

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

I. Bail Appln. No. 9 of 2023

[Ref: FIR No. 02(01)2022 CSD PS, u/s 18(b) ND&PS Act]

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II. Bail Appln. No. 10 of 2023

[Ref: FIR No. 02(02)2023 CSD PS, u/s 18/46 ND&PS Act]

Shri Mangneikam Haokip aged about 45 years S/o Tongkhojamg Haokip (Village Chief) resident of Lanchah Village, P.O. & P.S. Chassad, Kamjong District Manipur-795145.

.....AccusedPetitioner

- Vs -

Officer-in-Charge, Chassad Police Station, P.O. & P.S. Kamjong, Kamjong District, Manipur-795145.

.....Respondent

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner :: Mr. Tungrei Ngakang, Advocate.

For the Respondent :: Mr. RK. Umakanta, PP.

Date of Hearing :: 27.09.2023

Date of Order :: **07.12.2023**

ORDER (CAV)

[1] Heard Mr. Tungrei Ngakang, learned counsel for the petitioner and Mr. RK. Umakanta, learned PP for the State respondent.

[2] The petitioner has filed Bail Application being BA No. 9 of 2023 under Section 439 CrPC in connection with FIR No. 02(01)2022 Chassad PS u/s 18(b) ND&PS Act and BA No.10 of 2023 in connection with FIR No. 02(02)2013 Chassad PS u/s 18/46 ND&PS Act. Earlier, one single Bail Application being BA No. 9 of 2023 was filed for both FIRs. Later on, BA No.10 of 2023 was also filed for FIR No. 02(02)2023 and BA No. 9 of 2023 was treated in connection with FIR No. 02(01)2022.

[3] Brief fact of the case in FIR No. 02(01)2022 is that on 19.01.2022, a combined team of Kamjong District Police, NAB, 6 MR and Forest Department Kamjong carried out destruction of illicit poppy cultivation at Lanchah Village hill range of Kamjong under the jurisdiction of Chassad Police Station. About 26 acres of poppy cultivated areas were destroyed and accordingly FIR No. 02(01)2022 CSD PS u/s 18(b) ND&PS Act was registered. As the petitioner was Village Chief for the area under poppy cultivation, a notice was issued to him for appearance. The petitioner approached the court of learned Special Judge (NDPS), Ukhrul, Manipur under Section 438 CrPC by way of an application being Cril. Misc. (AB) Case No. 15 of 2022 for pre arrest bail and vide order dated 22.11.2022, he was granted interim protection. However, by an order dated 06.02.2023, the interim bail was vacated and the bail application was rejected. Then, the petitioner was arrested on 06.02.2023 and was remanded to police custody and on 10.02.2023 to judicial custody.

[4] For FIR No. 02(02)2023, it is stated that on 22.01.2023, Kamjong District Police led by Shri Semmi Ramror MPS, Addl. SP (LO), Kamjong conducted a survey and found poppy plants cultivation on land measuring an area of about 15 acres located at

a place of 1 km North-East of Maokot village settlement area in Lanchah Village under Sahamphung Sub-division, P.O. & P.S. Chasad, Kamjong District. A survey report was submitted to District Magistrate, Kamjong for issuing an order of attachment and destruction of poppy cultivated land. Thereafter, the order for attachment and destruction of poppy cultivated land was ordered under Section 48 ND & PS Act 1985 by the District Magistrate, Kamjong. For investigation, a FIR No. 02(02)2023 CSD PS u/s 18/46 ND&PS Act was registered on suo-moto.

[5] On 08.02.2023, a combined team of Kamjong District Police, 1st Bn MR, 6th Bn MR, 7th Bn MR, MPTC Pangei, NAB and Forest Department, Kamjong Division conducted the poppy plant destruction at Maokot Village Jurisdiction and 6.900 kgs of poppy pods with plants were seized. The seizure items were produced before the JMFC, Ukhrul on 11.02.2023 along with a prayer for sampling and forwarding of the exhibit to the Director, DFS, Manipur for examination. Thereafter, the samples were sent to the Director, DFS, Pangei on 16.02.2023.

