on 19.10.2021 at 11:00 a.m. and was in custody until 20.10.2021 i.e. one whole day, and from 27.10.2021 to 24.01.2022, and also, he was in custody for 5 days in October, 30 days in November, 31 days in December and 24 days in January, until the challan i.e. the chargesheet was filed on 24.01.2022.

6. Learned counsel for the petitioner placed reliance on the following judgments:-

6.1 ***Serious Fraud Investigation Office Vs. Rahul Modi & Ors., Criminal Appeal Nos.185-186 of 2022, decided on 07.02.2022***, wherein the Hon'ble Apex Court observed as under:-

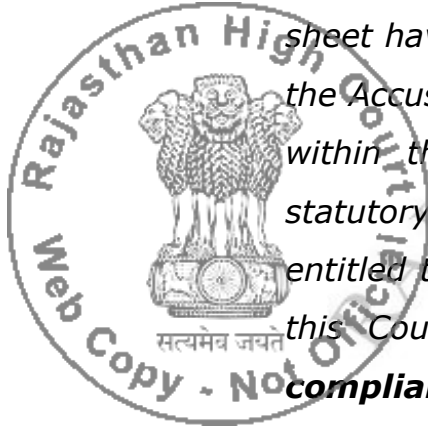
"8. The only point that arises for our consideration in this case is whether an Accused is entitled for statutory bail Under Section 167(2), Code of Criminal Procedure on the ground that cognizance has not been taken before the expiry of 60 days or 90 days, as the case may be, from the date of remand.. . . .

9. The scheme of the provisions relating to remand of an accused first during the stage of investigation and thereafter, after cognizance is taken, indicates that the



legislature intended investigation of certain crimes to be completed within the period prescribed therein, according to this Court in *Bhikam chand Jain (supra)*. This Court held that in the event of investigation not being completed by the investigating authorities within the prescribed period, the Accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. This Court was of the firm opinion that if on either the 61st day or the 91st day, an Accused makes an application for being released on bail in default of charge-sheet having been filed, the court has no option but to release the Accused on bail. However, once the charge-sheet was filed within the stipulated period, the right of the Accused to statutory bail came to an end and the Accused would be entitled to pray for regular bail on merits. . . . It was held by this Court that the **filing of charge-sheet is sufficient compliance with the provisions of proviso (a) to Section 167(2), Code of Criminal Procedure and that taking of cognizance is not material to Section 167**. The scheme of Code of Criminal Procedure is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. During the period of investigation, the Accused is under the custody of the Magistrate before whom he or she is first produced, with such Magistrate being vested with power to remand the Accused to police custody and/or judicial custody, up to a maximum period as prescribed Under Section 167(2). Acknowledging the fact that an Accused has to remain in custody of some court, this Court concluded that on filing of the charge-sheet within the stipulated period, the Accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the Accused for purposes of remand during the trial in terms of Section 309, Code of Criminal Procedure. This Court clarified that the two stages are different, with one following the other so as to maintain continuity of the custody of the Accused with a court.

10. It is **clear from the judgment of this Court in *Bhikamchand Jain (supra)* that filing of a charge-sheet is sufficient compliance with the provisions of Section**





167, Code of Criminal Procedure and that an accused cannot demand release on default bail Under Section 167(2) on the ground that cognizance has not been taken before the expiry of 60 days.

11. . . . **In Sanjay Dutt (supra), this Court held that the indefeasible right accruing to the accused is enforceable only prior to the filing of challan and it does not survive or remain enforceable, on the challan being filed. It was made clear that 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. . . .**

12. In Madar Sheikh (supra) ... **this Court held that the right conferred on an accused Under Section 167(2) cannot be exercised after the charge-sheet has been submitted and cognizance has been taken. . . .**

15. A close scrutiny of the judgments in Sanjay Dutt (supra), Madar Sheikh (supra) and M. Ravindran (supra) would show that there is nothing contrary to what has been decided in Bhikamchand Jain (supra). In all the above judgments which are relied upon by either side, this Court had categorically laid down that **the indefeasible right of an Accused to seek statutory bail Under Section 167(2), Code of Criminal Procedure arises only if the charge-sheet has not been filed before the expiry of the statutory period.** Reference to cognizance in Madar Sheikh (supra) is in view of the fact situation where the application was filed after the charge-sheet was submitted and cognizance had been taken by the trial court. Such reference cannot be construed as this Court introducing an additional requirement of cognizance having to be taken within the period prescribed under proviso (a) to Section 167(2), Code of Criminal Procedure, failing which **the Accused would be entitled to default bail, even after filing of the charge-sheet within the statutory period. It is not necessary to repeat that in both Madar Sheikh (supra) and M. Ravindran (supra), this Court expressed its view that non-filing of the charge-sheet within the statutory period is the ground for availing the**



indefeasible right to claim bail Under Section 167(2), Code of Criminal Procedure. The conundrum relating to the custody of the Accused after the expiry of 60 days has also been dealt with by this Court in *Bhikamchand Jain (supra)*. It was made clear that the Accused remains in custody of the Magistrate till cognizance is taken by the relevant court. . . .”

