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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 982/2009

PARAMJIT SINGH Petitioner
Through: Mr. Avninder Singh, Adv.

versus

THE STATE (GNCT) OF DELHI Respondent
Through: Mr. Sanjeev Bhandari, ASC for the
State.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL

ORDER
13.08.2009

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1. This writ petition has been filed on behalf of Paramjit Singh who is standing trial in a case arising out of FIR No.194/2004 registered by the police station Tilak Nagar under Sections 302/307 of the Indian Penal Code. The facts so far as necessary for the purposes of the present petition, are undisputed and are noticed hereunder.
2. The petitioner was taken into custody of the police upon registration of the case on 4th April, 2004. He was in judicial remand when the chargesheet was filed on 3rd July, 2004 which was the ninetieth day after his arrest.
3. The applicant was initially of the impression that the chargesheet had been filed beyond the period of 90 days and hence he was

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entitled to be admitted to bail in view of the mandate of Section 167 of the Criminal procedure Code. Pursuant thereto, the petitioner filed an application before the learned Additional Sessions Judge. My attention is drawn to the order dated 30th of November, 2005 which was passed on consideration thereof by the learned Additional Sessions Judge. This order records that the period within which the challan has been filed after the arrest of the accused, has been calculated by the accused as well as counsel and they have admitted that the challan has been filed before the expiry of 90 days. In this background, the application filed by the petitioner was dismissed.

4. The matter did not stop at the passing of this order. The petitioner thereafter filed an application under Section 439 of the Code of Criminal Procedure being Bail Application No.548/2006 in this court. The application for bail was premised again primarily on the ground that the applicant was entitled to bail in view of the provisions of sub-section 2 of Section 167 of the Cr.P.C. The application was dismissed by an order passed on 5th October, 2006. While dismissing the application on 5th October, 2009, this court had specifically noted that no case has been made out for grant of bail under Section 167 of

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the Code of Criminal Procedure.

5. It is undisputed that the order passed by this court dated 5th October, 2006 has not been assailed and has attained finality.

6. The present writ petition is again premised on the same submissions that the applicant is entitled to bail in view of the provisions of sub-section 2 of Section 167 of the Cr.P.C. A different aspect is albeit urged with regard to this issue. It is urged that the petitioner was admittedly in judicial custody at the time the chargesheet was filed on 3rd July, 2004, and was not produced before the magistrate at the time of its filing. Learned counsel for the petitioner has contended that in this background, the right of the petitioner to contest the filing of the chargesheet and to object that the same was beyond the statutory period has been denied to him. It is urged that in this background, it cannot be contended that the chargesheet has been filed within the period of 90 days.

7. Learned counsel for the petitioner however is unable to point out any statutory provision which requires that an accused person has to be produced before the Magistrate when the chargesheet is filed by the investigating agency. The provisions of the proviso to sub-section 2 of Section 167 Cr.P.C. which have been relied upon only mandate

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that no magistrate shall authorise detention in custody unless the accused is produced before him. The present case does not relate to detention of the accused person without his production before the magistrate concerned. The submission that the accused person had to be produced before the magistrate at the time of filing the chargesheet is clearly beyond statutory mandate and is wholly misconceived.

8. It is, however, noteworthy that when the chargesheet was filed before the learned magistrate on 3rd July, 2004, the court had noted that the challan had been filed by the Inspector Pratap Singh and that the accused was reported to be in judicial custody and he was not present. The court had clearly directed that the case filed be put up before the concerned court on 5th July, 2004.

9. In **1983(2) SCC 372 State of U.P. Vs. Laxmi Brahman & Anr.**, it was observed that as per the scheme of Section 167(1) & (2) with the proviso, on expiry of 60 days from the date of arrest of the accused, his further detention does not become ipso facto illegal or void, but if the chargesheet is not submitted within this period, then notwithstanding anything to the contrary in Section 437(1), the accused would be entitled to an order for being released on bail if he is

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prepared to and does furnish bail.

