

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL
MISCELLANEOUS CRIMINAL CASE NO.12249 OF 2023**

BETWEEN:-

1. **ABDUL JAMIL AGED 34 YEARS S/O ABDUL
AJIJ R/O H.NO.2 GALI NO.6 TILAK MARG,
BEHIND PEELU KI MASJID, UJJAIN,
(MADHYA PRADESH).**
2. **ABDUL KHALID AGED 42 YEARS S/O ABDUL
QAYYUM R/O 37/2, JUNA RISALA SUBHASH
MARG, INDORE (MADHYA PRADESH).**
3. **MOHAMMAD JAVED AGED 36 YEARS S/O
MOHAMMAD SABIR R/O 38/2 CHIPA BAKHAL
INDORE (MADHYA PRADESH).**
4. **IMRAN HUSSAIN TANWAR AGED 37 YEARS
S/O ABDUL RAHMAN TANWAR R/O H.NO.266
WARD NO.9 NURI COLONY MANASA
NEEMUCH (MADHYA PRADESH).**
5. **KHWAJA HUSAIN AGED 45 YEARS S/O
USMAN R/O 273, KACHORI ROAD NOORI COLONY,
MANASA NEEMUCH (MADHYA PRADESH).**
6. **ISHAQ KHAN AGED 43 YEARS S/O YASEEN KHAN
R/O 6/11 NAGARCHI BAKHAL UJJAIN (MADHYA PRADESH).**
7. **MOHAMMAD AAKIB KHAN AGED 31 YEARS S/O
NASIR KHAN R/O 47/5 ANKPAT MARG, AWANTIPURA
VISHNU GALI UJJAIN(MADHYA PRADESH).**
8. **ZUBER AHMED AGED 28 YEARS S/O NASIR AHMED
R/O 37, CHAND KA KUNAA UJJAIN,(MADHYA PRADESH).**
9. **MOHAMMAD YUSUF AGED 40 YEARS S/O MOHAMMAD**

- SHAFI R/O 9/1 CHHIPA BAKHAL SIRPUR
INDORE (MADHYA PRADESH).**
- 10. TOUSIF AHMAD CHHIPA AGED 40 YEARS S/O SHAKEEL
AHMAD R/O 89/1 JUNA RISALA INDORE (MADHYA PRADESH).**
- 11. MOHAMMAD SAMMAD AGED 32 YEARS S/O
KADRODDIN R/O 76/K WARD NO.4, JWALAPUR
SOI KALAN SHEOPUR (MADHYA PRADESH).**
- 12. MOHSIN QURESHI AGED 28 YEARS S/O ABDUL
MUHID QURESHI R/O NEAR OLD NAGAR PALIKA
GHOSIPURA GUNA (MADHYA PRADESH).**
- 13. SHAHZAAD AGED 30 YEARS S/O USMAN BAIG
R/O MOTIPURA CHOUDHRIPURA SEENKATURKIPURA
NARSINGGARH RAJGARH (MADHYA PRADESH).**
- 14. SHAKIR KHAN AGED 33 YEARS S/O SALIM KHAN
R/O WARD NO.27 JYOTI NAGAR, SHAJAPUR
(MADHYA PRADESH).**
- 15. ANAWAR KHAN AGED 30 YEARS S/O RIYAJ KHAN
R/O MUNDLA KHURD SEHORE (MADHYA PRADESH).**
- 16. SHAIKH NASER SHAIKH SABIR AGED 37 YEARS
S/O SHAIKH SABIR R/O FASHION HEART TAILOR
NEAR QURESHI PALACE GALI NO.34 BAIJIPURA
INDIRA NAGAR AURANGABAD MAHARASHTRA.**
- 17. GULAM NABEE AGED 59 YEARS S/O GULAM
MUSTUPHA R/O 135/1, JUNA RISAALA ARMY HEAD
QUARTER INDORE (MADHYA PRADESH).**
- 18. GULAM SHAH AGED 40 YEARS S/O ABDUL
R/O KAHAR MOHALLA WARD NO.18 BAKANER MANAWAR
DHAR (MADHYA PRADESH).**
- 19. PARVEZ KHAN MUZAMMIL KHAN AGED 30 YEARS
S/O MUZAMMIL KHAN R/O 4-12-43 KHAS GATE, NEAR
JAINSI POLICE CHOWKI AURANGABAD
(MAHARASHTRA).**

