HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No.	**Criminal Revision NO.1813/2020**
Parties Name	*Raja Bhaiya Singh* *Vs* *State of MP*
Date of Order	**08/01/2021**
Bench Constituted	**Justice B.K. Shrivastava**
Order passed by	**Justice B.K. Shrivastava**
Whether approved for reporting	Yes
Name of counsel for parties	**For applicant:** Shri Shreyas Pandit, Advocate. **For Respondent/State:** Shri Sanjeev Kumar Singh, Panel Lawyer.
Law laid down	1. The order dated 23.3.2020 of Supreme Court related to extension of time limit, was not applicable for filing the challan within 60 days or 90 days as prescribed under CrPC. 2. Order upon the application filed for default bail under section 167(2) of CrPC is not an interlocutory order because it decided the valuable right of default bail finally at that stage. Therefore, revision is tenable against the aforesaid order. 3. (i)Period for filing the challan will run from date of order of remand and "one day" will be complete on the next day of the remand. Therefore first date of remand will exclude but last date will be in included. (ii). Period of temporary bail for few days shall be excluded in computing said 90 days. (iii). Last date, which is Sunday or Holiday will also be counted in 90th day. 4. Because the offence under section 8(b)/20(a)(i) is punishable by imprisonment upto 10 years, not minimum period of 10 years or death or life imprisonment,

	therefore, limitation for filing the challan will be 60 days and not 90 days or 180 days. 5. Right of default bail under section 167(2) of CrPC cannot be curtailed by subsequent filing of challan even on the same date.
Significant paragraph numbers	**7, 11, 19, 28, 40**

(ORDER)
08.01.2021

This criminal revision has been preferred on 24.7.2020 by applicant Raja Bhaiya Singh against the order dated 25.4.2020 passed by the Special Judge, NDPS, Panna, District Panna in connection with Crime No.270/2019, registered at Police Station Simariya, District Panna under section 8/20 of Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "the Act").

2. By the impugned order the learned trial court dismissed the application filed under section 167(2) of CrPC on behalf of accused for default bail upon the ground that challan has not been filed within 60 days from the arrest of accused/applicant.

3. It appears from the record that the petitioner was arrested on 13.2.2020 and on the same date he was produced before the concerned Court, by which he was sent to judicial custody. The applicant moved an application under section 167(2) of CrPC on 21.4.2020 and the challan was also filed by the police on the same date. It appears from the impugned order that the trial court received the aforesaid application for default bail on 2:32 p.m. through whatsapp message upon the personal mobile number of concerned judicial officer (as per Circular No.P-33 dated 20.4.2020 issued by the District Judge, Panna). It is also mentioned in the impugned order that the challan was filed at 3:50 p.m on the same date i.e. 21.4.2020.

4. The trial court dismissed the aforesaid application in the light of order dated 23.3.2020 passed by Hon'ble the Supreme Court in Writ Petition

No.3/2020. The trial court mentioned the following observation of Supreme Court :-

> "this court has taken suo motu cognizance of the situation arising out of the challenge faced by the country on account of covid-19 virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under special law (both central and/or state)."

Upon the basis of aforesaid observation, the trial court came to the conclusion that the prescribed time limit of 60 days for filing the challan has already been extended by the aforesaid order of Hon'ble the Supreme Court. Therefore, the application is not tenable.

5. It is submitted by the counsel for applicant that the trial court committed mistake by mentioning that the time limit for default bail has been extended. On the other side, the Sate supported the view of the trial court and it is submitted by the State that the challan has been filed within the period of limitation because the limitation was extended by the Supreme Court.

6. In reference to the aforesaid controversy, it will be useful to refer the judgment dated 19.6.2020 passed by the three Judges Bench of Hon'ble the Supreme Court in ***S.Kasi Vs. Through the Inspector of Police, reported in 2020 SCC Online SC 521***. In the aforesaid case, the Hon'ble Supreme Court observed that :-

> "The indefeasible right to default bail under section 167(2) is an integral part of the right to personal liberty under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasized that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a chargesheet."

The Supreme Court considered the aforesaid extension of time and finally came to the conclusion as under :-

> "We, thus, are of the view that neither this Court in its order dated 23.3.2020 can be held to have eclipsed the time prescribed under Section 167(2) of Cr.P.C. nor the restrictions which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-submission of chargesheet within the time prescribed."