10. It has also been urged in cases that the total of detention should reckoned from the date of arrest. So far as computation of the period of 60 or 90 days as the case may be under Section 167 of the Code of Criminal Procedure is concerned, in **1986 (3) SCC 141 Chaganti Satyanarayana Vs. State of Andhra Pradesh**, the Apex Court laid the law as follows:-

"24. We must bear in mind that significant changes have been made in Section 167 as well as to the proviso by Act 45 of 1978 such as increasing the period for investigation in grave cases from 60 to 90 days, conferring of powers of remand on Executive Magistrates in certain situations etc. Therefore, it can be legitimately contended that the words occurring in proviso (a) should be construed within the frame work of the proviso itself without any reference to Section 167(2). If such a construction is made, it may be seen that the proviso forbids the extension of remands only beyond a total period of 90 days under Clause (i) and beyond a total period of 60 days under Clause (ii). Thus if proviso (a) is treated as a separate paragraph it necessarily follows that the period of 90 days or 60 days as the case may be, will commence running only from the date of remand and not from any anterior date in spite of the fact that the accused may have been taken into custody earlier by a police officer and deprived of his liberty."

11. Similar questions have arisen for consideration before the Apex Court as well. Sub-Section 4 of Section 20 of the Terrorist & Disruptive Activities (Prevention) Act, 1987 ('TADA' hereafter) has the effect of

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making Section 167 of the Cr.P.C. applicable to a case involving an offence thereunder, of course subject to certain statutory modifications including the one relating to period under the proviso. So far as the nature of the right of the accused to be admitted to bail upon failure of the investigating agency to file the chargesheet under Section 20(4) of TADA and Section 167 of Cr.P.C. is concerned, in **1994 (5) SCC 410 Sanjay Dutt Vs. State (CBI) Mumbai**, the Apex Court held as follows:-

"48. We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4)(bb) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the CrPC. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 Cr.P.C. ceases to apply. The Division Bench also indicated 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

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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. 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 CrPC. It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order. (See Naranjan Singh Nathawan v. The State of Punjab; Ram Narayan Singh v. The State of Delhi and Ors.; and A.K. Gopalan v. The Government of India.

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53. As a result of the above discussion, our answers to the three questions of law referred for our decision are as under :-

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(2)(b) The 'indefeasible right' of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the CrPC in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which enures 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

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forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the CrPC. The right of the accused to be released on bail after filing of the challan, notwithstanding 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."

12. There is therefore no ambiguity about the rights of the accused person to be released on bail upon failure of the prosecution to file the chargesheet within the maximum time permissible under law. The question which is often raised is as to whether this right survives and can be exercised once the challan stands filed. So far as this issue is concerned, in **1995 SCC (Cri) 830 State of M.P. Vs. Rustam and Ors.**, the principles were laid down thus:-

"3. We find that the High Court was in error – both in the matter of computation of the period of 90 days prescribed as also in applying the principle of compulsive bail on entertaining a petition after the challan was filed as the so-called "indefeasible right" of the accused, in our view stood defeated by efflux of time. The prescribed period of 90 days, in our view, would instantly commence either from 4-9-1993 (excluding from it 3-9-1993) or 3-12-1993 (including in it 2-12-1993). Clear 90 days have to expire before the right begins. Plainly put, one of the days on either side has to be excluded in computing the prescribed period of 90 days. Section 9 and 10 of the General Clauses Act warrant such an interpretation in computing the prescribed period of 90 days. The period of limitation thus computed on reckoning 27 days of September, 31 days of October and 30 days of November, would leave two clear days in December to compute 90 days and on which date

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the challan was filed, when the day running was the 90th day. The High Court was, thus, obviously in error in assuming that on 2-12-1993 when the challan was filed, period of 90 days had expired.