[6] On 06.02.2023, the accused/petitioner was arrested in connection with another FIR being FIR No. 02(01)2022 CSD PS, U/S 18(b) ND & PS Act relating to poppy cultivation. As such, the accused was remanded into judicial custody on 10.02.2023.

[7] According to the police report, it is stated that the poppy cultivated area is within Lanchah Village and as per the customary law, the petitioner who is the Chief of Lanchah Village is the sole owner of the poppy cultivated land. During the course of investigation, it has come to the light that the accused person was involved in the the

above referred FIR case. Hence, the accused being the Chief of Lanchah Village is required to be interrogated at JIC, Imphal and for taking photograph and finger print for further investigation of the case.

[8] The I.O of the present case prayed for police custody remand for formal arrest of the accused from jail for the purpose of further investigation in connection with FIR No. 02(02) 2023 CSD PS, U/S 18/46 ND & PS Act. Vide order dated 20.02.2023, Ld. Special Court allowed the prayer and the accused was further remanded into police custody and on 24.02.2023 remanded the accused back into judicial custody and till date, the accused is languishing in jail.

[9] In both bail applications, similar grounds have been taken by the petitioner that- (i) there is no material against him; (ii) he is not the Chief of the Village used for poppy cultivation during the life-time of his father, who is a recognised Chief; (iii) nothing was seized or recovered from the possession of the petitioner.

[10] State respondent has filed objections to the bail applications stating that the petitioner took charge of Chief from his father in the year 2008 when his father suffered BP stroke and as per Kuki customary law, no one can do cultivation in the land without permission from the Village Chief who is the sole owner of the village land. It is also stated that there are sufficient materials against the petitioner for his involvement in the offences under these two FIRs.

[11] On 16.09.2023 during the course of hearing, Mr. Tungrei Ngakang, learned counsel for the petitioner informed this Court that the petitioner was arrested on 06.02.2023 in connection with the FIRs and neither chargesheets nor applications

for extension of time to complete the investigation beyond the 180 days stipulated under Section 167 CrPC [vide Manipur Act 3 of 1983 wef 22.03.1983] and hence the petitioner was entitled to be released on default bail. Mr. RK Umakanta, learned PP sought some time to confirm whether the chargesheets had been filed or any applications for extension of time to complete the investigation beyond 180 days were filed or not.

[12] On 21.09.2023 when the bail applications were taken up for hearing, Mr. RK Umakanta, learned PP informed this Court that the prosecution filed two applications for extension of time to complete investigation beyond statutory period under Section 36A ND&PS Act. It was further submitted that chargesheet was also filed in connection with FIRNo.02(01)2022 CSD PS. Learned PP also sought some more time for taking instruction and furnishing complete details regarding the dates for filing of the applications and chargesheet. On 27.09.2023, learned PP submitted copies of two letters dated 19.09.2023 and 22.09.2023 sent by Addl SP(P), Kamjong District to him stating that the two applications for extension of time and the chargesheet in FIR No. 02(01)2022 were filed before the Special Court on 19.09.2023. The matters were heard on that day and reserved for order.

[13] Mr. Tungrei Ngakang, learned counsel for the petitioner submits that the petitioner was arrested on 06.02.2023 in connection with FIR No. 02(01)2022 and he was remanded to judicial custody on 10.02.2023 and since then he has been in custody. While he was in judicial custody, he was formally arrested on 20.02.2023 in connection with FIR No. 02(02)2023 and he was remanded to judicial custody on

