HIGH COURT OF MADHYA PRADESH, JABALPUR
BENCH AT INDORE
S.B.: Hon'ble Shri Justice Subodh Abhyankar

Miscellaneous Criminal Case No.15570/2021

(Nitin Khandelwal s/o Rajendra Khandelwal
Sachin Khandelwal s/o Rajendra Khandelwal
Versus
The State of Madhya Pradesh)

Miscellaneous Criminal Case No.16430/2021

(Nikhil Halabhavi s/o Pundlik
Versus
The State of Madhya Pradesh)

(Case was heard on 5th April, 2021)

Counsel for the Parties : Shri K.K. Manan, learned Senior Counsel along with Shri Prateek Maheshwari, learned counsel for the petitioners Nitin and Sachin in Miscellaneous Criminal Case No.15570/2021.
Shri Abhijeet Dube, learned counsel for the petitioner Nikhil in Miscellaneous Criminal Case No.16430/2021.
Shri Pushyamitra Bhargava, learned Additional Advocate General along with Shri Hemant Sharma, learned Government Advocate for the respondent / State of Madhya Pradesh.

Whether approved for reporting : Yes

Law laid down :

"default bail" under Section 167 (2)(a)(ii) of the Cr.P.C. on the ground that the charge sheet has not been filed within the prescribed period of 90 (ninety) days for offence u/s. 467 of IPC, wherein the sentence imposable is imprisonment for life;

whether it is necessary for an accused to file a separate application for claiming "default bail" u/s.167(2) of Cr.P.C. ?

20. In the present case, it is not disputed by the respondent that the petitioners Nitin and Sachin were arrested on 02.11.2020 whereas petitioner Nikhil Halabhavi in M.Cr.C.No.16430/2021 was arrested on 24.11.2020 and and they were remanded on 28.11.2010 whereas, the charge sheet has been filed on 06.03.2021 i.e. after more than 90 days from the date of their arrest. So far as "default bail" granted by the learned JMFC is concerned,

it was ordered on 29.01.2021 by invoking s.67(2)(a)(ii), i.e. after 60 days from the date of arrest of the petitioners. Validity of this order dated 29.01.2021 was challenged by the State in a criminal revision no.04/2021 against the petitioners on 05.02.2021 the notices of which were issued to the petitioners on 10.02.2021 whereas the charge sheet itself was filed in the mean time on 06.03.2021 and the final order was passed in Criminal Revision by the court on 10.03.2021. It is apparent from the aforesaid chronology that the dispute between the parties, whether the petitioners were entitled to receive the "default bail" was already pending before the revisional Court when the charge sheet was filed 06.03.2021 and the final order was passed 10.03.2021. In view of the same, even if there was no such oral prayer made by the counsel for the petitioners that the petitioners have entitled themselves to avail the benefit of Section 167 (2) of the Cr.P.C. as the charge sheet has not been filed even after the period of ninety days, in the considered opinion of the this court, it has to be presumed that the petitioners were already willing and ready to furnish the default bail and thus, the learned judge of the revisional court, instead of turning his blind eyes to the fact that the charge sheet has been filed beyond the period of 90 days, was duty bound to pass the order of default bail.

21. Resultantly, so far as the impugned order dated 10.03.2021 is concerned, the same is hereby affirmed for the reasons assigned herein above, however, considering the fact that the charge sheet in the present case was admittedly filed after a period of ninety days, the petitioners are held to be entitled to be released on "default bail" under Section 167 (2) (a) (i) of the Cr.P.C. Since the petitioners are already on bail vide the order passed by the JMFC on 29.01.2021, their bail bonds shall continue to hold good for the purpose of this order also.