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 Vs. State in which case Hitendra Vishnu Thakur Vs. State of Maharashtra 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 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 on the strength of three Constitution Bench cases – Narajan Singh Nathawan Vs. State of Punjab, Ram Narayan Singh Vs. State of Delhi and A.K. Gopalan Vs. Govt. of India. 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.”

(Emphasis supplied)

13. It is therefore clear that if an accused person fails to exercise his right to be released on bail for failure of the prosecution to file the chargesheet within the maximum time allowed by law, he cannot contend that he had an indefeasible right to exercise it at any time notwithstanding the fact that in the meantime the chargesheet is filed.

(Ref: **(1996) 1 SCC 718 Dr. Bipin Shantilal Panchal Vs. State of Gujarat**)

In this very pronouncement, the Supreme Court has also stated that on the other hand, if he exercises the right within the time allowed by law and is released on bail under such circumstances, he

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cannot be rearrested on the mere filing of the chargesheet.

14. The question as to whether the bail to which an accused person became entitled under Section 167 of the Cr.P.C. can be cancelled after the filing of the chargesheet was raised before the Apex Court are concerned, in **AIR 1993 SC 1 Aslam Babalal Desai Vs. State of Maharashtra**.

In this case the majority view of the court was expressed by Ahmadi, J & Ramaswamy, J in separate concurring judgments. In the judgment passed by Ahmadi, J, the applicable principles were laid down as follows:-

"14. We sum up as under:

The provisions of the Code, in particular Sections 57 and 167, manifest the legislative anxiety that once a persons' liberty has been interfered with by the police arresting him without a court's order or a warrant, the investigation must be carried out with utmost urgency and completed within the maximum period allowed by the proviso (a) to Section 167(2) of the Code. It must be realised that the said proviso was introduced in the Code by way of enlargement of time for which the arrested accused could be kept in custody. Therefore, the prosecuting agency must realise that if it fails to show a sense of urgency in the investigation of the case and omits or defaults to file a charge sheet within the time prescribed, the accused would be entitled to be released on bail and the order passed to that effect under Section 167(2) would be an order under Sections 437(1) or (2) or 439(1) of the Code. Since Section 167 does not empower cancellation of the bail, the power to cancel the bail can

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only be traced to Section 437(5) or 439(2) of the Code. The bail can then be cancelled on considerations which are valid for cancellation of bail granted under Section 437(1) or (2) or 439(1) of the Code. The fact that the bail was earlier rejected or that it was secured by the thrust of proviso (a) to Section 167(2) of the Code then recedes in the background. Once the accused has been released on bail his liberty cannot be interfered with lightly i.e. on the ground that the prosecution has subsequently submitted a charge-sheet. Such a view would introduce a sense of complacency in the investigating agency and would destroy the very purpose of instilling a sense of urgency expected by Sections 57 and 167(2) of the Code. We are, therefore, of the view that once an accused is released on bail under Section 167(2) he cannot be taken back in custody merely on the filing of a charge-sheet but there must exist special reasons for so doing besides the fact that the charge-sheet reveals the commission of a non-bailable crime. The ratio of Rajnikant's case to the extent it is inconsistent herewith does not, with respect, state the law correctly.

15. Even where two views are possible, this being a matter belonging to the field of criminal justice involving the liberty of an individual, the provision must be construed strictly in favour of individual liberty since even the law expects early completion of the investigation. The delay in completion of the investigation can be on pain of the accused being released on bail. The prosecution cannot be allowed to trifle with individual liberty if it does not take its task seriously and does not complete it within the time allowed by law. It would also result in avoidable difficulty to the accused if the latter is asked to secure a surety and a few days later be placed behind the bars at the sweet will of the prosecution on production of a charge-sheet. We are, therefore, of the view that unless there are strong grounds for cancellation of the bail, the bail once granted cannot be cancelled on mere production of the charge-sheet. The view we are taking is consistent

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with this Court's view in the case of Bashir & Raghubir (supra) but if any ambiguity has arisen on account of certain observations in Rajnikant's case our endeavour is to clear the same and set the controversy at rest."