24.02.2023 in this second FIR. He is in custody in both FIRs from the date of initial arrest, ie, 06.02.2023. Learned counsel clarifies that the present bail applications have been filed under the provisions of Section 439 CrPC as regular bail. However, the statutory period as stipulated under Section 167 CrPC has already expired on 09.08.2023 and 23.08.2023 in both FIRs from the date of judicial custody. Since chargesheets and/or applications for extension of time for completing investigation beyond the statutory period have not been filed, learned counsel informed this Court about this fact on 16.09.2023 during the course of hearing and prayed for releasing the petitioner on default bail. After taking time to verify the status of the case, the prosecution with malafide intention subsequently filed two applications for extension of time to complete investigation and the chargesheet in FIR No. 02(01)2022 in order to defeat the indefeasible right of the petitioner of being released on default bail. Learned counsel relies on the decisions of the **Rakesh Kumar Paul v. State of Assam: (2017) 15 SCC 67** to the effect that oral submission is sufficient for praying to be released on default bail and **M. Ravindran v. Intelligence Officer, DRI: (2021) 2 SCC 485** to highlight the point that submission of the application for extension of time to complete investigation and the chargesheet subsequently after filing of the application for default bail will not extinguish the indefeasible right to be released on default bail. He prays that the petitioner be released on bail on such conditions as imposed by this Court.

[14] Mr. RK Umakanta, learned PP submits that in the case of **Rakesh Kumar Paul (supra)**, the prosecution did not object to the oral submission made on behalf of

the accused for default bail. But in the present case, the oral submission made before this Court during the course of hearing is opposed by the prosecution and hence the ratio of **Rakesh Kumar Paul case** will not be applicable. Learned PP has also relied on the decisions of **Sanjay Dutt v. State: (1994) 5 SCC 410** and **Hitendra Vishnu Thakur v. State of Maharashtra: (1994) 4 SCC 602** holding that the application for default bail and the application for extension of time for completing investigation are to be heard together and only when the application for extension of time is rejected, the default bail has to be allowed. He further draws the attention of this Court to a Full Bench decision of Calcutta High Court in the recent case of **Subhas Yadav v. State of West Bengal, etc. : 2023 SCC Online Cal 313** which held that the right to statutory bail stands extinguished once the report of the Public Prosecutor seeking extension of time is filed. It is submitted that the petitioner is not entitled to be released on default bail.

[15] This Court frames the following points for determination:

I. Whether oral submission made during hearing of a regular bail application can be treated as an application for default bail under Section 167 CrPC?

II. Whether subsequent filing of application for extension of time to complete investigation beyond the statutory period and chargesheet after filing of application for default bail extinguishes the infeasible right of default bail under Section 167 CrPC?

[16] In order to answer the above propositions, it will be fruitful to discuss the relevant case laws with respect to entitlement to default bail on failure to submit chargesheet within the statutory mandate vis-à-vis application for extension of time to complete investigation.

[17] In the case of **Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602**, a 2 Judge Bench of the Hon'ble Supreme Court held that in a case under TADA, the prosecution can resist the application for default bail by filing an application for extension of time. Relevant para 30 is reproduced below:

30. In conclusion, we may (even at the cost of repetition) say that an accused person seeking bail under Section 20(4) has to make an application to the court for grant of bail on grounds of 'default' of the prosecution and the court *shall* release the accused on bail after notice to the public prosecutor *uninfluenced* by the gravity of the offence or the *merits of the prosecution case* since Section 20(8) does not control the grant of bail under Section 20(4) of TADA and both the provisions operate in separate and independent fields. It is, however, permissible for the public prosecutor to resist the grant of bail by seeking an extension under clause (bb) by filing a *report* for the purpose before the court. However, no extension shall be granted by the court *without notice* to an accused to have his say regarding the prayer for grant of extension under clause (bb). In this view of the matter, it is immaterial whether the application for bail on ground of 'default' under Section 20(4) is filed first or the *report* as envisaged by clause (bb) is filed by the public prosecutor first so long as both are considered while granting or refusing bail. If the period prescribed by clause (b) of Section 20(4) has expired and the court does not grant an extension on the *report* of the public prosecutor made under clause (bb), the court *shall* release the accused on bail as it would be an indefeasible right of the accused to be so released. Even where the court grants an extension under clause (bb) but the charge-sheet is not filed within the *extended* period, the court *shall* have no option but to release the accused on bail if he seeks it and is prepared to furnish the bail as directed by the court. Moreover, no extension under clause (bb) can be granted by the Designated Court except on a *report* of the public prosecutor nor can extension be granted for reasons other than those specifically contained in clause (bb) which must be strictly construed.

