



2025:AHC:156125

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 27980 of 2025

A.F.R.

Reserved on 12.08.2025

Delivered on 04.09.2025

Alok Singh

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Amarnath Tripathi, Narendra Kumar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 82

HON'BLE SAMEER JAIN, J.

1. Heard Sri Amarnath Tripathi, learned counsel for applicant and Sri Imran Khan as well as Sri Rajeev Dhar Dwivedi, learned Additional Government Advocates for the State.

2. The instant application has been filed by the applicant with a prayer to quash the order dated 23.07.2025 passed by Additional Sessions Judge/Special Judge (P.C. Act) Court No.2 Gorakhpur whereby his application to release him on default bail has been rejected arising out of Case Crime No. 93 of 2024, under Sections 389, 406, 420, 506, 411, 120B IPC and Section 13 of The Prevention of Corruption Act, Police Station Kotwali, District Gorakhpur.

Brief facts of the case:-

3. FIR of the present case was lodged on 09.04.2024 against applicant and others under Sections 379, 406, 420, 506 IPC and Section 13 Prevention of Corruption Act (in short P.C. Act).

4. After registration of the FIR investigation was commenced and on 05.06.2024 charge-sheet has been filed against applicant for offences under Sections 389, 406, 420, 506 IPC and Section 13 P.C. Act and Section 411 IPC read with Section 120B IPC and on 07.06.2024, Magistrate concerned took the cognizance but it reflects, charge-sheet has been filed without sanction, which was obtained subsequently on 22.11.2024 and was forwarded to the court on 22.07.2025.

5. It reflects, according to applicant as charge-sheet against him was filed without

sanction, therefore, the same was incomplete thus applicant moved an application under Section 167(2) Cr.P.C. with a prayer to release him on compulsory bail on the ground that charge-sheet was incomplete and cognizance was bad but vide order dated 23.07.2025 court concerned dismissed his application. Hence the instant application.

Submissions advanced on behalf of applicant:

6. Learned counsel for applicant submits, although charge-sheet in the present matter has been filed on 05.06.2024 which was within the prescribed time provided under Section 167 Cr.P.C. but as charge-sheet against applicant was also filed for offence under Section 13 P.C. Act, therefore, for cognizance sanction was necessary but without sanction charge-sheet has been filed against him thus charge-sheet dated 05.06.2024 filed against applicant was incomplete charge-sheet and it cannot be said in the instant matter investigation has been completed within prescribed time and therefore applicant was entitled to be released on default bail under Section 167(2) Cr.P.C.

7. He further submits, it appears, as prescribed time of 60 days was going to expire and sanction could not be obtained against applicant, therefore only with intention to defeat the indefeasible right of applicant to release him on compulsory bail provided under Section 167(2) Cr.P.C. charge-sheet has been filed, which was not permissible.

8. He further submits, as per Section 167(2) Cr.P.C. if within prescribed time which was 60 days in the present case investigation has not been completed then an accused is entitled to be released on compulsory bail. He further submits, in present case, charge-sheet has also been filed for offence relates to P.C. Act, therefore, along with charge-sheet sanction order must also be filed but only to defeat the right of applicant provided under Section 167(2) Cr.P.C. charge-sheet has been filed without sanction. He next submits, as incomplete charge-sheet without sanction does not contemplate the police report provided under Section 173(2) Cr.P.C. and therefore applicant was entitled to be released on default bail under Section 167(2) Cr.P.C.

9. He further submits, right of an accused to release on default bail under Section 167(2) Cr.P.C. is his fundamental right under Article 21 of the Constitution of India if investigation has not been completed within prescribed time and this right cannot be extinguished if Investigating Officer filed incomplete charge-sheet only with intention to defeat his right of default bail under Section 167(2) Cr.P.C.

10. He further submits, the right of an accused to release him on compulsory bail under Section 167(2) Cr.P.C. is his indefeasible right and if charge-sheet within stipulated period of time has not been filed or incomplete charge-sheet has been filed then court has no other option except to release him on default bail if he makes prayer to release him on bail.