6.2 **Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and Ors. (2013) 1 SCC (LS) 480** wherein the

Hon'ble Apex Court, with regard to the provision of law laid down in Section 167 Cr.P.C, observed as under:-

“From the above provision, it would be amply clear that the Magistrate may authorise the detention of an accused person, otherwise than in the custody of the police, beyond a period of 15 days, if he is satisfied that there are adequate grounds for doing so, but no Magistrate is authorised to detain the accused person in custody for a total period exceeding 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and, 60 days where the investigation relates to any other offence. In other words, **if an accused was ready to offer bail, once the stipulated period for the investigation had been completed, then the Magistrate no longer had the authority to extend the period of detention beyond the said period of 90 days and, consequently, he had no option but to release the accused on bail. The language used in Sections 167(2)(a)(i) and (ii) is that on the expiry of the period of 90 days or 60 days, as the case may be, the accused person shall be released on bail, if he is prepared to and does furnish bail.** The direction upon the learned Magistrate or the Trial Court is mandatory in nature and any detention beyond the said period would be illegal.

...once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. . . .Whether cognizance is taken or not is not material as far as Section 167 Code of Criminal Procedure is concerned. . . . The scheme of the Code of Criminal Procedure is such that once the investigation stage is completed, the Court proceeds to the



next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) Code of Criminal Procedure, the Magistrate is vested with authority to remand the accused to custody, both police custody and/or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the Court trying the offence, when the said Court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 Code of Criminal Procedure. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court."

7. On the other hand, learned Public Prosecutor opposes, and submits that the learned Court below, vide the impugned order, has rightly held that once a charge sheet has been filed and cognizance has also been taken against the accused-petitioner, the right to claim bail under Section 167 (2) Cr.P.C. does not subsist. And that, since the accused-petitioner made the application seeking default/statutory bail after the charge sheet was filed, he relinquished his right to seek bail as a matter of right under Section 167 (2) Cr.P.C.

8. Learned Public Prosecutor placed reliance on the following judgments:-

8.1 **Sanjay Dutt Vs. State through C.B.I. Bombay (1994) 5 SCC 410**, relevant portion of which reads as under:



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

8.2 ***Mohamed Iqbal Madar Sheikh and Ors. Vs. State of Maharashtra (1996) 1 SCC 722***, relevant portion of which reads as under:

"So far the facts of the present case are concerned, the appellant Nos. 1 to 6 were taken into custody on 16.1.1993. The charge-sheet was submitted on 30.8.1993; obviously beyond the statutory period under Section 20(4)(b). There is nothing on record to show that provisions of Section 20(4)(bb) were applied in respect of appellants. They had become entitled to be released on bail under proviso (a) to Section 167(2) of the Code read with Section 20(4)(b) of the TADA. **But it is an admitted position that no application for bail on the said ground was made on behalf of the appellants. Unless applications had been made on behalf of the appellants, there was no question of their being released on ground of default in completion of the investigation within the statutory period.**"

9. The contention of the learned counsel for the petitioner that the period, during which the accused-petitioner was arrested for



the first time, and detained in custody, before which the additional offences were added by the investigation officer, would be computed and therefore the total period of detention of the accused person in custody would exceed 90 days, making him entitled to default/statutory bail.

10. Heard learned counsel for the parties as well as perused the record of the case and the judgments cited at the Bar.

11. This Court therefore observes that the following two issues arise for consideration:

11.1 Whether the learned Court below, in computing the total period of detention of accused person as under Section 167 (2) Cr.P.C. , during which the accused – applicant was in custody, was right to exclude the period during which he was previously remained in custody, and subsequently released on bail i.e. before which the additional offences against him were found to be made out by the investigating officer.

11.2 Whether a bail application, under Section 167 (2) Cr.P.C., seeking default/statutory bail, filed after the charge sheet, although the charge sheet has been filed after the expiry of the prescribed statutory time limit under Section 167 (2) Cr.P.C., would be maintainable.

