

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SINGLE BENCH: HON. MR. JUSTICE RAJENDRA KUMAR (VERMA))

Case No.	:	Criminal Revision No.883/2021
Parties name	:	The State of M. P. vs. Sanjay
Date of Order	:	10/12/21
Bench constituted of	:	Hon'ble Justice <u>RAJENDRA KUMAR (VERMA)</u>
Judgement delivered by	:	Hon'ble Justice <u>RAJENDRA KUMAR (VERMA)</u>
Whether approved for reporting	:	Yes
Name of counsels for the parties	:	Ms. Vinita Phaye, learned Govt. Advocate on behalf of applicant/State. None for the respondent though served.
Law laid down	:	Where the minimum sentence is less than 10 years <i>but</i> the maximum sentence is not death or life imprisonment then Section 167 (2) (a) (ii) will apply and the accused will be entitled to grant of “default bail” after 60 days in case charge-sheet is not filed. In view of the same, since the maximum sentence provided u/s.467 of IPC is life imprisonment, regardless that the minimum sentence is less then 10 years, the period of filing of charge-sheet is 90 days.
Significant paragraph numbers	:	13

ORDER

(Passed on 10th day of December, 2021)

1. This criminal revision has been preferred under Section 397 read with Section 401 of Cr.P.C. by the applicant/State being

aggrieved by the order dated 12.12.2020 passed by JMFC, Indore in Case No.6891/2020 under Section 419, 420, 467, 468 and 471 in Crime No.11/20202 registered at Police station, Annapurna, Indore whereby the respondent has been granted default bail under Section 167(2) of Cr.P.C. for non compliance of the aforesaid provision in filing the charge-sheet within the prescribed period.

2. In the present case, notice was issued to the respondent on 28.06.2021 but he did not appear then again even after service of the notices, SPC was issued on 09.09.2021, but again no response has been made on behalf of the respondent though served. Hence, proper opportunity has already been granted to the respondent.
3. The facts in short is that, the petitioner was granted default bail by the learned trial Court on 12.12.2020 with regard to the provisions as stated above considering the fact that the prosecution has not filed the charge-sheet against the respondent within 60 days and the same was filed within 72 days, which is an admitted fact.
4. Learned counsel for the State has submitted that the learned trial Court has erred in considering the gravity of offence and the sentence prescribed under the provision of section 467 of IPC and has erred in considering the law in the case of **Shalini Verma And Anr vs. State of Chhatisgarh 2019 SCC Online CG 22** and misinterpreted the law laid down by Apex Court in the case of **Rakesh Kumar Paul vs. State of Assam reported in**

2017(15) SCC 67. The charge-sheet has been filed within prescribed period i.e. within 90 days, hence, the order of the trial Court dated 12.12.2020 is liable to be quashed and the respondent may kindly be directed to take into custody.

5. I have heard the counsel for the State and perused the record.
6. The application for default bail was decided by the learned trial court vide order dated 12.12.2020 relying upon the decisions of **Shalini Verma (supra) and Rakesh Kumar Paul (supra)** holding that as per the provisions for which the petitioner has been implicated, minimum sentence less than 0 years can also be imposed.
7. From the aforesaid factual backdrop, only one issue is has to consider by this court “what is the period for filing the charge-sheet in a case falling u/s.467 of Cr.P.C., *inter alia*, i.e. whether it would be 60 days or 90 days from the date of remand?
8. So far as the question for the period of filing of the charge sheet under Section 167 (2) of the Cr.P.C. is concerned, this issue has already been considered by Co-ordinate Bench of this Court in the case of **Nikhil Halabhavi vs. The State of Madhya Pradesh reported in ILR 2021 MP 1178** and this issue has already been decided by the Supreme Court in the case of **Rakesh Kumar Paul (supra)** wherein the decision in the case of **Bhupinder Singh** has been overruled. The relevant paras of the same are as under:

“**25.** While it is true that merely because a minimum sentence is provided for in the statute it does not

mean that only the minimum sentence is imposable. Equally, there is also nothing to suggest that only the maximum sentence is imposable. Either punishment can be imposed and even something in between. Where does one strike a balance? It was held that it is eventually for the court to decide what sentence should be imposed given the range available. Undoubtedly, the legislature can bind the sentencing court by laying down the minimum sentence (not less than) and it can also lay down the maximum sentence. If the minimum is laid down, the sentencing Judge has no option but to give a sentence “not less than” that sentence provided for. Therefore, the words “not less than” occurring in clause (i) to proviso (a) of Section 167(2) CrPC (and in other provisions) must be given their natural and obvious meaning, which is to say, not below a minimum threshold and in the case of Section 167 CrPC these words must relate to an offence punishable with a minimum of 10 years’ imprisonment.