.....PETITIONERS

(BY SHRI MUJEEB UR REHMAN - ADVOCATE)

AND

**1. THE STATE OF MADHYA PRADESH,
THROUGH POLICE STATION STF/ATF
BHOPAL (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI B. D. SINGH-DEPUTY ADVOCATE GENERAL)

.....
Reserved on : *11.09.2023*

Pronounced on : *12.10.2023*
.....

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

This petition under Section 482 of the Code of Criminal Procedure has been filed by the petitioners/accused persons praying for a direction to the trial Court to release petitioners Abdul Jamil, Abdul Khalid, Mohammad Javed, Imran Hussain Tanwar, Khwaja Husain, Ishaq Khan, Mohammad Aakib Khan, Zuber Ahmed, Mohammad Yusuf, Tousif Ahmad Chhipa, Mohammad Samsad, Mohsin Qureshi, Shahzaad, Shakir Khan, Anawar Khan, Shaikh Naser Shaikh Sabir, Gulam Nabee, Gulam Shah and Parvez Khan Muzammil Khan on bail who are accused in the case arising out of FIR No.43/2022 of P.S. Special Task Force, Bhopal for commission of offence under Sections 121A, 153A, 120B, 201 of Indian Penal Code,1860 (hereinafter referred to as IPC for the sake of brevity and

convenience) and Sections 13(1)(b), 18 of the Unlawful Activities (Prevention) Act, 1967 (Amendment 2012) (hereinafter referred to as “UAPA” for the sake of brevity and convenience). The aforesaid applicants, who are 19 in number, have challenged the orders dated 14.10.2022, 28.10.2022, 10.11.2022, 24.11.2022, 08.12.2022, 22.12.2022, 05.01.2023, 19.01.2023, 01.02.2023, 15.02.2023 and 01.03.2023.

2. The above orders allowing their judicial custody have been challenged on the ground that their judicial custody was allowed in their absence as they were neither produced in person before the Court nor through the medium of electronic video linkage.

3. Learned counsel for the petitioners has submitted that while passing the impugned orders learned trial Court has failed to comply with the mandate of Section 167(2)(b) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘Code’). Learned counsel placing reliance on Hon’ble Apex Court judgment in *Jigar @ Jimmy Pravinchandra Adatiya vs. State of Gujarat-Criminal Appeal No.1656/2022* arising out of SLP (Cri.) No.7696/2021, *Raj Narain vs. Superintendent Central Jail, New Delhi-1971 AIR 178* and *Bairam Muralidhar vs. State of Andhra Pradesh-Criminal Appeal No.1587/2014* arising out of SLP (Crl.) 1487/2012, *Anil Rai vs. State of Bihar-Criminal Appeal No.389/1998*, Madras High Court order in Criminal Appeal No.1317 and 1319 of 2022, *Sundeeep Kumar Bafna vs. State of Maharashtra and anr.-Criminal Appeal No.689/2014* arising out of SLP (Crl.) No.1348/2014 has submitted that in the aforesaid cases, Hon’ble

Apex Court and Divisional Bench of Madras High Court held that application of prosecution for extension of time ought not to have been taken up without production of accused before the trial Court either in person or through electronic video linkage, as in aforesaid cases it has been consistently held that mere non production of accused before the Court when extension application of prosecution was taken up will suffice and it is not necessary to show prejudice. In fact, procedural safeguards play an important role in protecting the liberty guaranteed by Article 21 of the Constitution of India.