Significant paragraph numbers : From 19 to 21

O R D E R

Post for

23.04.2021

(Subodh Abhyankar)
Judge

High Court of Madhya Pradesh, Jabalpur
Bench at Indore

Miscellaneous Criminal Case No.15570/2021

(Nitin Khandelwal s/o Rajendra Khandelwal
Sachin Khandelwal s/o Rajendra Khandelwal
Versus
The State of Madhya Pradesh)

Miscellaneous Criminal Case No.16430/2021

(Nikhil Halabhavi s/o Pundlik
Versus
The State of Madhya Pradesh)

* * * * *

Shri K.K. Manan, learned Senior Counsel along with Shri Prateek Maheshwari, learned counsel for the petitioners Nitin and Sachin in Miscellaneous Criminal Case No.15570/2021.

Shri Abhijeet Dube, learned counsel for the petitioner Nikhil in Miscellaneous Criminal Case No.16430/2021.

Shri Pushyamitra Bhargava, learned Additional Advocate General along with Shri Hemant Sharma, learned Government Advocate for the respondent / State of Madhya Pradesh.

* * * * *

O R D E R

(Passed on this 23rd day of April, 2021)

This order shall also govern the disposal of M.Cr.C. No.16430/2021, as both these petitions under Section 482 of the Code of Criminal Procedure, 1973 have arisen out of an order dated 10.03.2021 passed by 2nd Additional Sessions Judge, Indore, District Indore (MP) in Criminal Revision No.04/2021.

2. The aforesaid criminal revision was filed by the respondent / State of Madhya Pradesh against the order dated 29.01.2021 passed by Judicial Magistrate First Class, Dr. Ambedkar Nagar, District Indore (MP) in Criminal Case No.266/2020 whereby the learned Judicial Magistrate has granted the “default bail” to the petitioners under Section

167 (2)(a)(ii) of the Cr.P.C. on the ground that the charge sheet has not been filed within the prescribed period of 60 days.

3. Dehors the unnecessary details, the brief facts of the case are that the petitioners were initially arrested on 02.11.2020 in connection with an offence under Sections 420 and 120-B/34 of the Indian Penal Code, 1860 read with Section 3/4 of the MP Public Gambling Act, 1976, but as the investigation ensued, it was found that the offence also involved Sections 467, 468 and 471 of IPC and Sections 66-C and 66-D of Information Technology Act, 2000. Thus, a formal memo of arrest was also prepared on 04.11.2020 wherein the aforesaid sections were also included. Petitioner Nikhil Halabhavi was arrested on 24.11.2020 and was remanded on 28.11.2020. However, as the charge sheet was not filed even after a period of sixty days from the date of arrest of the petitioners, seperate applications under Section 167 (2) of the Cr.P.C. was preferred by them claiming "default bail" on the ground of non-filing of the charge sheet within sixty days' time. The aforesaid application was decided by the learned Judicial Magistrate vide its order dated 29.01.2021 relying upon the decisions in the case of **Nitin Nikhra** v. **State of MP** reported as **2019 SCC Online MP 4459**, **Shalini Verma and another** v. **State of Chhatisgarh** reported as **2019 SCC Online Chhatisgarh 22** and in the case of **Rakesh Kumar Paul** v. **State of Assam** reported as **(2017) 15 SCC 67**, holding that as per the aforesaid decisions, the sections under which the petitioners have been implicated, a sentence up to ten years can also be imposed, as it is not neces-

sary under Section 467 of IPC that a minimum sentence of ten years be imposed.

4. Being aggrieved of the aforesaid order dated 29.01.2021 , the State of M.P. preferred a criminal revision under S. 397 of the Cr.P.C. before the 2nd Additional Sessions Judge, Dr. Ambedkar Nagar District Indore (MP) whereby the learned Judge, vide its order dated 10.03.2021, has reversed the order passed by the JMFC on the ground that since u/s. 467 of IPC, sentence imposable is imprisonment for life, *inter alia,* hence the period to file the charge sheet has to be considered as 90 (ninety) days instead of 60 (sixty) days.