7. Therefore, it appears that the order dated 23.3.2020 of Supreme Court related to extension of time limit, was not applicable for filing the challan within 60 days or 90 days as prescribed under CrPC. Therefore, the trial court committed mistake in this regard.

8. The counsel for State submitted that the revision is not tenable against the order passed under section 167(2) of CrPC because the order is in the nature of "interlocutory order". As per section 397 of CrPC, no revision is tenable against the interim order/interlocutory order.

9. The expression 'interlocutory order' has not been defined in the Code. In ***Amar Nath v. State of Haryana*** ***In Amar Nath and others v. State of Haryana and others*****, AIR 1977 S.C. 2185 = 1977 CRI. L. J. 1891 = (1978) 1 SCR 222,** the Apex Court said that the term **"interlocutory order"** in S. 397 (2) has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in S. 397. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt

amount to interlocutory orders against which no revision would lie under Section 397 (2). But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High court.

10. In ***Madhu Limaye v. State of Maharashtra (1978) 1 SCR 749 : (AIR 1978 SC 47)*****,** a Three Judge Bench of Apex Court has held an order rejecting the plea of the accused on a point which when accepted will conclude the particular proceeding cannot be held to be an interlocutory order. In ***V. C. Shukla v. State (1980) 2 SCR 380 : (AIR 1980 SC 962),*** this Court has held that the term 'interlocutory order' used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi final.

11. Therefore, as per aforesaid law, the order upon the application filed for default bail under section 167(2) of CrPC is not an interlocutory order because it decided the valuable right of default bail finally at that stage. Hence, the revision is tenable against the aforesaid order.

12. The second question raised by the counsel for State that the limitation period was 90 days; while the counsel for applicant argued that looking to the offence, the limitation period will be 60 days. The trial court also accepted that the limitation period was 60 days.

13. It will be useful to refer section 167(2) of CrPC, which provides :-

> **"167- Procedure when investigation cannot be completed in twenty-four hours.**
>
> **(1) ……**
> **(2)** The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorize the detention of the accused in such

custody as such Magistrate thinks fit, 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 authorize 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 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 sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;
(c) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police."

14. As for as computation of period of 90 or 60 days is concerned, the law has been settled. It was held in **Jagdish and others, v. State of M. P.,** ***1984 CRI. L. J. 79 [M.P.]*** that date of arrest is to be excluded. Further in the case of **Chaganti Satyanarayana v. State of A.P.,** ***AIR 1986 S.C. 2130 = [1986] 3 SCC 141 = 1986 Cri.L.R. 256*** the Apex court said that Period **of 90 days / 60 days** envisaged by Proviso (a) begins to **run from date of order of remand and not from earlier date when accused was arrested**. The court observed that detention can be authorized by the Magistrate only when the order of remand is passed. The earlier period when the accused is in the custody of a public officer in exercise of his powers under S.57 cannot constitute detention pursuant to an authorization issued by the Magistrate. It, therefore, stands to reason that the total period of 90 days or 60 days can begin to run only from the date of order of remand. This case has been **subsequently followed in Central Bureau of**

Investigation, Special Investigation Cell-I, New Delhi v. Anupam J. Kulkarni, ***(1992) 3 SCC 141 : (AIR 1992 SC 1768 : 1992 AIR SCW 1976)***, **State through CBI v. Mohd. Ashraft Bhat and another,** ***(1996) 1 SCC 432, (1996 AIR SCW 237).*** **State of Maharashtra v. Bharati Chandmal Varma (Mrs)** ***(2002) 2 SCC 121 (AIR 2002 SC 285 : 2001 AIR SCW 5003),*** **State of Madhya Pradesh v. Rustom and others,** ***1995 Supp. (3) SCC 221,*** **Sadhwi Pragyna Singh Thakur v. State of Maharashtra,** ***2011 AIR SCW 5551 [23.09.2011] [(2011)10 SCC 445].***

15. In **Central Bureau of Investigation v. Nazir Ahmed Sheikh,** ***AIR 1996 S.C. 2980 = 1996 AIR SCW 1216 = 1996 CRI. L. J. 1876*** also said that limitation for filing of charge sheet would be to run and be counted from next date of arrest. In **Pop Singh vs. State of M.P.** ***2004 [2] MPHT 215 [25.11.03]*** Accused who was produced before JMFC in another case, after taking the permission from magistrate was formally arrested on 26.06.2003 and produced before CJM on 01.07.2003 in compliance of Production warrant. High court held that period of 90 days will be counted from the date on which accused was produced before CJM [i.e. 01.07.2003] and not from the date of formal arrest [i.e. 26.03.2003].