12. This Court observes that the accused–petitioner was initially arrested on 19.10.2021, in connection with alleged commission of offence under Section 363 I.P.C. and was presented before a Magistrate and was granted bail on 20.10.2021. Subsequently, during the period of investigation, the investigating officer filed an



application under Section 437(3) Cr.P.C. before the Judicial Magistrate, Osian upon finding that the accused– petitioner had allegedly committed offences under other Sections of the I.P.C., namely Sections 457, 342, 366A, 376(2)(n), 376D, along with offences under the Protection of Children from Sexual Offences Act, 2012 (POCSO), namely Sections 3/4, 5(G)/6 which was accepted by the learned Magistrate vide order dated 26.10.2021, while granting permission to the investigating officer to arrest the petitioner. In pursuance of the said order, the petitioner was arrested again on 27.10.2021, and after being presented before the learned Court below on 28.10.2021, he was remanded to police custody. Subsequently, on 31.10.2021 the accused–petitioner was remanded to judicial custody. The charge sheet was filed on 24.01.2022.

13. This Court further observes that the impugned order, dated 24.02.2022, passed by the learned Court below, states that the accused–petitioner made an application seeking bail before the learned Court below, on 22.02.2022, after the charge sheet was filed, and cognizance of the offences mentioned in the F.I.R. was taken against him, which was within the stipulated period of 90 days as laid down in Section 167 (2) Cr.P.C., which was computed from 27.10.2021.

14. This Court is also conscious of the law laid down by the Hon'ble Apex Court in the following judgments: -

14.1 **Achpal & Ors. Vs. State of Rajasthan (2019) 14 SCC 599**, relevant portion of which reads as under:



"It is thus clearly indicated that the stage of investigation ought to be confined to 90 or 60 days, as the case may be, and thereafter the issue relating to the custody of the Accused ought to be dealt with by the Magistrate on the basis of the investigation. Matters and issues relating to liberty and whether the person Accused of a charge ought to be confined or not, must be decided by the Magistrate and not by the Police. The further custody of such person ought not to be guided by mere suspicion that he may have committed an offence or for that matter, to facilitate pending investigation.

The fact of the matter is that as on completion of 90 days of prescribed period Under Section 167 of the Code there were no papers of investigation before the concerned Magistrate. The Accused were thus denied of protection established by law. The issue of their custody had to be considered on merits by the concerned Magistrate and they could not be simply remanded to custody de hors such consideration.

The provisions of the Code do not empower anyone to extend the period within which the investigation must be completed nor does it admit of any such eventuality. There are enactments such as the Terrorist and Disruptive Activities (Prevention) Act, 1985 and Maharashtra Control of Organised Crime Act, 1999 which clearly contemplate extension of period and to that extent those enactments have modified the provisions of the Code including Section 167. In the absence of any such similar provision empowering the Court to extend the period, no Court could either directly or indirectly extend such period.

We must at this stage note an important feature. In Rakesh Kumar Paul (*supra*), in his conclusions, Madan B. Lokur, J. observed in para 49 as under:

The Petitioner is held entitled to the grant of "default bail" on the facts and in the circumstances of this case. The trial Judge should release the Petitioner on "default bail" on such terms and conditions as may be reasonable. However, we make it clear that this does not prohibit or otherwise prevent the arrest or



re-arrest of the Petitioner on cogent grounds in respect of the subject charge and upon arrest or re-arrest, the Petitioner is entitled to petition for grant of regular bail which application should be considered on its own merit. We also make it clear that this will not impact on the arrest of the Petitioner in any other case.”

14.2 **Rakesh Kumar Paul Vs. State of Assam (2017) 15 SCC**

67 wherein the Hon'ble Apex Court made the following observations:-

“The significance of the period of 60 days or 90 days, as the case may be, is that if the investigation is not completed within that period then the Accused (assuming he or she is in custody) is entitled to 'default bail' if no charge sheet or challan is filed on the 60th or 90th day, the Accused applies for 'default bail' and is prepared to and does furnish bail for release.

Ever since 1898, the legislative intent has been to conclude investigations within twenty-four hours. This intention has not changed for more than a century, as the marginal notes to Section 167 of the Code of Criminal Procedure suggest. However, the Legislature has been pragmatic enough to appreciate that it is not always possible to complete investigations into an offence within twenty-four hours. Therefore initially, in the Code of Criminal Procedure of 1898, a maximum period of 15 days was provided for completing the investigations. Unfortunately, this limit was being violated through the subterfuge of taking advantage of Section 344 of the Code of Criminal Procedure of 1898. The misuse was recognized in the 41st Report of the Law Commission of India and consequently the Law Commission recommended fixing a maximum period of 60 days for completing investigations and that recommendation came to be enacted as the law in the Code of Criminal Procedure of 1973. Subsequently, this period was also found to be insufficient for completing investigations into more serious offences and, as mentioned above, the period for completing investigations was bifurcated into 90



days for some offences and 60 days for the remaining offences.