26. Of the two views expressed by this Court, we accept the view in *Rajeev Chaudhary*.

27. It is true that an offence punishable with a sentence of death or imprisonment for life or imprisonment for a term that may extend to 10 years is a serious offence entailing intensive and perhaps extensive investigation. It would therefore appear that given the seriousness of the offence, the extended period of 90 days should be available to the investigating officer in such cases. In other words, the period of investigation should be relatable to the gravity of the offence — understandably so. This could be contrasted with an offence where the maximum punishment under IPC or any other penal statute is (say) 7 years, the offence being not serious or grave enough to warrant an extended period of 90 days of investigation. This is certainly a possible view and indeed CrPC makes a distinction in the period of investigation for the purposes of “default bail.”

depending on the gravity of the offence. Nevertheless, to avoid any uncertainty or ambiguity in interpretation, the law was enacted with two compartments. *Offences punishable with imprisonment of not less than ten years have been*

kept in one compartment equating them with offences punishable with death or imprisonment for life. This category of offences undoubtedly calls for deeper investigation since the minimum punishment is pretty stiff. All other offences have been placed in a separate compartment, since they provide for a lesser minimum sentence, even though the maximum punishment could be more than ten years' imprisonment. While such offences might also require deeper investigation (since the maximum is quite high) they have been kept in a different compartment because of the lower minimum imposable by the sentencing court, and thereby reducing the period of incarceration during investigations which must be concluded expeditiously. The cut-off, whether one likes it or not, is based on the wisdom of the legislature and must be respected."

(emphasis supplied)

.9. Deepak Gupta, J, in his concurring judgement has held as under:-

“65. Keeping in view the legislative history of Section 167, it is clear that the legislature was carving out the more serious offences and giving the investigating agency another 30 days to complete the investigation before the accused became entitled to grant of “default bail”. It categorises these offences in the three classes:

I. First category comprises of those offences where the maximum punishment was death.

II. *Second category comprises of those offences where the maximum punishment is life imprisonment.*

III. The third category comprises of those offences which are punishable with a term not less than 10 years.

66. In the first two categories, the legislature made reference only to the maximum punishment imposable, regardless of the minimum punishment, which may be imposed. Therefore, if a person is charged with an offence, which is punishable with death or life imprisonment, but the minimum imprisonment is less

than 10 years, then also the period of 90 days will apply. However, when we look at the third category, the words used by the legislature are “not less than ten years”. This obviously means that the punishment should be 10 years or more. This cannot include offences where the maximum punishment is 10 years. It obviously means that the minimum punishment is 10 years whatever be the maximum punishment.

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75. On the other hand, in *Bhupinder Singh v. Jarnail Singh* the Court had distinguished *Rajeev Chaudhary case*³ and held that the word “punishable” is significant and if the offence is punishable with imprisonment for 10 years, whether that be the maximum punishment or minimum punishment, the accused was not entitled to “default bail” prior to 90 days. With due respect, I am unable to agree with the view expressed in this case. Strictly speaking, this question did not arise in *Bhupinder Singh case*. In that case, the accused was charged for an offence under Section 304-B of the Penal Code and this offence is punishable with imprisonment for a term which shall not be less than 7 years but which may extend to imprisonment for life. Since the offence is punishable with imprisonment for life, then the fact that the minimum sentence provided is 7 years would make no difference, as explained by me above. It is only when the maximum sentence is less than life imprisonment that the minimum sentence must be 10 years to fall in the third category of cases. Certain examples of such cases are offences punishable under Sections 21(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, which provide a minimum sentence of 10 years and a maximum sentence of 20 years.

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“83. This Court in a large number of judgments has held that the right to legal aid is also a fundamental right. Legal aid has to be competent legal aid and, therefore, it is the duty of the counsel representing the accused whether they are paid counsel or legal aid counsel to inform the accused that on the expiry of the statutory period of 60/90 days, they are entitled to ‘default bail’. In my view, the magistrate should also not encourage

wrongful detention and must inform the accused of his right. In case the accused still does not want to exercise his right then he shall remain in custody but if he chooses to exercise his right and is willing to furnish bail he must be enlarged on bail.

84. In view of the above discussion, my findings are as follows:

84.1. I agree with both my learned brothers that the amendment made to the Prevention of Corruption Act, 1988 by the Lokpal and Lokayuktas Act, 2013 applies to all accused charged with offences under this Act irrespective of the fact whether the action is initiated under the Lokpal and Lokayuktas Act, 2013, or any other law.

84.2. *Section 167 (2) (a) (i) of the Code is applicable only in cases where the accused is charged with*

(a) offences punishable with death and any lower sentence;

(b) offences punishable with life imprisonment and any lower sentence; and (c) offences punishable with minimum sentence of 10 years.

84.3. In all cases where the minimum sentence is less than 10 years *but the maximum sentence is not death or life imprisonment* then Section 167 (2) (a) (ii) will apply and the accused will be entitled to grant of “default bail” after 60 days in case charge-sheet is not filed.

84.4. The right to get this bail is an indefeasible right and this right must be exercised by the accused by offering to furnish bail.”