16. In **State of M.P. v. Rustam and others,** ***1995 Supp (3) SCC 221*****,** Apex Court has laid down the law that while computing period of ninety days, the day on which the accused was remanded to the judicial custody should be excluded, and the day on which challan is filed in the court, should be included. This case has been followed in **Ravi Prakash Singh alias Arvind Singh v. State of Bihar*****, 2015 CRI. L. J. 1666*****.** In the case of **Ajay Singh Vs. Surendra etc.** ***2005 [3] MPLJ 306*****,** accused was produced before Magistrate on 27.05.2004 and challan was filed on 25.08.2004. High court held that the **day on which accused was produced before the Magistrate [i.e. 27.05.04] will not include in 90 days but the date of filing the challan [i.e. 25.08.04] will be include**. Therefore counting of 90 days will start from 28.05.04. This court again explained the position in **Meharazuddin vs. State of M.P., I.L.R. 2016 M.P. 2837** and said that first day would complete after passage of 24 hours from the

date of remand.

17. If an accused was released on temporary bail for some period during 90 or 60 days, than aforesaid period will not be counted at the time of calculation. In **"Devendra Kumar v. State of M.P"** ***1992 CRI. L. J. 1730 = 1991 [2] MPJR 338*** **[M.P.]** it has been held that **period of temporary bail for few days shall be excluded in computing said 90 days.**

18. In **Ashok Sharma vs. State of M.P.** ***1993 JLJ 99*****,** it has been held that last date, which is **Sunday or Holiday will also be counted** in 90th day because Sec. 10 of General Clauses Act 1897 will not be applicable. The court said that Word "Magistrate" used in section 56, 57 and 167 not mean the "Court of Magistrate". If the last date of remand is Holiday, the accused will be produced before the magistrate.

19. Therefore it is the settled position of law that:-

(i) Period for filing the challan will run from date of order of remand and "one day" will be complete on the next day of the remand. Therefore first date of remand will exclude but last date will be in included.

(ii) Period of temporary bail for few days shall be excluded in computing said 90 days.

(iii) Last date, which is Sunday or Holiday will also be counted in 90th day.

20. In this case, the applicant was arrested on 13.2.2020 and was produced before the concerned Court on the same date and he was remanded to the judicial custody. Excluding the date of remand and including the date of filing the challan, 15 days in the month of February, 31 days in the month of March and 21 days in the month of April will be counted. Then it can be said that the challan was filed on 67th day. On the same date i.e. 21.4.2020 the application for default

bail was filed at 2:32 p.m. After filing the aforesaid application, challan was filed at 3:50 p.m.

21. Now we see what will be the limitation for filing the challan in this case. The police filed the challan under section 8/20 of the Act. As per the prosecution case, 36 green, small and big plants of *Ganja* were seized from the *Baadi* of the accused. As per the allegation of the prosecution, the accused cultivated the aforesaid *Ganja* plants. The Investigation Agency seized the aforesaid plants and the weight of the aforesaid plants was found one quintal and 15 kgs.

22. As per objection raised by State that the quantity is the "commercial quantity", therefore, as per section 8 read with section 20 (b)(ii)(C) of the Act, the punishment will be extended 20 years with fine and the limitation period will be 90 days; while the challan was filed on 67th day. The aforesaid contention raised by the State strongly opposed by the counsel for applicant. It is submitted that the limitation period will be 60 days. The counsel also draws attention towards the section 36(4) of the Act.