Notwithstanding this, the basic legislative intent of completing investigations within twenty-four hours and also within an otherwise time-bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete investigations, the Legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an Accused to remain in custody for a prolonged or indefinite period.

What is forgotten is that the infeasible right for 'default bail' accrued to the Petitioner when the period of 60 days for completing the investigation and filing a charge sheet came to an end on 3rd or 4th January, 2017 and that the infeasible right continued till 24th January, 2017. The question is whether during this interregnum the Petitioner was entitled to 'default bail' or not? Ordinarily, the answer would be "yes" but in the present case, the Petitioner was not granted bail and a charge sheet was filed against him on 24th January, 2017. Was his infeasible right completely taken away?

The Constitution Bench in Sanjay Dutt made it clear in paragraph 48 of the Report that **the infeasible right accruing to the Accused is enforceable only prior to the filing of the charge sheet and it does not survive or remain enforceable thereafter, if already not availed of. In other words, the Constitution Bench took the view that the infeasible right of 'default bail' continues till the charge sheet or challan is filed and it gets extinguished thereafter.**

This Court had occasion to review the entire case law on the subject in Union of India v. Nirala Yadav MANU/SC/0580/2014 : (2014) 9 SCC 457. In that decision, reference was made to Uday Mohanlal Acharya v. State of Maharashtra MANU/SC/0222/2001 : (2001) 5 SCC 453 and the conclusions arrived at in that decision. We are concerned with conclusion No. 3 which reads as follows:



(3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the Accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the Accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

This Court also dealt with the decision rendered in Sanjay Dutt and **noted that the principle laid down by the Constitution Bench is to the effect that if the charge sheet is not filed and the right for 'default bail' has ripened into the status of indefeasibility**, it cannot be frustrated by the prosecution on any pretext. The Accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the Accused is prepared to furnish the bail bond.

It is not as if the Petitioner did not make any application for default bail-such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the Accused makes a written application for 'default bail' or an oral application for 'default bail' is of no consequence. The concerned court must deal with such an application by considering the statutory requirements namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge sheet or challan has been filed and whether the Accused is prepared to and does furnish bail. 41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical

... it would equally be the duty and responsibility of a court on coming to know that the Accused person before it is entitled to 'default bail', to at least apprise him or her of the indefeasible right. A contrary view would diminish the respect for personal



liberty, on which so much emphasis has been laid by this Court.

... when the High Court dismissed the application for bail filed by the Petitioner, he had an indefeasible right to the grant of 'default bail' since the statutory period of 60 days for filing a charge sheet had expired, no charge sheet or challan had been filed against him (it was filed only on 24th January, 2017) and the Petitioner had orally applied for 'default bail'. Under these circumstances, the only course open to the High Court on 11th January, 2017 was to enquire from the Petitioner whether he was prepared to furnish bail and if so then to grant him 'default bail' on reasonable conditions. Unfortunately, this was completely overlooked by the High Court.

It would have been another matter altogether if the Petitioner had not applied for 'default bail' for whatever reason during this interregnum"

14.3 **M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence (2021) 2 SCC 485** wherein the Hon'ble Apex Court observed asunder: -

"The right to be released on default bail continues to remain enforceable if the Accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court."

15. This Court further observes, as aforementioned, that the accused-petitioner was first arrested and taken into custody for a period of one day, when an offence under Section 363 I.P.C. was found to be made out against him. And that the accused-petitioner was produced before a Magistrate the very next day, and was granted bail on 20.10.2021, the same day.



16. It is clear from the record, and from what has been enumerated above that the petitioner was, after the aforesaid order, re-arrested on 27.10.2021 upon fresh inclusion of the alleged offences under Sections 457, 342, 366A, 376(2)(n), 376D IPC, along with Sections 3/4, 5(G)/6 of the POCSO Act, and the charge-sheet was filed on 24.01.2022.

17. A bare perusal of Section 167 (2) Cr.P.C. reveals that under sub-section (2) (a) (I) of 167 Cr.P.C., the period of 90 days would be computed when the investigation, with regard to that particular offence(s), began. The offence under Section 363 I.P.C. would attract the application of Section 167 sub-section (2) (a) (ii) of Cr.P.C. since the maximum / upper limit period of imprisonment under the said section would be 60 days. Regardless of that fact, this Court finds that if an additional or new offence(s) are found to be made out by the investigating authority, against an accused, then the computation of the period, as laid down under Section 167 Cr.P.C. would be done afresh.