4. It is further submitted that failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform them that the application made by the Public Prosecutor for the extension of time is being considered, is not a mere procedural irregularity. It is gross illegality that violates the rights of the accused under Article 21 of the Constitution of India. Therefore, the orders passed by the Special Court of extending the period of investigation and extension of their judicial custody are illegal on account of the failure of the respondent/State to produce the accused before the Special Court either physically or virtually when judicial remand was granted and when the prayer for grant of extension of time was made by the Public Prosecutor. In the light of the aforesaid pronouncement, it is prayed by learned counsel for the petitioners that aforementioned orders passed by the Special Court on aforesaid mentioned dates allowing the judicial custody of the petitioners in their absence be declared illegal, the order extending judicial remand and the period of

investigation be declared illegal and petitioners may be released on bail under Section 167(2) of Cr.P.C.

5. On the other hand, learned Deputy Advocate General appearing on behalf of the State has opposed the prayer and has submitted that an order of extension of judicial remand cannot be considered to be invalid merely because the accused has not been produced before the Magistrate. It is submitted that in case of non-compliance of proviso (b) of Section 167(2) of the Code there is no corresponding provision for grant of bail as it consists when the charge sheet is not filed within the mandatory period. It is submitted that on all dates whenever judicial remand of accused was extended their advocate was/were present in the Court and petitioners were duly represented by their advocates. It is submitted that at that time petitioners did not challenge the order of grant of judicial remand on the same dates but whatsoever objections were raised by the petitioners' advocate they were duly considered and decided by the Special Judge. It is submitted by learned Deputy Advocate General that no applications were moved by the accused seeking default bail before the trial Court. The judicial remand may be extended even in the absence of the accused. Accused/petitioners does not move any application for default bail before the trial Court before filing of charge sheet. Hence, petitioners cannot get any benefit of the case laws relied on by them. To bolster his arguments, learned Deputy Advocate General has placed reliance on the judgment of **Qamar Ghani Usmani vs. State of Gujarat (2023) SCC OnLine SC 380** and **Judgebir Singh alias Jasbir Singh Samra**

alias Jasbir vs. National Investigation Agency-(2023) SCC OnLine SC 543.

6. I have heard learned counsel for the parties at length and perused the material on record.

7. The short questions which are involved for determination before the court are :-

(a) Whether accused can be released on statutory/ default bail under section 167(2) of Cr.P.C merely on the ground that at the time of extension of judicial custody by Special Judge accused persons were not produced either physically or virtually before the court on the dates mentioned hereinabove ?

(b) Whether accused who have not moved any application to exercise their right for grant of statutory bail before charge sheet is filed, can be released on default bail merely on the ground of their non-production either physically or virtually before the Special Judge extending judicial custody and the time for investigation ?

8. Learned counsel appearing on behalf of the petitioners/ accused has heavily relied upon the decision of Hon'ble Apex Court in the case of *Jigar @ Jimmy Pravinchandra Adatiya Vs. State of Gujrat – Cr.A.No.1656/2022 arising out of SLP (Cri) No.7696/2021, Raj Narain Vs. Supdt. Central Jail, New Delhi -1971 AIR-178, Bairam Muralidhar Vs. State of Andhra Pradesh- Cr.A.No.1587/2014 arising out of SLP (Cri) No. 1487/2012, Anil Rai Vs. State of Bihar- Cr.A.No.389/1998 and Sundeep Kumar Bafna Vs. State of*

***Maharashtra and ano. - Cr.A.No.689/2014 arising out of SLP (Cri.)
No.1348/2014.***

9. Before advertng to the rival submissions canvassed by learned counsel for the parties, it would be proper to look into the relevant statutory provisions of the Code and UAPA. Provision of Section 167 of the Code and Section 43-D of the UAPA are relevant. Provisions of Section 167(2) of the Code are reproduced as under :-

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

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is wellfounded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(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--

1[(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall 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;]

2[(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;]

(c) no Magistrate of the second class, not

specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

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

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

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

10. A reading of the above provision makes it clear that physical production is mandatory so long as the accused is in police custody where it is first time production and on subsequent production physically/ virtually for further detention in judicial custody production can be either physical or through the medium of electronic video linkage. Section 167 of the Code give due regard to the personal liberty of a person. Without submission of charge sheet within 60 days or 90 days, as may be applicable, an accused cannot be detained by the police. The provision gives due recognition to the personal liberty.