[18] In the celebrated case of **Sanjay Dutt v. State through CBI, Bombay (II), (1994) 5 SCC 410**, a 5 Judge Constitution Bench held the indefeasible right of default bail extinguishes once chargesheet is filed and in such situation the bail is to be considered on merit. If application for extension of time to complete investigation is filed, both the applications for default bail and for extension of time are to be heard together. Bail cannot be granted in such situation unless application for extension of time is refused. Para 48 is reproduced for clarity.

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 Code of Criminal Procedure. 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 CrPC 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 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 Code of Criminal Procedure. 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. State of Punjab*¹⁴;

*Ram Narayan Singh v. State of Delhi*¹⁵ and *A.K. Gopalan v. Government of India*¹⁶.)

14 (1952) 1 SCC 118 : 1952 SCR 395 : AIR 1952 SC 106 : 1952 Cri LJ 656

15 1953 SCR 652 : AIR 1953 SC 277 : 1953 Cri LJ 1113

16 (1966) 2 SCR 427 : AIR 1966 SC 816 : 1966 Cri LJ 602

[19] In the leading case of **Rakesh Kumar Paul v. State of Assam: (2017) 15 SCC 67**, a 3 Judge Bench of Hon'ble Supreme Court held it is the duty and responsibility of the court on coming to know the fact that the accused before it is entitled to default bail, to apprise him of this indefeasible right. It is further held that oral submission made during the hearing of regular bail is sufficient to be treated as an application for releasing on default bail. Relevant para are quoted below.

36. While dealing with this common stance, the Constitution Bench in *Sanjay Dutt*⁹ made it clear in para 48 of the Report that the indefeasible right accruing to the accused is enforceable only prior to the filing of the charge-sheet and it does not survive or remain enforceable thereafter, if already not availed of. In other words, the Constitution Bench took the view that the indefeasible right of "default bail" continues till the charge-sheet or challan is filed and it gets extinguished thereafter. This is clear from the conclusion stated by the Constitution Bench in para 53(2)(b) of the Report. This reads as follows: (SCC p. 444)

"53. (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 Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in *Hitendra Vishnu Thakur*¹⁰ 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 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, 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.”

37. This Court had occasion to review the entire case law on the subject in *Union of India v. Nirala Yadav*¹¹. In that decision, reference was made to *Uday Mohanlal Acharya v. State of Maharashtra*¹² and the conclusions arrived at in that decision. We are concerned with Conclusion (3) which reads as follows: (*Nirala Yadav case*¹¹, SCC p. 472, para 24)

“13. (3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.’ (*Uday Mohanlal case*¹², SCC p. 473, para 13)”

38. This Court also dealt with the decision rendered in *Sanjay Dutt*⁹ and noted that the principle laid down by the Constitution Bench is to the effect that if the charge-sheet is not filed and the right for “default bail” has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge-sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.

39. This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to *Mohd. Iqbal Madar Sheikh v. State of Maharashtra*¹³ wherein it was observed that some courts keep the application for “default bail” pending for some days so that in the meantime a charge-sheet is submitted. While such a practice both on the part of the prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for “default bail” during the interregnum when the statutory period for filing the charge-sheet or challan expires and the submission of the charge-sheet or challan in court.

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44. Strong words indeed. That being so we are of the clear opinion that adapting this principle, it would equally be the duty and responsibility of a court on coming to know that the accused person before it is entitled to “default bail”, to at least apprise him or her of the indefeasible right. A contrary view would diminish the respect for personal liberty, on which so much emphasis has been laid by this Court as is evidenced by the decisions mentioned above, and also adverted to in *Nirala Yadav*¹¹.