11. Learned counsel for applicant placed reliance on the judgment passed by the Apex

Court in the case of **Ritu Chhabaria Vs. Union of India (2024) 12 SCC 116** and submitted, in this case the Supreme Court categorically deprecated the practice of Investigating Officer to file incomplete charge-sheet with intention to defeat the indefeasible right of an accused to release him on default bail under Section 167(2) Cr.P.C.

12. He further submits, in the case of Ritu Chhabaria (supra) also Investigating Officer filed incomplete charge-sheet and Supreme Court after considering this fact observed that right of default bail under Section 167(2) Cr.P.C. is not merely statutory but a fundamental right which flows from Article 21 of Constitution of India and was pleased to release the accused on compulsory bail under Section 167(2) Cr.P.C.

13. Learned counsel for the applicant also placed reliance on the order dated 11.07.2025 passed by this Bench in Application U/S 528 BNSS No. 21254 of 2025 (Ashok Kumar Srivastava and another Vs. State of U.P.) and submitted that in that case also without sanction charge-sheet was filed but after considering the judgment of Ritu Chhabaria (supra) this Bench by observing that the charge-sheet against the accused was incomplete directed the accused to release on default bail.

14. He further submits, therefore, order dated 23.07.2025 passed by the court concerned is illegal and is liable to be set aside and applicant should be directed to release on compulsory bail under Section 167(2) Cr.P.C.

Submissions advanced on behalf of State:

15. Per contra, learned Additional Government Advocates opposed the prayer and submitted that admittedly in the present matter charge-sheet against applicant has been filed on 05.06.2024 i.e. within the stipulated time of 60 days and therefore applicant cannot claim to be released on default bail under Section 167(2) Cr.P.C.

16. They further submitted that law is by far now settled that as soon as charge-sheet is submitted the right of an accused to release him on compulsory bail under Section 167(2) Cr.P.C. is extinguished.

17. They next submitted that however from the record it reflects, while forwarding the charge-sheet to the court concerned on 05.06.2024 sanction till date could not be obtained against the applicant and without sanction charge-sheet has been filed against him also for offence under Section 13 P.C. Act and even without sanction court concerned took the cognizance but by virtue of provisions of Prevention of Corruption Act cognizance taken by the court though may be illegal but on this ground applicant cannot be released on default bail under Section 167(2) Cr.P.C.

18. They further submitted that obtaining sanction against an accused not the part of the investigation and investigation relates to the facts of the case investigated by the Investigating Officer and after completing investigation Investigating Officer forwards

his report to the competent authority for sanction and as soon as he forwards his report the investigation stands completed and therefore even if sanction could not be obtained and without sanction if Investigating Officer forwarded the charge-sheet to the court then also it cannot be said that the charge-sheet filed by him was incomplete charge-sheet. They further submitted that as soon as charge-sheet arrived in the court the right of an accused to release him on default bail under Section 167(2) Cr.P.C. stands extinguished if said charge-sheet has been filed within stipulated period of time.

19. They further submitted that in the present matter admittedly charge-sheet has been filed without sanction but it has been filed within stipulated period and therefore court concerned rightly dismissed the application filed by the applicant to release him on default bail under Section 167(2) Cr.P.C.

20. They placed reliance on the judgment passed by the Apex Court in the case of **Judgebir Singh @ Jasbir Singh Samra @ Jasbir and others Vs. National Investigation Agency (2023) 17 SCC 48**. They further submitted that while passing the impugned order dated 23.07.2025 court concerned also considered this judgment of the Apex Court passed in the case of Judgebir Singh (supra).

21. They further submitted that therefore instant application filed by the applicant is devoid of merits and it should be dismissed.

Analysis:

22. I have heard both the parties and perused the record of the case.

23. The only issue before this Court in the instant application is that if without sanction charge-sheet has been filed within stipulated period even for the offences for which sanction was necessary for cognizance then whether charge-sheet can be said to be incomplete charge-sheet and whether in such scenario an accused can be released on compulsory bail under Section 167(2) Cr.P.C.