5. Shri Manan, learned Senior Counsel has made two fold arguments. It is submitted that the learned Judge of the Revisional Court has not considered the decision rendered by this Court in the case of *Nitin Nikhra* (supra) as also the decision in the case of *Shalini Verma* (supra) by the Chhatisgarh High Court, as in both these cases the offences involved Section 467 of IPC, *inter alia* and wherein it is held that the accused persons are entitled to "default bail" after expiry of sixty days, if the charge sheet is not filed within the said period of sixty days from the date of arrest; and has relied upon a decision rendered by the Supreme Court in the case of ***Bhupinder Singh and others*** *v.* ***Jarnail Singh and another*** reported as ***(2006) 6 SCC 277*** despite the fact that it has already been overruled by the Supreme Court in the case of ***Rakesh Kumar Paul*** (supra).

6. Alternatively, Shri Manan has also submitted that even assuming that in the present case the period of ninety days is applicable for filing the charge sheet, in that case also, the petitioners were initially arrested on 02.11.2020 and after inclusion of s.467, inter alia, they were again formally arrested on 04.11.2020 and were sent to judicial remand on 28.11.2020 whereas the charge sheet was filed only on 06.03.2021 i.e.after 124 days after their arrest, thus, the petitioners are still entitled to the default bail u/s.167(2)(a)(i). Thus, it is submitted that on this ground also, the petitioners are entitled to be released on "default bail" under Section 167 (2) of the Cr.P.C. Shri Manan has submitted that after completion of the sixty days or the ninety days, as the case may be, if the charge sheet it not filed, in that case, an accused gets an indefeasible right to claim the bail, even if no application to this effect has been filed, as only oral request to this effect would suffice as long as he is willing to furnish the bail. In support of his contention, Shri Manan has also relied upon the following decisions of the Supreme Court, viz., **Bikramjit Singh** v. **State of Punjab** reported as **(2020) 10 SCC 616**, **Rakesh Kumar Paul** v. **State of Assam** reported as **(2017) 15 SCC 67, Rajeev Choudhary v. State (NCT) of Delhi reported as (2001) 5 SCC 34, Fakhrey Alam v. State of Uttar Pradesh, Criminal Appeal No.319 of 2021 (arising out of SLP (Criminal) No.6181/2020) order dated 15.03.2021** as also the other cases viz., **Som Nath & others** v. **State of Punjab** reported as **2012 (1) Crimes 123**,, **Subhash Bahadur** v. **State (NCT of Delhi)** reported as **2020 (4)**

Crimes 470 (Delhi) and **Om Prakash Gabbar** v. **State of Punjab** reported as **1997 Criminal Law Journal 2974**.

7. Shri Abhijeet Dube, learned counsel for the petitioner Nikhil in Miscellaneous Criminal Case No.16430/2021 has also submitted that the revisional court was also informed that the charge sheet was not filed even after the period of 90 days but the learned judge of the revisional court has not considered the aforesaid plea, it is further submitted that this fact has also been pleaded by the petitioner in the present petition.

8. On the other hand, Shri Pushyamitra Bhargava, learned Additional Advocate General assisted by Shri Hemant Sharma, learned Government Advocate for the State has opposed the prayer and although no reply to the petition has been filed, it is submitted but it is submitted that no illegality has been committed by the learned Judge of the Revisional Court in passing the impugned order, as under Section 467 of IPC, an accused is punishable up to the period of Life Imprisonment, which in itself is sufficient to hold that the period of filing of the charge sheet has to be considered as ninety days and not sixty days. It is submitted that as per the MP Amendment of 2008, the case under Section 467 of IPC is triable by Sessions judge and thus, the period has to be considered as ninety days and not sixty days. Shri Bhargava has also relied upon the judgment rendered by the Supreme Court in the case of ***Rakesh Kumar Paul*** *v.* ***State of Assam*** (supra) which has also been relied upon by the petitioners. It is further submitted that the deci-

sion in the case of *Nitin Nikhara* (supra) is not applicable in the present case as there is no discussion regarding s.467 of IPC, nor the decision rendered by the Chhattisgarh High court in the case of ***Shalini Verma (supra)*** as there is an amendment in M.P. in Section 467 of IPC and the case is triable by the Sessions Court, it is thus submitted that the aforesaid decision would not be applicable in the case.