However, such a right of default bail, although a valuable right, as the same is a conditional one, the condition precedent is the pendency of investigation. Therefore, once investigation is complete with filing of the police report, containing the details specified under section 173(2) of the Cr.P.C, the question of decline or grant for default bail does not arise. However, section 43-D of the UAPA operates as a special provision. Section 43-D is reproduced as under :-

“Section 43D. Modified application of certain provisions of the Code.

1[43D. Modified application of certain provisions of the Code.--(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),--

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:--

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with 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 ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that--

(a) the reference in sub-section (1) thereof

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government.";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to 'the State Government' shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act

shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

11. A reading of the above mentioned provision of UAPA makes it clear that benefit of default bail shall be available to the accused for the offence alleged to have been committed under the UAPA where the investigation has not concluded within 90 days of the arrest of the accused irrespective of the punishment of the offence alleged to have been committed by him. At the same time, the provision also gives right to the investigating agency to seek further period of 90 days to complete the investigation by filing a report to the public prosecutor

indicating the progress of the investigation. By virtue of Section 43D of the UAPA, the investigating agency get 180 days to complete the investigation.

12. In the case in hand accused Abdul Jamil, Abdul Khalid and Mohd. Javed were produced before designated NIA Court on 23.09.2022. The police remand was granted upto 30.09.2022. On 30.09.22, they were sent to judicial custody upto 14.10.2022. On 14.10.2022, the Presiding Officer was on leave, all four accused persons were not produced before the Court. However, on the basis of an application filed by the investigating agency, judicial remand was extended upto 28.10.2022.

13. In compliance of production warrant Mohsin Qureshi, Tousif Ahmad Chhipa, Mohd. Shamshad, Imran, Shakir Khan, Ishaq Khan, Yasin Khan, Zuber, Mohd. Aqib and Shahjad Beg were not produced. However, the aforesaid accused persons were produced before the Court of Special Judge on 19.10.2022. Their advocates had appeared for them and permission was granted to the investigating Officer to arrest them. They were arrested and were remanded to police custody upto 27.10.2022.

14. On 25.10.2022 accused Anwar Khan was produced and his police remand was granted upto 29.10.2022. That day accused Abdul Kareem, Abdul Zamil Sheikh,, Abdul Khalid and Mohd. Javed were produced before the court. Their Judicial remand was granted upto 10.11.2022. On 28.10.2022, accused Abdul Khalid and Mohd. Javed were not produced before the court but an application for extending their judicial remand was produced by Sub Inspector of the agency. The

same was allowed and judicial remand was extended upto 10.11.2022. On 29.10.2022, Anwar Khan was produced. His judicial remand was extended upto 10.11.2022.

15. On 10.11.2022, 24.11.2022, 22.12.2022, 5.1.2023, 19.01.2023 and 01.02.2023 accused were not produced. An application for extending judicial remand was filed and their judicial remand was extended. On 04.02.2023, accused Parvez Khan was produced in compliance of the production warrant issued by the Court. The investigating agency was permitted to arrest him. On that date, accused Gulam Nabee and Parvez Khan Muzammil Khan were also produced and their police remand was granted upto 08.02.2023. Their advocates were also present. Their judicial remand was extended upto 15.02.2023. On 15.02.2023 accused were not produced. However, their advocates had appeared. An application for extension of judicial remand was filed and their judicial remand was extended upto 01.03.2023.

16. On 01.03.2023 accused persons were produced through video conferencing from Central Jail, Bhopal. However, accused Sheikh Naser was not produced. On 20.03.2023 charge sheet was filed against 22 persons. That day all accused were produced in the court through video linkage.