17.1 Owing to the present facts and circumstances, such is the position in the present case, wherein new offences were found to be made out against the accused-petitioner, by the investigating officer during the course of investigation.

18. This Court, in light of the aforementioned, finds that the learned Court below, after appreciating relevant judicial precedents, has rightly found that the total period of detention of the accused-petitioner have to begun from 27.10.2021, until when the charge sheet was filed on 24.01.2022. And therefore, the charge sheet was rightly filed within the stipulated 90 days' time period as laid down under Section 167 (2) (a) (I) Cr.P.C.



19. In the present case, the accused–petitioner preferred an application seeking bail, under Section 167 (2) Cr.P.C, on 22.02.2022 before the learned court below, at a belated stage of about 29 days after the charge sheet was filed, i.e. on 24.01.2022.

20. Thus, the first issue is answered as that the period of 90 days is stated to be counted when the investigation for the fresh offence(s) is started and not from the date of lodging of the FIR.

20.1 The second issue once attached to the controversy is also answered in the following paragraphs in accordance with the settled law as laid down by the Hon'ble Apex Court.

21. In **Suresh Kumar Bhikamchand Jain (supra)**, the Hon'ble Apex Court reiterated the decision of the Hon'ble Constitution Bench in **Sanjay Dutt (supra)** stating that the right to default/statutory bail accrues to the accused, and gains the status of an 'indefeasible right' only after the expiry of the total period as laid down in Section 167 (2) Cr.P.C. and until the charge-sheet is subsequently filed.

21.1 The Hon'ble Apex Court in **Sanjay Dutt (supra)**, laid down in clear and cogent terms that the indefeasible right of default/statutory bail, accruing to the accused, who is in detention/custody, is enforceable only prior to filing of the charge-sheet and it does not survive once the charge-sheet has been filed; unless, the said right had already been availed of.

21.2 This implies that if the accused had made an application seeking bail under Section 167(2) Cr.P.C. after the expiry of the total period laid down in the said provision, but before the charge-sheet is filed, the pendency of such an application would not affect



his right to seek such bail, even in case of filing of the charge-sheet prior to adjudication on such application.

22. In both the aforesaid cases, and in **Mohamed Iqbal Madar Sheikh (supra)**, the Hon'ble Apex Court held that the said right to seek default/statutory bail may be availed only after an application for the same has been made by the accused, or on behalf of the accused-applicant before the concerned Magistrate.

23. Further, in **Achpal (supra)** it has been clarified that unless an extension to such a total period of detention of an accused, as laid down under Section 167 (2) Cr.P.C, was prescribed by a particular statute, the Courts would not be empowered to grant any extension of time for detention of an accused or overlook the delay in filing the charge sheet in case an application seeking bail by the accused person(s) has been preferred.

24. The Hon'ble Apex Court, in **Rakesh Kumar Paul (supra)**, after delving deep into statutory interpretation of legislation, and the right to life and personal liberty of an accused, and in **M. Ravindran (supra)**, reinforced the *ratio decidendi*, as laid down in aforementioned case laws, and held that the infeasible right accruing to the accused is enforceable only prior to the filing of the charge sheet, and therefore, the right to seek default/statutory bail only remains until the charge sheet is filed, and is extinguished as soon as the charge sheet is filed, once the statutory period as laid down under Section 167 (2) Cr.P.C. has expired.

25. This Court answers the second issue as that if a bail application under Section 167(2) Cr.P.C., seeking default/statutory bail, if filed after filing of the charge-sheet, even if the charge-



sheet has been filed after expiry of the prescribed statutory time limit, under the said provision of law, would not in fact be maintainable.

26. Therefore, what is of utmost significance is whether the application seeking default/statutory bail under Section 167(2) Cr.P.C. has been made before filing of the charge-sheet, or not; and the said right of the accused becomes an indefeasible right only in the circumstance that the prescribed total period has expired and the charge-sheet has not been filed. Other surrounding circumstances are however, immaterial solely with regard to such right, in such attending circumstances.

27. This Court hereby observes that the right to seek default/statutory bail accrues to the accused in the nature of an indefeasible right, only if such remedy by preferring an appropriate application has been availed of within the prescribed window from the date of expiry of total period of detention of accused person(s) under Section 167(2) Cr.P.C., until filing of the charge-sheet.

28. This Court, in light of the praefatus observations, finds that the impugned order passed by the learned Court below does not suffer from any legal infirmity so as to warrant any interference by this Court.

29. Consequently, the present petition is dismissed. All pending applications stand disposed of.

(DR.PUSHPENDRA SINGH BHATI), J.

147-SKant/-