On the contentions that after the filing of the charge-sheet beyond the period of 90 days, the petitioners were entitled to "default bail", Shri Bhargava has submitted that the said right was not invoked by the petitioners by filing a separate application in this behalf. Thus, it is submitted that the petition be dismissed and the order passed by the Revisional Court be upheld.

9. Heard the learned counsel for the parties and perused the case diary.

10. From the aforesaid factual backdrop, the two issues which fall for the consideration of this court are:-

> **firstly**, 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 arrest ?
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> **Secondly**, is it necessary for an accused to file a separate application for claiming default bail u/s.167(2) of Cr.P.C. ?

11. So far as the first issue of the period of filing of the charge sheet under Section 167 (2) of the Cr.P.C. is concerned, it 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***

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

Deepak Gupta, J, in his concurring judgment 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*[5] 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*[5]. *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)

12. 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*."
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> (emphasis supplied)

13. 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 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.

14. So far as the decision rendered by the coordinate bench of this Court in the case of *Nitin Nikhra (supra)* is concerned, although Section 467 of IPC is indeed mentioned in the body of the order, however, there is no specific findings regarding s. 467 *vis-a vis* s.167(2)(a)(i), thus, s.467 of IPC has not been dealt with by the coordinate bench as only Section 132 of the Central Goods and Service Tax Act, 2017

has been considered where the maximum sentence which can be awarded is five years only.

Relevant paras of this decision are as hereunder:-

> "5. On the other hand, learned counsel for the respondent opposed the prayer and submits that applicant has not cooperated in the investigation and did not mention details therefore, he has been retained in custody. Since the documents have been alleged to be forged by the applicant, therefore, ingredients of offence under Section 467 of the I.P.C are also available in the case in hand and since Section 467 of the Cr.P.C involves punishment for more than ten years, therefore, department has the authority to file charge sheet up till 90 days. He relied upon Section 69 and 70 of the Act. In this regard, he referred the judgments rendered by the Apex Court in the case of **A.A.Mulla and Others Vs. State of Maharashtra AIR 1997 SC 1441, Safiya Vs. Government of Kerala and Others AIR 2003 SC 3562, judgment rendered by the Rajasthan High Court in the case of Amal Mubarak Salim Al Reiyami and Others Vs. Union of India 2015 (321) ELT 590 (Rajashthan) and judgment rendered in the case of Manoj Kumar Arora Vs. Union of India 2018 (15) G.S.T.L. 323 and Sanjay Kumar Bhuwalka Vs. Union of India reported as 2018(19) G.S.T.L. 591 (Cal.)** and hence, prayed for dismissal of the bail application.
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> 6. Heard learned counsel for the parties at length and perused the case diary.
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> 7. This is a case where the applicant is facing heat of investigation under Section 132 of the Act. Section 132 of the Act prescribes punishment for certain offences and maximum sentence which can be awarded, is five years. Section 167 (2) of the Cr.P.C provides 60 days time to the investigating agency to submit charge sheet for the offences where investigation relates to any offence other than total imprisonment for life or imprisonment for a term of not less than 10 years. Here the maximum sentence punishable is imprisonment for five years therefore, respondent had to file the charge sheet within 60 days. But admittedly, charge sheet has not been filed, therefore, right of `default bail' accrued to the applicant after completion of 60 days. It was the duty of the investigating agency to submit charge sheet within the stipulated period, but same has not happened. Apex Court in the case of **Rakesh Kumar Paul (supra)** has categorically outlined the concept of `default bail' and held that in the case of indefeasible right, right is said to be accrued to the accused if the charge sheet is not filed within the stipulated period (60 days in the present case). In the case of **Achpal alias Ramswaroop (Supra)** said principle has been reiterated by the Apex Court."

In view of the same, this Court finds force with the contention raised by the counsel for the respondent / State that the aforesaid Section 467 of IPC though referred to in the body of the order, has not been dealt with in the operating para of the order and thus, the aforesaid decision, in the considered opinion of this court, cannot be treated as an authority on the point in issue. Thus, it is held that the aforesaid decision is of no avail to the petitioners.