45. On 11-1-2017² when the High Court dismissed the application for bail filed by the petitioner, he had an indefeasible right to the grant of "default bail" since the statutory period of 60 days for filing a charge-sheet had expired, no charge-sheet or challan had been filed against him (it was filed only on 24-1-2017) and the **petitioner had orally applied for "default bail"**. Under these circumstances, the only course open to the High Court on 11-1-2017 was to enquire from the petitioner whether he was prepared to furnish bail and if so then to grant him "default bail" on reasonable conditions. Unfortunately, this was completely overlooked by the High Court.

46. It was submitted that as of today, a charge-sheet having been filed against the petitioner, he is not entitled to "default bail" but must apply for regular bail — the "default bail" chapter being now closed. We cannot agree for the simple reason that we are concerned with the interregnum between 4-1-2017 and 24-1-2017 when no charge-sheet had been filed, during which period he had availed of his indefeasible right of "default bail". It would have been another matter altogether if the petitioner had not applied for "default bail" for whatever reason during this interregnum. There could be a situation (however rare) where an accused is not prepared to be bailed out perhaps for  ¹⁰² his personal security since he or she might be facing some threat outside the correction home or for any other reason. But then in such an event, the accused voluntarily gives up the indefeasible right for default bail and having forfeited that right the accused cannot, after the charge-sheet or challan has been filed, claim a resuscitation of the indefeasible right. But that is not the case insofar as the petitioner is concerned, since he did not give up his indefeasible right for "default bail" during the interregnum between 4-1-2017 and 24-1-2017 as is evident from the decision of the High Court rendered on 11-1-2017². On the contrary, he had availed of his right to "default bail" which could not have been defeated on 11-1-2017 and which we are today compelled to acknowledge and enforce.

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

9 *Sanjay Dutt v. State*, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433

10 *Hitendra Vishnu Thakur v. State of Maharashtra*, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087

11 *Union of India v. Nirala Yadav*, (2014) 9 SCC 457 : (2014) 5 SCC (Cri) 212

12 *Uday Mohanlal Acharya v. State of Maharashtra*, (2001) 5 SCC 453 : 2001 SCC (Cri) 760

[20] In the case of **M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485**, a 3 Judge Bench held the dictum in **Sanjay Dutt case** for combined hearing the application for default bail and application for extension of time will not be applicable, if the application for default bail has been filed earlier. The purpose of limited notice to the prosecution is to verify whether chargesheet has already been filed and/or whether the prosecution has obtained an order for extension of time. It is further held that such limited notice cannot be used to defeat the indefeasible right of default bail to the accused by subsequent filing of charge sheet or application for extension of time. Relevant para are reproduced to have a bird's eye view of the law in this regard.

17.7. Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three-Judge Bench of this Court in *Rakesh Kumar Paul v. State of Assam*¹⁰, which laid down certain seminal principles as to the interpretation of Section 167(2) CrPC though the questions of law involved were somewhat different from the present case. The questions before the three-Judge Bench in *Rakesh Kumar Paul*¹⁰ were whether, firstly, the 90-day remand extension under Section 167(2)(a)(i) would be applicable in respect of offences where the maximum period of imprisonment was 10 years, though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under Section 167(2) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90-day limit is only available in respect of offences where a *minimum* ten year' imprisonment period is stipulated, and that **the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in lieu of a written application.**

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18.10. We agree with the view expressed in *Rakesh Kumar Paul*¹⁰ that as a cautionary measure, the counsel for the accused as well as the Magistrate ought to inform the accused of the availability of the indefeasible right under Section 167(2) once it accrues to him, without any delay. This is especially where the accused is from an underprivileged section of society and is unlikely to have access to information about his legal rights. Such knowledge sharing by Magistrates will thwart any dilatory tactics by the prosecution and also ensure that the obligations spelled out under Article 21 of the Constitution and the Statement of Objects and Reasons of the CrPC are upheld.