17. It is noteworthy that four accused persons i.e accused Nos.1 to 4 were arrested on 23.09.2022. The 90 days period provided under Section 167 of Code thus would expire on 21.12.2022. Accused persons No.5 to 17 were arrested on 19.10.2022 thus their 90 days

period would expire on 16.01.2023. One accused Anwar Khan was arrested on 24.10.2023. His 90 days period would expire on 21.01.2023. Four accused were arrested on 3/4.02.2023. Their 90 days period would expire on 3/4.05.2023.

18. It is worth mentioning that within the period of 90 days i.e on 14.12.2022, the investigation officer submitted the application and prayed for extension of time for completing the investigation. Copies of the application submitted by investigation officer were supplied to advocates appearing for the accused persons. All accused persons filed reply of application. The learned trial court considering the report submitted by the investigation officer for extension of time for completing the investigation and after hearing the prosecution and accused persons allowed the application for extension of time by order dated 20.12.2022 and granted extension of $90+90=180$ days period. The accused persons did not challenge the extension on any grounds which were available to them that such extension is illegal or contrary to law. As such, extension was never challenged.

19. In the case in hand, the main contention of learned counsel for the petitioners is that as on aforesaid dates petitioners were not produced, therefore, only on that ground they are entitled for default bail and for the same learned counsel placed reliance on the cases of *Raj Narain (supra)*. In the case of *Raj Narain (supra)*, the Hon'ble Apex Court has held that presence of accused is not required in a case of extension of remand by Magistrate. It was a case when petitioner was produced when inquiry under section 107 of the Code was initiated

but on one date he was not been produced when he was remanded to jail. It was further held that the order of remand cannot be considered to be invalid merely because the accused has not been produced before the Magistrate.

20. In the case of ***Ramesh Kumar Ravi @ Ram Prasad and etc. Vs. State of Bihar and others etc.-1987 Cr.L.J. 1489*** Full Bench of Patna High Court held that though physical production of the accused before the Magistrate is desirable, yet the failure to do so would not perse vitiate the order of remand if the circumstances for non-production were beyond the control of the prosecution or the police. Also see ***Bambasiya Rao Vs. Union of India-1973 Cr.L.J 663.***

21. In the case in hand, learned counsel for the petitioner has relied on the minority view taken by Vaidialingam J. in Raj Narain (supra) case where His Lordship differing with the view taken by the majority held that the order of remand dated 29.08.1970 passed by City Magistrate, Lucknow was illegal. Same being a minority view, petitioners gets no benefit from aforesaid case law.

22. As far as the case of ***Jigar @ Jimmy (supra)*** is concerned, the facts of the said case have no application in the facts of present case as in that case court had passed the orders on the report submitted by learned Public Prosecutor by which time to complete investigation was extended upto 180 days. The presence of none of the accused was procured either physically or through video linkage and they were not even informed about the report submitted by the public prosecutor and when they applied for default bail they had no notice of extension

granted by the court. The applications for grant of default bail were made before filing of the charge sheet and in such circumstances the Hon'ble Apex Court held as under :-

*“37. When they applied for bail, the appellants had no notice of the extension of time granted by the Court. Moreover, the applications were made before the filing of charge sheet. Hence, the appellants are entitled to default bail. At this stage, we may note here that in the case of “Sanjay Dutt” as well as in the case of Bikramjit Singh”, this Court held that grant of default bail does not prevent re-arrest of the petitioners on cogent grounds after filing of charge-sheet. Thereafter, the accused can always apply for regular bail. However, as held by this Court in the case of **Mohd. Iqbal Madar Sheikh and others Vs. State of Maharashtra**, re-arrest cannot be made only on the ground of filing of charge sheet. It all depends on the facts of each case.”*

23. In the case in hand, extension of time was granted by the court on 20.12.2022 by passing a detailed order and same was passed after hearing the applicants/ accused herein. It is also noteworthy that in this case petitioners/ accused never exercised their right to grant of default bail before the charge sheet was filed, they have lost their right to such benefit once charge sheet is filed. As they never moved any application exercising their right to grant of statutory bail before charge sheet was filed they are not entitled to be released for default bail only on the ground that they were not produced before the trial court on some dates either physically or through video linkage.