15. So far as the case of *Shalini Verma* (supra) rendered by the Chhatisgarh High Court is concerned, I am afraid, that I am not inclined to accept the said preposition as well. It is found that although the Hon'ble Judge of Chhatisgarh High Court has also referred to the decision rendered by the Supreme Court in the case of ***Rakesh Kumar Paul*** (supra), however, only para 25 and 26 of the aforesaid decision has been taken into consideration. Relevant paras of *Shalini Verma* (supra) read, 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:
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> > "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.
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> 26. Of the two views expressed by this Court, we accept the view in Rajeev Choudhary [Rajeev Choudhary v. State (NCT of Delhi), (2001) 5 SCC 34]."
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> 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 sub-clause (ii) of Section 167 (2) (a) of CrPC and would be of sixty (60) days."

16. 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 then 10 years, the aforesaid decision relied upon by the learned counsel for the petitioners in the case of *Shalini Verma(supra)* is also of no avail to the petitioners.

17. So far as the contention raised by Shri Manan regarding filing of the charge sheet after 124 days from the date of arrest of the

petitioners is concerned, at this juncture, it would also be germane to refer to the contentions of shri Abhijeet Dube, learned counsel for the petitioner Nikhil in Miscellaneous Criminal Case No.16430/2021, who has submitted that the revisional court was also informed that the charge sheet was not filed even after the period of 90 days but the learned judge of the revisional court has not considered the aforesaid plea, it is further submitted that this fact has also been pleaded by the petitioner in the present petition.

18. In the decision rendered by the Supreme Court in the case of ***Bikramjit Singh v. State of Punjab, (2020) 10 SCC 616,*** after extensively referring to ***Rakesh Kumar Paul (supra), it is held as under :-***

> *"* **33.** In a fairly recent judgment reported as *Rakesh Kumar Paul* v. *State of Assam*[19], a three-Judge Bench of this Court referred to the earlier decisions of this Court and went one step further. It was held by the majority judgment of Madan B. Lokur, J. and Deepak Gupta, J. *that even an oral application for grant of default bail would suffice, and so long as such application is made before the charge-sheet is filed by the police, default bail must be granted.* This was stated in Lokur, J.'s judgment as follows: (SCC pp. 98-99 & 101-102, paras 37-41, 45-47 & 49)
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> ."*37*. This Court had occasion to review the entire case law on the subject in *Union of India* v. *Nirala Yadav*[14]. In that decision, reference was made to *Uday Mohanlal Acharya* v. *State of Maharashtra*[11] and the conclusions arrived at in that decision. We are concerned with Conclusion (3) which reads as follows: (*Nirala Yadav case*[14], SCC p. 472, para 24)
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> '*24*. …"*13*. (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." (*Uday Mohanlal case*[11], SCC p. 473, para 13)'

38. *This Court also dealt with the decision rendered in Sanjay Dutt*[3] *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.*

39. *This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to Mohd. Iqbal Madar Sheikh v. State of Maharashtra*[20] *wherein it was observed that some courts keep the application for "default bail" pending for some days so that in the meantime a charge-sheet is submitted. While such a practice both on the part of the prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for "default bail" during the interregnum when the statutory period for filing the charge-sheet or challan expires and the submission of the charge-sheet or challan in court.*

Procedure for obtaining default bail

40. In the present case, it was also argued by the learned counsel for the State that the petitioner did not apply for "default bail" on or after 4-1-2017 till 24-1-2017 on which date his indefeasible right got extinguished on the filing of the charge-sheet. Strictly speaking, this is correct since the petitioner applied for regular bail on 11-1-2017 in the Gauhati High Court — he made no specific application for grant of "default bail". However, the application for regular bail filed by the accused on 11-1-2017 did advert to the statutory period for filing a charge-sheet having expired and that perhaps no charge-sheet had in fact being filed. *In any event, this issue was argued by the learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court*[21] *did not reject the submission on the ground of maintainability but on merits. Therefore 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 court concerned 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. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court.

