

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 8th OF NOVEMBER, 2023

MISC. CRIMINAL CASE No. 36824 of 2023

BETWEEN:-

**RAJENDRA SINGH BHATI S/O SHRI SOHAN SINGH
BHATI, AGED ABOUT 57 YEARS, OCCUPATION:
GOVT. EMPLOYEE R/O 126, SUBHASH NAGAR MAIN
DISTT. INDORE (MADHYA PRADESH)**

.....APPLICANT

(SHRI NEERAJ KUMAR SONI, LEARNED COUNSEL FOR THE APPLICANT.)

AND

**THE STATE OF MADHYA PRADESH THROUGH SHO,
POLICE STATION M.G. ROAD, DISTRICT INDORE
(MADHYA PRADESH)**

.....RESPONDENTS

(SHRI AJAY RAJ GUPTA - PUBLIC PROSECUTOR FOR STATE)

[Empty dashed box for signature]

*This application coming on for orders this day, the court passed
the following:*

ORDER

The present petition is filed under section 482 Cr.P.C.
seeking quashment of the order dated 9.8.2023 passed by ASJ
and Special Court (under the Electricity Act) in crime NO.

522/2022 affirming the order dated 31.7.2023 passed by JMFC in criminal case No. 4757/2023.

2. The petitioner is claiming default bail on the ground that respondent has failed to file chargesheet within the period of 90 days under section 167(2) Cr.P.C. and therefore, the petitioner is entitled for default bail.

3. Facts of the case are that applicant is accused in crime No. 522/2022 registered at P.S. M.G. Road, Indore for commission of offence under section 420, 467, 468 and 471 IPC. According to the applicant, he surrendered before the Magistrate on 2.5.2023 and on the said date, order of remand was passed. The period of 90 days expired on 30.7.2023 and the chargesheet was filed on 31.7.2023, beyond the period of 90 days, and therefore indefeasible right has accrued in favour of the petitioner for grant of default bail. In support of his submission, he has placed reliance on the judgment passed by the Supreme Court in the case of **Enforcement Directorate, Govt. of India Vs. Kapil Wadhwan (Cr.Appeal No.701-702/2020)** decided on 27.3.2023. He also referred the order passed by High Court of Orissa in case of **Lambodar Bag Vs.**

State of Orissa, (2018) 71 OCR 31 and the judgment passed by Madras High Court on 6.12.2021 in **CRL OP (MD) No.18273 of 2021 (K.Muthuirul Vs. Inspector of Police)**.

4. Per contra, counsel for the State submitted that chargesheet was filed on 31.7.2023 and the applicant filed an application for grant of default bail after filing of the chargesheet and therefore, in the light of the judgment passed by the Apex Court in the case of **Pragyna Singh Thakur Vs. State of Maharashtra, (2011) 10 SCC 445**, no indefeasible right would accrue under section 167(2) Cr.P.C.. Counsel further submitted that chargesheet was already submitted to the Magistrate before expiration of 90 days. However, the Magistrate was on remand duty, therefore, the chargesheet could not be filed in the Court. He has produced copy of Roznamcha dated 29.7.2023.

5. After hearing learned counsel for the parties, it is apposite to refer the relevant provision of section 167(2) Cr.P.C., which is reproduced herein under :-

(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 the 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 authorise 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 sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter. "

6. The Magistrate has rejected the application on the ground that chargesheet was filed on 31.7.2023 before the tea-break and application for default bail was filed after the tea-break and therefore, in the light of the judgment passed in the case of Pragyna Singh Thakur (supra), the applicant is not entitled for default bail.

7. Upon perusal of the aforesaid proviso (a)(i) of section 167(2) Cr.P.C. it is manifest that where the investigation

relates to an offence punishable with death or imprisonment of life for a period not less than 10 years, the chargesheet has to be filed within 90 days. In the present case as per the respondent, the chargesheet was prepared and was attempted to be filed on 29.7.2023 but on the said date, the Presiding Officer was not available and therefore the same could not be filed before the Court and copy was directed to be submitted in the Court Room No.19 of Smt. Sakshi Kapoor. The relevant entry of Roznamacha is reproduced herein under :-

मध्य प्रदेश शासन (पुलिस विभाग)