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20.1. The observations made in *Hitendra Vishnu Thakur*⁵ and *Sanjay Dutt*⁴ to the effect that the application for default bail and any application for extension of time made by the Public Prosecutor must be considered together are, in our opinion, only applicable in situations where the Public Prosecutor files a report seeking extension of time *prior* to the filing of the application for default bail by the accused. In such a situation, notwithstanding the fact that the period for completion of investigation has expired, both applications would have to be considered together. However, where the accused has already applied for default bail, the Prosecutor cannot defeat the enforcement of his indefeasible right by subsequently filing a final report, additional complaint or report seeking extension of time.

20.2. It must also be added and it is well settled that issuance of notice to the State on the application for default bail filed under the proviso to Section 167(2) is only so that the Public Prosecutor can satisfy the court that the prosecution has already obtained an order of extension of time from the court; or that the challan has been filed in the designated court before the expiry of the prescribed period; or that the prescribed period has actually not expired. The prosecution can accordingly urge the court to refuse granting bail on the alleged ground of default. Such issuance of notice would avoid the possibility of the accused obtaining default bail by deliberate or inadvertent suppression of certain facts and also guard against multiplicity of proceedings.

20.3. However, Public Prosecutors cannot be permitted to misuse the limited notice issued to them by the court on bail applications filed under Section 167(2) by dragging on proceedings and filing subsequent applications/reports for the purpose of "buying extra time" and facilitating filling up of lacunae in the investigation by the investigating agency.

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25. Therefore, in conclusion:

25.1. 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 36-A(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 investigating agency.

25.2. 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 charge-sheet or a report seeking extension of time by the prosecution before the court; or filing of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher court.

25.3. However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a charge-sheet, 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.

25.4. 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.

[21] In the case of **Subhas Yadav and Ors. vs. The State of West Bengal (17.01.2023 - CALHC) : MANU/WB/0138/2023: 2023 SCC Online Cal 313**, a 3 Judge Full Bench of Calcutta High Court held that the right to default bail extinguishes once an application for extension of time is filed by the prosecution. Final conclusion is reproduced as below:

Conclusion:-

30. In light of the aforesaid discussion, the issues are answered as follows:-

1. Right of an accused to statutory bail upon expiry of the period of detention prescribed under section 36A(4) of NDPS Act is an inchoate one till he avails of his right by seeking statutory bail either by way of an application or even orally. Hence, he cannot be released automatically on statutory bail on the mere expiry of 180 days even if the prosecutor has failed to submit report seeking extension of detention in terms of the proviso to section 36A(4) of the Act before expiry of the said period;

2. Order extending the period of detention under proviso to section 36A(4) of NDPS Act on a report of the Public Prosecutor submitted after expiry of 180 days but prior to the accused availing of his right does not envisage retrospective operation but the total period of detention under the aforesaid provision cannot exceed one year in the whole;

3. As per Para 25.3 of M. Ravindran (supra) the right to statutory bail stands extinguished once the report of the Public Prosecutor seeking extension is filed. Hence, remand of the accused till the prayer of the prosecutor is disposed of is traceable to section 167(2) Cr.P.C. read with section 36A(4) of the NDPS Act. In the event, the application for extension is dismissed or an order extending detention is set aside by a superior court right to statutory bail revives in favour of the accused;

4. Upon expiry of 180 days of detention, Special Court as a cautionary measure ought to inform the accused (particularly if he is from an underprivileged section of society and is unrepresented by a counsel) of his right to statutory bail. However, failure to intimate the accused of his right by itself would not entitle him to statutory bail unless he avails of such relief;

5. Prayer for extension of period of detention must be on the basis of a report of Public Prosecutor which must record progress of investigation and spell out specific reasons to justify further detention beyond 180 days pending investigation;