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45. On 11-1-2017 (*Rakesh Kumar Paul* v. *State of Assam*[1]) *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 24-1-2017) and the petitioner had orally applied for "default bail". Under these circumstances, the only course open to the High Court on 11-1-2017 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.*

46. It was submitted that as of today, a charge-sheet having been filed against the petitioner, he is not entitled to "default bail" but must apply for regular bail — the "default bail" chapter being now closed. We cannot agree for the simple reason that we are concerned with the interregnum between 4-1-2017 and 24-1-2017 when no charge-sheet had been filed, during which period he had availed of his indefeasible right of "default bail". It would have been another matter altogether if the petitioner had not applied for "default bail" for whatever reason during this interregnum. There could be a situation (however rare) where an accused is not prepared to be bailed out perhaps for his personal security since he or she might be facing some threat outside the correction home or for any other reason. But then in such an event, the accused voluntarily gives up the indefeasible right for default bail and having forfeited that right the accused cannot, after the charge-sheet or challan has been filed, claim a resuscitation of the indefeasible right. *But that is not the case insofar as the*

petitioner is concerned, since he did not give up his indefeasible right for "default bail" during the interregnum between 4-1-2017 and 24-1-2017 as is evident from the decision of the High Court rendered on 11-1-2017[21]*. On the contrary, he had availed of his right to "default bail" which could not have been defeated on 11-1-2017 and which we are today compelled to acknowledge and enforce.*

47. Consequently, we are of the opinion that the petitioner had satisfied all the requirements of obtaining "default bail" which is that on 11-1-2017 he had put in more than 60 days in custody pending investigations into an alleged offence not punishable with imprisonment for a minimum period of 10 years, no charge-sheet had been filed against him and he was prepared to furnish bail for his release, as such, he ought to have been released by the High Court on reasonable terms and conditions of bail.

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Conclusion

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."

34. Deepak Gupta, J. in his concurring opinion agreed with Lokur, J. as follows: (*Rakesh Kumar Paul case*[19], SCC pp. 111-12, paras 82 & 86)

"*82*. The right to get "default bail" is a very important right. Ours is a country where millions of our countrymen are totally illiterate and not aware of their rights. A Constitution Bench of this Court in *Sanjay Dutt*[3] has held that the accused must apply for grant of "default bail". As far as Section 167 of the Code is concerned, Explanation I to Section 167 provides that notwithstanding the expiry of the period specified (i.e. 60 days or 90 days, as the case may be), the accused can be detained in custody so long as he does not furnish bail. Explanation I to Section 167 of the Code reads as follows:

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

This would, in my opinion, mean that even though the period had expired, the accused would be deemed to be in legal custody till he does not furnish bail. The requirement is of furnishing of bail. The accused does not have to make out any grounds for grant of bail. He does not have to file a detailed application. All he has to aver in the application is that since 60/90 days have expired and charge-sheet has not been filed, he is entitled to bail and is willing to furnish bail. This indefeasible right cannot be defeated by filing the charge-sheet after the accused has offered to furnish bail.

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86. I agree and concur with the conclusions drawn and directions given by the learned Brother Lokur, J. in paras 49 to 51 of his judgment."

35. P.C. Pant, J., however, dissented holding: (*Rakesh Kumar Paul case*[19], SCC p. 123, para 113)

"*113*. The law laid down as above shows that the requirement of an application claiming the statutory right under Section 167(2) of the Code is a prerequisite for the grant of bail on default. In my opinion, such application has to be made before the Magistrate for enforcement of the statutory right. In the cases under the Prevention of Corruption Act or other Acts where Special Courts are constituted by excluding the jurisdiction of the Magistrate, it has to be made before such Special Court. In the present case, for the reasons discussed, since the appellant never sought default bail before the court concerned, as such is not entitled to the same."