23. It will be useful to refer the relevant parts of sections 2, 8, 20 and 36 of NDPS Act:-

> **"2. Definitions.-** In this Act, unless the context otherwise requires,--
>
> [(i) …….
>
> (ii) …….
>
> (iii) "cannabis (hemp)" means--
>
> (a) *charas*, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;
>
> (b) *ganja*, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and
>
> (c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any rink prepared therefrom;
>
> (iv) "cannabis plant" means any plant of the genus cannabis;"

“ 8. Prohibition of certain operations.-No person shall -

(a) cultivate any coca plant or gather any portion of coca plant; or
(b) **cultivate the opium poppy or any cannabis plant;** or
(c) ……..**”**

“20. Punishment for contravention in relation to cannabis plant and cannabis.- Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder,-

(a) cultivates any cannabis plant; or
(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable -

(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),-

> **(A)** and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees, or with both;
> **(B)** and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;
> **(C)** and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]**”**

“ 36A. Offences triable by Special Courts.-
(1) ……..
(2) …….
(3) ……..

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days": Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) ……..**”**

24. Therefore, it appears from the aforesaid provisions that section 8(a) of the Act is not applicable in this case because the aforesaid provision is related to the

Coca plant etc. The present case is covered by Section 8(b) of the Act, which prohibits the cultivation of Opium, Poppy or any "Cannabis plant". Definition of "Cannabis plant" has been given in sections 2(iii) and (iv) of the Act. As per the aforesaid definition, the plant of *Ganja* is also included in the Cannabis plant. Section 20(a) of Act prescribes the punishment for cultivation of any Cannabis plant. As per section 20(a)(i) of the Act, the punishment provided for contravention related to Clause(a) of the section 20 is imprisonment for a term which may extent to 10 years and shall also be liable to fine of Rs.One Lac. It is clearly transpired from the challan that the matter does not cover by section 20(b)(ii)(C) of the Act because the matter is related only to the "cultivation of" Cannabis plant. The notification relating to commercial quantity does not cover the cultivation. Therefore, the offence under section 8(b) read with section 20(a)(i) of the Act is made out, for which the imprisonment may be upto 10 years. No any minimum sentence is prescribed.

25. At this stage, counsel for State also contended that because the punishment is prescribed for 10 years, therefore, the limitation for filing the challan will be 90 days and not 60 days; while the counsel for applicant strongly opposed the aforesaid contention and submitted that the offence is not punishable with the penalty of death, life imprisonment or sentence more than 10 years. Minimum sentence of 10 years is not prescribed for the aforesaid offence. Therefore, the limitation period for filing challan will be 60 days.

26. In **Rakesh Kumar Paul vs. State of Assam,** ***AIR 2017 S.C. 3948 = 2018 Cri.L.J.155,*** **Three judges Bench by 2-1 majority** held that a bare reading of S. 167 of Code clearly indicates that if offence is punishable with death or life imprisonment or with a minimum sentence of 10 years, then S. 167(2) (a)(i) will apply and accused can apply of 'default bail' only if investigating agency does not file charge-sheet within 90 days. However, in all cases where minimum sentence is less than 10 years but maximum sentence is not death or life imprisonment then S. 167(2)(a)(i) will apply and accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed. **Section 167(2)(a)(i) of Code is applicable only in cases where** accused is charged with **(i)**

offences punishable with death and any lower sentence; (ii) offences punishable with life imprisonment and any lower sentence and,**(iii) offences punishable with minimum sentence is not less than 10 years**. **In all cases where minimum sentence is less than 10 years but maximum sentence is not death or life imprisonment then S. 167(2)(a)(ii) will apply and accused will be entitled to grant of 'default bail' after 60 days** in case charge-sheet is not filed.

27. Apex Court observed that while it is true that merely because a minimum sentence is provided for in statute it does not mean only minimum sentence is imposable. Equally, there is also nothing to suggest that only 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 court to decide what sentence should be imposed given range available. Undoubtedly, the Legislature can bind sentencing court by laying down minimum sentence (not less than) and it can also lay down maximum sentence. If minimum is laid down, sentencing Judge has no option but to give a sentence 'not less than' that sentence provided for. Therefore, words **'not less than'** occurring in **Clause (i) to proviso (a) of S. 167(2)** of the Cr. P. C. (and in other provisions) must be given their natural and obvious meaning which is to say, not below a minimum threshold and in case of S. 167 of Cr. P. C. these words must relate to an offence punishable with a minimum of 10 years imprisonment.