6. Special Court on the basis of the report of Public Prosecutor and materials in support of such plea must be satisfied of the twin requirements, i.e., (a) there is appreciable progress in the investigation and (b) there are specific/compelling reasons to justify further detention pending investigation. Each case has to be decided on its own merits. For example, failure to complete investigation solely on the score of non-submission of FSL report of the samples drawn from the

contraband is an institutional shortcoming. This by itself may not justify further detention pending completion of investigation. But if the aforesaid fact situation is coupled with compelling circumstances like complexities in investigation in an organized crime racket or inter-state/trans-border trafficking, criminal antecedents of the accused giving rise to possibility of recidivism, abscondence of co-accused, etc., constituting 'specific reasons' justifying further detention, the Court may be inclined to extend the period of detention and deny liberty;

7. Prayer for extension of period of detention must be decided at the earliest without undue delay preferably within 7 days from making such application. Reasons for adjournment must be specifically stated;

8. No written notice or copy of report of Public Prosecutor requires to be served upon the accused or his counsel but the accused or his counsel must be present personally or through video linkage at the time of consideration of the application. Accused and/or his counsel must be aware of such consideration and may raise objection, if any, with regard to compliance of mandatory requirements of law.

[22] From the above discussion of the various case laws, it is clear that the accused has an indefeasible right to default bail, when the prosecution fails to file chargesheet within the stipulated time and/or fails to file an application for extension of time to complete investigation. The accused exercises such right if he files an application for releasing him on default bail. Oral submission made on behalf of the accused during the hearing of regular bail application is sufficient. It is the duty of the court to apprise the accused of such right. The prosecution cannot misuse the limited notice period granted to verify filing of chargesheet and/or obtaining of an order of extension of time, to deprive this valuable right by filing belated chargesheet or application for extension of time. Such belated filing of chargesheet or application for extension of time does not extinguish the right to default bail. This right will extinguish,

if the accused has failed to file an application for default bail (or to make an oral submission) and the prosecution files chargesheet or application for extension of time.

[23] This Court is of the opinion that as per the majority view in the case of **Rakesh Kumar Paul (supra)**, oral submission made during the course of hearing in a regular bail application is sufficient compliance for filing an application for default bail under Section 167 CrPC. It was also held that it is the duty of the court to apprise the accused that he is entitled to default bail, if chargesheet is not filed within the statutory period. In the case of **M. Ravindran (supra)**, it was held that subsequent filing of application for extension of time to complete investigation and/or chargesheet during the pendency of an application for default bail, will not extinguish such right. In a catena of cases including the case of **Union of India v. Nirala Yadav: (2014) 9 SCC 457**, Hon'ble Supreme Court has deprecated the practice of the prosecution or its modus of filing application for extension of time or chargesheet after taking adjournment in the default bail hearing. In the present cases, the applications for extension of time to complete investigation and the chargesheet were filed by the prosecution after taking time from this Court to verify the factum of filing of chargesheet and any application for extension of time in the Special Court. Accordingly, both questions are answered in favour of the petitioner.

[24] In view of the above, the bail applications are allowed for default in filing chargesheet/application for extension of time, notwithstanding the fact that the petitioner has been accused of serious offences of poppy cultivation in large scale. The petitioner be released from custody in both FIRs on furnishing bail bonds of Rs.

1,00,000/- with sureties of like amount (government employee) each to the satisfaction of learned Special Judge (NDPS), Ukhurul subject to the following conditions:

- (a) The petitioner shall co-operate with the investigation;
- (b) The petitioner shall not influence to any person acquainted with the facts of this case and shall not tamper with evidence;
- (c) The petitioner shall appear before the Investigating Officer on every 1st and 15th of every month till the filing of chargesheet and thereafter on every date fixed by Trial Court;
- (d) The petitioner shall not leave station without the permission of learned Special Court (NDPS), Ukhurul;
- (e) In case of violation of any of these conditions, State may approach this Court for appropriate order.

Send a copy of this order to learned Special Court (NDPS), Ukhurul and the OC, Chassad PS for information

JUDGE

FR/NFR

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