(emphasis supplied)

10. So far as Section 467 of IPC is concerned, the same reads, as under: -

“467. Forgery of valuable security, will, etc.—

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an

acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

(emphasis supplied)

11. Section 467 of IPC, when read in the light of the aforesaid paras of **Rakesh Kumar Paul** (supra), specially para 84.2 , it is apparent that the period of filing of the charge sheet in a case where the offence is punishable with life imprisonment and any lower sentence, would be 90 days and as per para 84.3, where the minimum sentence is less than 10 years *but* the maximum sentence is not death or life imprisonment then Section 167 (2) (a) (ii) will apply and the accused will be entitled to grant of “default bail” after 60 days in case charge-sheet is not filed.

12. So far as the case of **Shalini Verma** (supra) referred by High Court of Chhatisgarh is concerned, it is found that although the Hon'ble Court has also referred to the decision rendered by by apex Court in the case of **Rakesh Kumar Paul** (supra), however, only para nos. 25 and 26 of the aforesaid decision has been taken into consideration. Relevant paras of **Shalini Verma** (supra) reads as under:-

“14. The above declaration of law has been affirmed by the majority in the matter of Rakesh Kumar Paul Vs State of Assam, (2017) 15 SCC 67 and contrary view expressed in Bhupinder Singh Vs Jarnail Singh - (2006) 6 SCC 277 has been overruled on this point. The relevant para(s) of Rakesh Kumar Paul (Supra) reads

thus:

"25. While it is true that merely because a minimum sentence is provided for in the statute it does not mean that only the minimum sentence is imposable. Equally, there is also nothing to suggest that only the maximum sentence is imposable. Either punishment can be imposed and even something in between. Where does one strike a balance? It was held that it is eventually for the court to decide what sentence should be imposed given the range available. Undoubtedly, the legislature can bind the sentencing court by laying down the minimum sentence (not less than) and it can also lay down the maximum sentence. If the minimum is laid down, the sentencing Judge has no option but to give a sentence "not less than" that sentence provided for. Therefore, the words "not less than" occurring in clause (i) to proviso (a) of Section 167 (2) CrPC (and in other provisions) must be given their natural and obvious meaning, which is to say, not below a minimum threshold and in the case of Section 167 CrPC these words must relate to an offence punishable with a minimum of 10 years' imprisonment.

26. Of the two views expressed by this Court, we accept the view in Rajeev Choudhary [Rajeev [Rajeev Choudhary v. State (NCT of Delhi), (2001) 5 SCC 34]."

15. In view of the above, I have no hesitation to hold that the computation of period of detention of the accused person in custody under Section 167 (2) of CrPC will start from the date of remand and period of detention in custody for the offence punishable u/S 467 of IPC shall be governed by subclause (ii) of Section 167 (2) (a) of CrPC and would be of sixty (60) days."

13. It is apparent that the learned Judge of the Chhagisgarh High Court has not taken into account the subsequent paras no.27, and other paras Nos.65, 66, 75, 83 and 84 of the

concurring judgement of *Deepak Gupta, J* which are already reproduced hereinabove and which clearly provide that as per *Section 167 (2) (a) (i) of the Code*, the period of filing of the charge sheet in a case where the offence is punishable with life imprisonment and any lower sentence would be ninety days and as per para 84.3, **where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then Section 167 (2) (a) (ii) will apply and the accused will be entitled to grant of “default bail” after 60 days in case charge-sheet is not filed. In view of the same, since the maximum sentence provided u/s.467 of IPC is life imprisonment, regardless that the minimum sentence is less than 10 years, the period of filing of charge-sheet is 90 days**, therefore, the aforesaid decision relied upon by the trial Court in the case of *Shalini Verma (supra)* is of no avail to the respondent.

14. In view of the foregoing discussions and the law laid down by Hon'ble the Apex court in the case of **Rakesh Kumar Paul (supra)**, the case of the petition is within the provisions of Section 167 (2) (a) (I) (as per para no.84.2), as per which, the limit of filing of the charge-sheet is 90 days. Hence, considering the aforesaid, this Criminal Revision is allowed and the order dated 12.12.2020 passed by JMFC, Indore in Case No.6891/2020 under Section 419, 420, 467, 468 and 471 in Crime No.11/20202 registered at Police station, Annapurna, Indore for granting default bail, is hereby

set aside.

15. Consequently, the prosecution is directed to take the respondent into custody immediately and the learned trial shall further decide the bail application, if any file, in accordance with law.
16. The bail bond so furnished, stand discharged and the learned trial Court shall pass appropriate order in this regard.
17. At the time of taking the respondent into custody, the authority concerned is directed to ensure possession of Corona-19 negative report of the respondent, looking to the outbreak of Corona Virus in compliance of the Covid-19 Guidelines issued from time to time
Certified copy, as per rules.

**(Rajendra Kumar (Verma))
Judge**

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