28. Because the offence under section 8(b)/20(a)(i) is punishable by imprisonment upto 10 years, not minimum period of 10 years or death or life imprisonment, therefore, limitation for filing the challan will be 60 days and not 90 days or 180 days.

29. The State also raised the contention that when the application for default bail was considered by the trial court, at that time, the challan was also filed. The counsel for State draws attention towards the law laid down by the various authorities and submitted that when the challan was filed, then the right of default bail does not arise and the matter should be considered on its own merit.

30. On the other side, the counsel for applicant opposed the aforesaid contention and submitted that the right of bail was available to the accused at the moment when he filed the application before the Court. The subsequent filing of challan does not defeat the aforesaid valuable right of the accused.

31. "Indefeasible right" of the accused under section 167(2) of CrPC was considered by Hon'ble the Supreme Court and the High Court in various cases. The counsel for State placed reliance upon the law laid down in various authorities.

32. **Full Bench of five judges** in **Sanjay Dutt v. State through C.B.I., Bombay,** ***1995 CRI. L. J. 477 [S.C.] = [1994] 5 SCC 410 = AIR 1994 SCW 3857*** considered the **'indefeasible right'** of accused and held that right does not survive or remain enforceable on challan being filed. The court observed that the 'indefeasible right' of the accused to be released on bail in accordance with Section 20(4)(bb) read with S. 167(2), Cr.P.C. in default of completion of the investigation and filing of the challan within the time allowed is a right which insures 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 Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, withstanding 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. The court again said that **if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in Section 20(4)(bb), both of them should be considered together. It is obvious that no bail can be given even in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer for extension of time, if such a prayer is**

made.

33. In the case of **State of M.P. Vs. Rustam,** ***1995 Supp (3) SCC 221 = 1995 SCC [Cri.] 830,*** the Apex court referred the **Sanjay Dutt v. State, (*1994) 5 SCC 410 = 1994 SCC (Cri) 1433,*** and held that the **court is required to examine the availability of the right of compulsive bail on the date it is considering the question of bail and not barely on the date of the presentation of the petition for bail.** Court said in para 4 :-

> **"4.** We may also observe that the High Court's view in entertaining the bail petition after the challan was filed was erroneous. The matter now stands settled in ***Sanjay Dutt v. State [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433]*** in which case ***Hitendra Vishnu Thakur v. State of Maharashtra [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087]*** has aptly been explained away. **The court is required to examine the availability of the right of compulsive bail on the date it is considering the question of bail and not barely on the date of the presentation of the petition for bail. This well-settled principle has been noticed in** Sanjay Dutt case [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] **on the strength of three Constitution Bench** cases Naranjan Singh Nathawan v. State of Punjab [1952 SCR 395 : AIR 1952 SC 106 : 1952 Cri LJ 656], Ram Narayan Singh v. State of Delhi [1953 SCR 652 : AIR 1953 SC 277 : 1953 Cri LJ 1113] and A.K. Gopalan v. Govt. of India [(1966) 2 SCR 427 : AIR 1966 SC 816 : 1966 Cri LJ 602] **On the dates when the High Court entertained the petition for bail and granted it to the accused-respondents, undeniably the challan stood filed in court, and then the right as such was not available"**.

34. In **"Dr.Bipin Shantilal Panchal, v. State of Gujarat",** ***1996 CRI. L. J. 1652 [AIR 1996 S.C. 2897= 1996 AIR SCW 734 = 1996 CRI. L. J. 1652 = 1996(1) SCC 718 =1996 CRI. L. J. 1652],*** **Three judges bench** of Apex court referred the case of **Sanjay Dutt v. State through C.B.I. Bombay *(II), (1994) 5 SCC 410 : (1994 AIR SCW 3857)*** and said that S. 167 (2) does not create indefeasible right on accused to exercise it at any time. **If charge sheet filed and accused in custody on basis of order of remand than he cannot be released on bail on ground that charge-sheet was not submitted within statutory period**.

35. In the case of **Dinesh Dalmia v. C. B. I .,** ***AIR 2008 S.C. 78 = [2007] 8***

SCC 770 = 2007 AIR SCW 6112 the court said that right to be released on Statutory bail available only, till investigation remains pending **and the right is lost once charge-sheet is filed.** The right does not get revived only because further investigation is pending. In para 29 The Court observed:-

> **"29.** The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of Section 173 of the Code."