36. *A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge-sheet is filed, the right to default bail becomes complete. It is of no moment that the criminal court in question either does not dispose of such application before the charge-sheet is filed or disposes of such application wrongly before such charge-sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted.*

37. *On the facts of the present case, the High Court was wholly incorrect in stating that once the challan was presented by the prosecution on 25-3-2019 as an application was filed by the appellant on 26-3-2019, the*

> *appellant is not entitled to default bail.* First and foremost, the High Court has got the dates all wrong. The application that was made for default bail was made on or before 25-2-2019 and not 26-3-2019. The charge-sheet was filed on 26-3-2019 and not 25-3-2019. The fact that this application was wrongly dismissed on 25-2-2019 would make no difference and ought to have been corrected in revision. The sole ground for dismissing the application was that the time of 90 days had already been extended by the learned Sub-Divisional Judicial Magistrate, Ajnala by his order dated 13-2-2019. This order was correctly set aside by the Special Court by its judgment dated 25-3-2019, holding that under the UAPA read with the NIA Act, the Special Court alone had jurisdiction to extend time to 180 days under the first proviso in Section 43-D(2)(*b*). The fact that the appellant filed yet another application for default bail on 8-4-2019, would not mean that this application would wipe out the effect of the earlier application that had been wrongly decided. *We must not forget that we are dealing with the personal liberty of an accused under a statute which imposes drastic punishments. The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled.*
>
> (emphasis supplied)

19. From the perusal of the impugned order, it is apparent that there is no discussion to this effect by the learned judge of the revisional court that the charge sheet has been filed after a period of 90 days. Be that as it may, as has been held by the Supreme Court in the case of Bikramjit Singh (supra) and *Rakesh Kumar Paul* (supra), wherein it is held that after the expiry of period of sixty / ninety days, even if any formal application is not filed by the accused claiming default bail, it is the duty of the Magistrate to ask the accused if he wants to exercise his right to get bail and if he exercises his right, then he shall be granted bail, otherwise, he can remain in custody.

20. In the present case, it is not disputed by the respondent that the petitioners Nitin and Sachin were arrested on 02.11.2020 whereas petitioner Nikhil Halabhavi in M.Cr.C.No.16430/2021 was arrested on 24.11.2020 and and they were remanded on 28.11.2010 whereas, the charge sheet has been filed on 06.03.2021 i.e. after more than 90 days from the date of their arrest. So far as "default bail" granted by the learned JMFC is concerned, it was ordered on 29.01.2021 by invoking s.67(2)(a)(ii), i.e. after 60 days from the date of arrest of the petitioners. Validity of this order dated 29.01.2021 was challenged by the State in a criminal revision no.04/2021 against the petitioners on 05.02.2021 the notices of which were issued to the petitioners on 10.02.2021 whereas the charge sheet itself was filed in the mean time on 06.03.2021 and the final order was passed in Criminal Revision by the court on 10.03.2021. It is apparent from the aforesaid chronology that the dispute between the parties, whether the petitioners were entitled to receive the "default bail" was already pending before the revisional Court when the charge sheet was filed 06.03.2021 and the final order was passed 10.03.2021. In view of the same, even if there was no such oral prayer made by the counsel for the petitioners that the petitioners have entitled themselves to avail the benefit of Section 167 (2) of the Cr.P.C. as the charge sheet has not been filed even after the period of ninety days, in the considered opinion of the this court, it has to be presumed that the petitioners were already willing and ready to furnish the default bail and thus, the learned judge of the revisional court, instead

of turning his blind eyes to the fact that the charge sheet has been filed beyond the period of 90 days, was duty bound to pass the order of default bail.

21. Resultantly, so far as the impugned order dated 10.03.2021 is concerned, the same is hereby affirmed for the reasons assigned herein above, however, considering the fact that the charge sheet in the present case was admittedly filed after a period of ninety days, the petitioners are held to be entitled to be released on "default bail" under Section 167 (2) (a) (i) of the Cr.P.C. Since the petitioners are already on bail vide the order passed by the JMFC on 29.01.2021, their bail bonds shall continue to hold good for the purpose of this order also.

22. Thus, the petitions stand partly allowed.

(Subodh Abhyankar)
Judge

Pithawe RC