24. From perusal of Section 167(2) Cr.P.C. it reflects, if a person is arrested and detained in custody and investigation could not be concluded within stipulated period of time which was 60 days in the present matter then an accused shall be released on bail therefore section 167(2) Cr.P.C. contemplates default or compulsory bail.

25. The Constitution Bench of the Apex Court in the case of **Sanjay Dutt Vs. State (1994) 5 SCC 410** held that in case of non completion of investigation within stipulated period of time the indefeasible right accrues to an accused to release him on bail under Section 167(2) Cr.P.C., however, in this case Apex Court further observed that if before making prayer to release him on bail charge-sheet has been submitted then right of an accused to release him on compulsory bail under Section 167(2) Cr.P.C. stands extinguished.

26. In case at hand, however admittedly within stipulated period of time charge-sheet has been filed but without sanction which was mandatory for taking cognizance for offence under Section 13 P.C. Act and therefore to analyse whether charge-sheet filed against applicant was incomplete it is necessary to go through Section 173(2) Cr.P.C. which describes the prescribed form of police report i.e. charge-sheet.

27. As per Section 173(2) Cr.P.C. a police report i.e. charge-sheet should be in the form prescribed by the State Government stating:-

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and if so whether with or without sureties;
- (g) whether he has been forwarded in custody under Section 170; and
- (h) whether the report of the medical examination of the woman has been attached where investigation relates to an offence under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of the Indian Penal Code

28. Therefore, from the provisions of Section 173(2) Cr.P.C. it could not be reflected, obtaining sanction is also one of the requirement in forwarding the police report i.e. charge-sheet.

29. Further, however, Section 173(5) Cr.P.C. states that when such report i.e. police report is in respect of an accused to which Section 170 applies the police officer shall forward to the Magistrate along with the report:-

- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; and
- (b) the statements recorded under Section 161 Cr.P.C. of all the persons whom the prosecution proposes to examine as its witnesses.

30. Therefore, from Section 173(5)(a) Cr.P.C. it reflects, in a case where accused is in custody under Section 170 Cr.P.C. then along with report all the documents on which prosecution proposes to rely should also be sent to the Court but it reflects, provisions of Section 173(5)(a) Cr.P.C. do not include the sanction order too.

31. The Apex Court in the case of Judgebir Singh (supra) was having occasion to discuss the issue and in this case also charge-sheet has been filed without sanction which was required but Apex Court after considering Section 173(5) Cr.P.C. held that

Section 173(5) Cr.P.C. of course requires all the documents or all the extracts thereof on which prosecution proposes to rely, to accompany the final report but sanction order cannot be brought within the category of those documents contemplated under clause 5 of Section 173 Cr.P.C.

32. Therefore it reflects, even if along with the charge-sheet no sanction order has been forwarded then also it cannot be said that charge-sheet was incomplete and on this ground an accused cannot be released on default bail under Section 167(2) Cr.P.C.

33. Further, the Apex Court in the case of **Narendra Kumar Amin Vs. Central Bureau of Investigation and others (2015) 3 SCC 417** in para-15 observed as:-

"The observation made at para 76 of the Constitution Bench judgment of this Court in the case of K. Veeraswamy Vs. Union of India (1991) 3 SCC 655 that the report is complete if it is accompanied by all documents and statement of witnesses as required under [Section 173 \(5\)](#) of Cr.P.C. cannot be construed as the statement of law, since it was not made in the context of the police report under [Section 2 \(r\)](#) read with Section 173 (2) (5) and (8) of [Cr.P.C.](#) On the contrary, the three Judge Bench of this Court in the decision in CBI Vs. R.S. Pai (2002) 5 SCC 82 case, after referring to the earlier judgment of the coordinate Bench in Narayan Rao Vs. State of A.P. AIR 1957 SC 737 case categorically held that the word "shall" used in sub- Section (5) cannot be interpreted as mandatory, but directory. The said statement of law is made after considering the provisions of [Section 2\(r\)](#) read with Section 173 (5) and (8) of [Cr.P.C.](#) Therefore, filing of police report containing the particulars as mentioned under Section 173 (2) amounted to completion of filing of the report before the learned ACJM, cognizance is taken and registered the same. The contention of the appellant that the police report filed in this case is not as per the legal requirement under Section 173 (2) and (5) [Cr.P.C.](#) which entitled him for default bail, was rightly rejected by the High Court and does not call for any interference by this Court."