36. In the case of **Sadhwi Pragyna Singh Thakur v. State of Maharashtra,** ***2011 AIR SCW 5551 = 2011 CRI. L. J. (Supp) 265*** , the court considered the **Uday Mohanlal Acharya v. State of Maharashtra** ***(2001) 5 SCC 453 : (AIR 2001 SC 1910 : 2001 AIR SCW 1500)*** **[Three Judge Bench**] and followed the **Sanjay Dutt v. State** ***(1994) 5 SCC 410 = 1994 AIR SCW 3857*** and said **if the application filed for default bail on grounds that charge-sheet is not filed within 90 days and before consideration of the same and before being released on bail, charge-sheet is filed, than said right to be released on bail, can be only on merits**.

37. In reference to the aforesaid subject, it can be said that the law has been settled by Hon'ble the Three Judges Bench of Supreme Court on 26.10.2020 in the case of ***M.Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence, reported in 2020 SCC Online 867,*** wherein the Supreme Court mentioned the following two points for consideration :-

> "9. Thus the points to be decided in this case are:
>
> (a) Whether the indefeasible right accruing to the appellant under Section 167(2) CrPC gets extinguished by subsequent filing of an additional complaint by the investigating agency;

(b) Whether the Court should take into consideration the time of filing of the application for bail, based on default of the investigating agency or the time of disposal of the application for bail while answering (a).”

38. In the aforesaid case, the Apex Court considered the cases of ***Hitendra Vishnu Thakur and others Vs. State of Maharashtra and others (1994) 4 SCC 602, Sanjay Dutt Vs.State of Maharashtra (1994) 5 SCC 410, Uday Mohan Lal Acharya Vs.State of Maharashtra (2001) 5 SCC 453, Rakesh Kumar Paul Vs. State of Assam (2017) 15 SCC 67, Bipin Shantilal Panchal Vs. State of Gujarat (1996) 1 SCC 718, Mohd. Iqbal Madar Sheikh Vs.State of Maharashtra (1996) 1 SCC 722, Union of India Vs. Nirala Yadav (2014) 9 SCC 457, Pragya Singh Thakur Vs. State of Maharashtra (2011) 10 SCC 445, Bikramjit Singh Vs. State of Punjab 2020 SCC online SC 824*** and observed as under −

> “It appears that the term ‘if not already availed of’ mentioned supra has become a bone of contention as Court have differed in their opinions as to whether the right to default bail is availed of and enforced as soon as the application for bail is filed; or when the bail petition is finally disposed of by the Court; or only when the accused actually furnishes bail as directed by the Court and is released from custody.”

39. After taking into consideration the aforesaid authorities, Hon’ble the Supreme Court settled the law in Para 18 as under:-

> “18.1 Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have ‘availed of’ or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2), CrPC read with Section 36A (4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in

case of default by the investigative agency.

18.2 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.

18.3 However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.

18.4 Notwithstanding the order of default bail passed by the Court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent Court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid."

40. Therefore, it appears that the right of default bail under section 167(2) of CrPC cannot be curtailed by subsequent filing of challan even on the same date. In the aforesaid case, the bail application was filed on 10:30 a.m. on 1.2.2019 and challan was filed at 4:25 p.m. on the same date. At that time, the application was not considered but the Hon'ble Supreme Court held that the right of accused to get the default bail will be available.

41. Hence, it appears that the limitation period was 60 days. Challan was not filed within the prescribed limit of 60 days and before filing the challan, the applicant moved the application for default bail. Therefore, the trial court was having no any discretion to dismiss the aforesaid application by saying that the

time was extended for filing the challan. By subsequent filing of challan, the right of accused was not forfeited.

42. In view of aforesaid, the revision is **allowed.** The impugned order passed by the Special Judge, NDPS, Panna on 25.4.2020 is set aside. It is ordered that the applicant **Raja Bhaiya Singh** be released on bail upon his furnishing a bail bond worth **Rs.50,000/-(Rupees Fifty Thousand)** and a personal bond of the same amount to the satisfaction of the trial court.

At the time of releasing the applicant from custody, all the instructions issued by the Government related to COVID-19 shall also be followed by the concerned authorities.

(B.K.SHRIVASTAVA)
JUDGE

TG/-