15. Certain observations in the concurring judgment by Ramaswamy, J are important and throw valuable light on the issue and read thus:-

"40. The purpose of interpretation is to sustain the law. The court must interpret the words or the language in the statute to promote public good and misuse of power is interdicted. Criminal law primarily concerns with social protection and prescribes rules of behaviour to be observed by all. Law punishes for deviance, transgression, violation or omission. Liberty of the individual and security and order in the society or public order are delicate and yet paramount considerations. Undue emphasis on either would impede harmony and hampers public good as well as disturb social weal and peace. To keep the weal balanced, must be the prime duty of the Judiciary. The purpose of the proviso to Section 167(2) read with Chapter XXXIII of the Code is to impress upon the need for expeditious completion of the investigation by the police officer within the prescribed limitation and to prevent Taxity in that behalf. Orr its default the Magistrate shall release the accused on bail if the accused is ready and does furnish the bail. At the same time during investigation or trial the power of the court to have the bail cancelled and have the accused taken into custody are preserved. But as interpreted by this Court on the happening of the catalyst act i.e. expiry of 90/60 days the hammer of release on default would fall. Later filing of the charge-sheet (challan) is not by itself relevant to have the bail cancelled on committing the accused for trial or taking cognizance of the offence. As emphasised by this Court in Bashir's and Raghubir's cases, on curing the defect by filing the charge-sheet (challan) if the prosecution seeks to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable

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offence and that it is necessary to arrest and commit him into the custody, prima facie at that stage, strong grounds indeed are necessary. For cancellation of the bail after filing of the charge-sheet the factum of dismissal of the bail on the earlier occasion is not relevant. But during investigation some strong prima facie evidence and gravity and magnitude of the crime or the manner in which the crime was committed and other attending circumstances may be relevant as prima facie grounds to have a fresh look to cancel the bail. The grounds for cancellation of the bail in Chapter XXXIII are, de hors the merits in the matter, namely, necessity due to the conduct of the accused and abuse of liberty i.e. obstruction of the smooth investigation or suborning witnesses or attempting to tamper the evidence, threatening the witnesses with dire consequences or making or attempting to remove himself beyond the reach of the court to hamper the smooth trial, etc. are independent of the merits in the matter. Cancellation of the bail would be necessitated by the conduct of the accused himself after the release. I agree with brother Punchhi, J. that it might be possible to abuse the proviso by deliberate delay in completing the investigation to facilitate the release of the accused on bail. I also agree that merits brought out in the charge-sheet and attending circumstances are relevant, as the bail, was granted due to default of the investigating officer without court's adverting to the merits but strong grounds are necessary to cancel the bail. To that extent brother Ahmadi, J. also laid emphasis, namely, strong grounds are to be made out in the charge-sheet. With respect I agree with brother Ahmadi's emphasis that filing the charge-sheet (challan) itself is not sufficient. However, I lay emphasis that the High Court or the Court of Sessions should consider the merits of the case. With respect, K.J. Shetty, J., laid emphasis on the subsequent filing of the charge-sheet and the power for cancellation under Sections 437 and 439 of the Code. Unfortunately, the ratio in Parida's and Bashir's cases was not brought to the notice of the learned Judge, which was directly on the point and for the reasons stated I find it difficult to agree with the learned Judge in that

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respect. I am in full agreement with the view expressed by brother Ahmadi, J. and the order proposed by him."

16. The Apex Court has laid down the principles with regard to the responsibility of the magistrates before whom a challan has been filed to ensure that rights of the accused persons under Section 167 of the Cr.P.C. are adequately protected. The mandate of the statutory provisions as well as the principles laid down by the Apex Court is required to be complied with by all courts. In the instant case, the learned magistrate was clearly conscious of the statutory mandate and these salutary principles.

For all these reasons, I find no merit in this writ petition which is hereby dismissed.

AUGUST 13, 2009
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GITA MITTAL, J