24. In the case of ***Qamar Ghani Usmani Vs. State of Gujrat -2023 SCC Online SC 380***, the Hon'ble Apex Court in para-25 held as under :-

“25. However, in the facts and circumstances of the case, we are of the view that the appellant is not entitled to the relief of statutory/default bail. In the present case the facts are glaring which are as under: -

.....The accused was arrested on 29.01.2022. The 90 days provided under Section 167 Cr.PC thus would expire on 29.04.2022. Within the period of 90 days i.e., on 22.04.2022, the IO submitted the report and prayed for extension of time for completing the investigation which came to be allowed by the learned Trial Court by granting extension of 30 days period. It is true that for whatever reason, the accused was not kept present at the time when the learned Trial Court considered the report submitted by the IO for extension of time for completing the investigation. However, the accused came to be informed about the extension on the very next day i.e., 23.04.2022. The accused did not challenge the extension on any ground which may be available to him and/or did not make any grievance that such an extension is illegal and/or contrary to law. On 10.05.2022, he made the present application for default bail/statutory bail on the ground that the charge sheet has not been filed within the period of 90 days. At this stage, it is required to be noted that at the time when the present application for default/statutory bail was made on 10.05.2022, there was already an extension of time by the learned Trial Court which as such was in existence and the extension was up to 22.05.2022. At this stage, it is required to be noted that though informed on 23.04.2022 about the extension of time for completing the investigation, the accused did not disclose the

same in the application for default bail/statutory bail submitted on 10.05.2022. That thereafter, on 22.05.2022, IO again submitted the report for further extension of time for completing the investigation which came to be allowed/granted by the learned Trial Court which as such was in the presence of the accused and at that time, the accused remained present. Neither the first extension nor the second extension came to be challenged by the accused.”

25. In the case of **Judgebir Singh @ Jasbir Singh Samra @ Jasbir and others-2023 SCC Online 543** in somewhat similar circumstances where applicant/accused had not exercised their right of default bail, the Hon’ble Apex Court in para 77 and 78 held as under :-

77. 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 charge sheet or a report seeking extension of time by the prosecution before the court. However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a charge sheet, or a report seeking extension of time is preferred before the Magistrate or any other competent court, the right to default bail would be extinguished. The court 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.

78. Our observations in paras 76 and 77 respectively as above are keeping in mind the decision of this Court rendered by a three-Judge Bench in the case of Sayed Mohd. Ahmad Kazmi

v. State (Government of NCT of Delhi) and Others reported in (2012) 12 SCC 1, wherein in paras 25, 26 and 27 respectively, this Court observed as under:

“25. Having carefully considered the submissions made on behalf of the respective parties, the relevant provisions of law and the decision cited, we are unable to accept the submissions advanced on behalf of the State by the learned Additional Solicitor General Mr Raval. There is no denying the fact that on 17-7-2012, when CR No. 86 of 2012 was allowed by the Additional Sessions Judge and the custody of the appellant was held to be illegal and an application under Section 167(2) CrPC was made on behalf of the appellant for grant of statutory bail which was listed for hearing. Instead of hearing the application, the Chief Metropolitan Magistrate adjourned the same till the next day when the Public Prosecutor filed an application for extension of the period of custody and investigation and on 20-7-2012 extended the time of investigation and the custody of the appellant for a further period of 90 days with retrospective effect from 2-6-2012. Not only is the retrospectivity of the order of the Chief Metropolitan Magistrate untenable, it could not also defeat the statutory right which had accrued to the appellant on the expiry of 90 days from the date when the appellant was taken into custody.

Such right, as has been commented upon by this Court in Sanjay Dutt [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] and the other cases cited by the learned Additional Solicitor General, could only be distinguished (sic extinguished) once the charge-sheet had been filed in the case and no application has been made prior thereto for grant of statutory bail. It is well-established that if an accused does not exercise his right to grant of statutory bail before the charge-sheet is filed, he loses his right to such benefit once such charge-sheet is filed and can, thereafter, only apply for regular bail.