रोजनामचा विवरण

जिला : इंदौर अर्बन

थाना : महात्मा गाँधी रोड़

दिन : शनिवार

दिनांक: 20/07/2023 समय: 22:23

प्रविष्टि क्रमांक	प्रविष्टि का प्रकार	समय	ब्यौरे	सन्दर्भ
056	आगमन/वापसी	22:23	रोजनामचा प्रविष्टि प्रधान आरक्षक-कार्यवाहक/ RAJENDRA SURAGE के लिए निरीक्षक / SANTOSH SINGH द्वारा की गयी: इस समय सूचना है कि रवाना इंतजाम मोहर्म ड्यूटी कर वापस थाना आया वापसी खुलासा इस प्रकार है कि थाने से रवाना होकर इंतजाम	वापसी आर. 482 रामकृष्ण

			हेतु रवाना होकर राजवाड़ा पहुंचा वहां से रवाना होकर जिला न्यायालय कोर्टरूम (55) में अप. क्रं. 522/2022 धारा 420, 467, 468, 471 भादवि का चालान श्री यश कुमार सिंह सा. की कोर्ट में चालान पेश करने हेतु पहुंचा जहाँ पर श्रीमान द्वारा चालान का अवलोकन करते बताया कि दो दिवस शेष होने से थाने से संबंधित कोर्ट रूम (19) श्रीमति साक्षीकपूर मेडम की कोर्ट पेश करने की हिदायत दी। जिसकी सूचना हालात थाना प्रभारी महो. को अवगत कराया बाद इंतजाम ड्यूटी मेवाती मोहल्ला परचम के साथ कर्वला मैदान ड्यूटी बाद थाने आकर वापसी दर्ज है।	इंतजाम ड्यूटी से
--	--	--	--	------------------

8. In the case of Pragyna Singh Thakur (supra) it has been held that if the chargesheet is filed and bail application is filed subsequently, no indefeasible right is accrued in favour of the accused under section 167(2) Cr.P.C.. The aforesaid judgment has not been considered in any of the judgments relied on by the counsel for the petitioner. In the case of Kapil Wadhwan(supra), the Court held that if the chargesheet is not filed within the period of 60 days from the date of remand and on the next day default bail application was presented before the Court, the date of remand would be excluded while

computing 60 days and held that it would entitle the respondent to default bail. The aforesaid judgment would not render any assistance to the facts of the present case as in the present case as per order of the Magistrate, the chargeheet was filed on 31.7.2023 before tea-break and application for default bail was filed after the tea-break. In the present case, as per Roznamcha also, the chargeheet was already prepared and was submitted in the court but same could not be taken on record because the Magistrate was on remand duty. Apart from that in the case of **Sanjay Dutt Vs. CBI, 1994(5) SCC 402**, it is held that accused must apply for default bail, the moment the right under section 167(2) Cr.P.C. accrues to him. Counsel for appellant placed reliance on the judgment in the case of Lamodar Bagh (supra) to contend that in the said case it has been held that Magistrate is under obligation to inform the accused that he has right to claim default bail. The aforesaid case was dealing with the provisions under NDPS Act, 1985 and in reference to the aforesaid provision, the aforesaid ratio was laid down. The Division Bench of this Court in the case of **Devraj Maratha @ Dillu Vs. State of M.P. (M.Cr.C.No.**

668/2018) while answering to a reference for interpretation of subsection (6) of section 437 of Cr.P.C. held that provision is mandatory in the sense that the Magistrate is required to exercise his power of granting bail after statutory period if trial is not concluded within that period, however passing of an order under section 437(6) is mandatory but not grant of bail.

The relevant para are reproduced as under :-

"(a) provision envisaged in subsection (6) of Section 437 of the Code is mandatory in the sense that the Magistrate is required to exercise his power of granting bail after the statutory period, if the trial is not concluded within that, however, passing of an order under section 437(6) of the Code is mandatory, but not grant of bail.

(b) The Magistrate is vested with full power to take into consideration - (i) the nature of allegations, (ii) whether the delay is attributable to the accused or to the prosecution, and (iii) criminal antecedents of the accused or any other justifiable reason, while refusing to grant bail."

9. In the light of aforesaid enunciation of law and in the facts of the present case, the chargesheet was already prepared and tendered in the court as per Roznamacha within 90 days and chargesheet was filed on 31.7.2023 before tea-break and application for default bail was filed after filing of the chargesheet, no indefeasible right is accrued under section

167(2) Cr.P.C. in favour of the applicant to claim default bail as per law laid down by the Apex Court in the case of Pragyna Singh Thakur (supra).

The petition *sans merit* and is hereby dismissed.

(VIJAY KUMAR SHUKLA)
JUDGE

MK