26. The circumstances in this case, however, are different in that the appellant had exercised his right to statutory bail on the very same day on which his custody was held to be illegal and such an application was left undecided by the Chief Metropolitan Magistrate till after the application filed by the prosecution for extension of time to complete investigation was taken up and orders were passed thereupon.

27. We are unable to appreciate the procedure adopted by the Chief Metropolitan Magistrate, which has been endorsed by the High Court and we are of the view that the appellant acquired the right for grant of statutory bail on 17-7-2012, when his custody was held to be illegal by the

Additional Sessions Judge since his application for statutory bail was pending at the time when the application for extension of time for continuing the investigation was filed by the prosecution. In our view, the right of the appellant to grant of statutory bail remained unaffected by the subsequent application and both the Chief Metropolitan Magistrate and the High Court erred in holding otherwise.”

(Emphasis supplied)

26. In the case in hand it is also worth mentioning that petitioners/accused never moved any application challenging the order dated 20.12.2022 whereby extension was granted by the Special Court. It is also worth mentioning that petitioners never exercised their right to statutory bail by filing an application under section 167(2) Cr.P.C seeking default bail. If petitioners even after acquiring the right for grant of statutory bail failed to exercise their right to grant of statutory bail before charge sheet was filed, they lost their right to such benefit once such charge sheet is filed.

27. In view of foregoing discussion and the settled position of law, it is apparent that petitioners cannot be released on default bail merely because they were not produced before the Special Court on some dates and there is non-compliance of the provision of producing through video linkage or physical appearance. In absence of any corresponding provision for grant of bail when charge sheet is not filed within the mandatory period, petitioners cannot claim to be released on default

bail.

28. However, in this case it cannot be over looked that accused were not produced before the court on some dates at the time of extension of judicial remand. The learned Special Judge has also not given reasons why he extended remand even when accused was not produced before him. The manner in which Superintendent of Jail are performing their duties and judges are dealing with the issue, is unsatisfactory. Every one is aware that in judicial custody, physical as well as virtual production is recognized by the Code of Criminal Procedure. So, Superintendent of Jail are required to produce the accused through virtual mode. The Judges seized of the matter are also expected to procure presence of the accused lodged in jail through virtual production if physical production is not possible for any reason. Procedure can be adopted in both type of cases where investigation is going on and charge sheet has not been filed and also in cases when remand is extended under section 309 of the Code.

29. In the State of Madhya Pradesh, facility of video conferencing has been provided to all courts and jails. Therefore, there are no reasons for Superintendent of Jail and the courts seized with the matter not to procure presence of the accused who are lodged in jail through video conferencing at the time of extending remand and not to comply with the provisions of Section 167(2)(b) of Cr.P.C. Therefore, it is directed that all courts/magistrates while extending custody period will make all efforts to procure presence of accused through the medium of video linkage if they are not produced in-person at the time of

extension of further detention in judicial custody. Superintendent of Jail shall also make all attempts to adduce such accused before the court through virtual mode till charge sheet is filed and even after filing of charge sheet when accused are remanded under section 309 of Cr.P.C and are not produced in-person before the court, they will be produced through medium of electronic linkage and factum of their production be recorded in the order-sheet by the Judges/Magistrates seized with the matter.

30. A copy of this order be sent to the Director General (Prison) M.P. for strict adherence of the directions contained hereinabove. Principal Registrar (Judicial) of the High Court is directed to place this order before Hon'ble the Chief Justice and take necessary instructions to circulate the same amongst the Judges/ Magistrates in order to ensure strict compliance of Section 167(2)(b) of Cr.P.C to avoid the circumstances which have come in the notice of this court in this matter.

31. With the aforesaid observation and directions, this petition stands **dismissed**.

(DINESH KUMAR PALIWAL)
JUDGE

MKL