34. Further, no doubt cognizance without sanction for offence under Section 13 P.C. Act should not be taken but even if on the report submitted by the police under Section 173(2) Cr.P.C. court concerned either wrongly took the cognizance or it could not take the cognizance, it is irrelevant for the purpose of section 167(2) Cr.P.C. to release the accused on default bail because taking of cognizance and investigation are two entirely different matters. Therefore even if after investigation without sanction charge-sheet has been filed within prescribed period and along with the charge-sheet all the required documents have been sent then an accused cannot be released on default bail under Section 167(2) Cr.P.C. by declaring the charge-sheet incomplete. This issue is also no more res-integra and it has been effectively addressed by the Apex Court in case of **Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra (2013) 3 SCC 77** delivered by Three Judges Bench of the Apex Court. In this case also without sanction charge-sheet has been filed and when accused applied for default bail under Section 167(2) Cr.P.C. then while dismissing his prayer the Apex Court in paragraph Nos. 18 and 19 observed as:-

"18. None of the said cases detract from the position that once a charge-

sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as [Section 167](#) Cr.P.C. is concerned. The right which may have accrued to the petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of [Section 309](#) Cr.P.C., it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in [Section 167](#) Cr.P.C. The scheme of the [Cr.P.C.](#) is such that once the investigation stage is completed, the Court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under [Section 167\(2\)](#) Cr.P.C., the Magistrate is vested with authority to remand the accused to custody, both police custody and/ or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the Court trying the offence, when the said Court assumes custody of the accused for purposes of remand during the trial in terms of [Section 309](#) Cr.P.C. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court.

19. Having regard to the above, we have no hesitation in holding that notwithstanding the fact that the prosecution had not been able to obtain sanction to prosecute the accused, the accused was not entitled to grant of statutory bail since the charge-sheet had been filed well within the period contemplated under [Section 167\(2\)\(a\)\(ii\)](#) Cr.P.C. Sanction is an enabling provision to prosecute, which is totally separate from the concept of investigation which is concluded by the filing of the charge-sheet. The two are on separate footings. In that view of the matter, the special leave petition deserves to be and is hereby dismissed."

35. Recently, the Apex Court in the case of Judgebir Singh (supra) after relying the judgment of Suresh Kumar Bhikamchand Jain (supra) held that filing of a charge-sheet is a sufficient compliance with the provisions of Section 167 Cr.P.C. and even if along with charge-sheet sanction order has not been forwarded then also an accused cannot claim to be released on statutory bail under Section 167(2) Cr.P.C. on the ground that as sanction has not been obtained therefore either cognizance is bad or it could not be taken.

36. Further, however, learned counsel for applicant placed reliance on the judgment of the Apex Court passed in the case of Ritu Chhabaria (supra) but it reflects, facts of the case of Ritu Chhabaria (supra) are quite distinguishable from the facts of the present case. In that case although charge-sheet was filed by the Investigating Officer but subsequently supplementary charge-sheet was also filed and therefore at the time of filing first charge-sheet investigation was still pending. In such circumstances the Apex Court took the view that there was no question of filing any supplementary charge-sheet taking the aid of Section 173(2) Cr.P.C. as sub section 8 of Section 173 Cr.P.C. comes into picture only after the investigation is completed and the charge-

sheet has been filed. The Apex Court in the case of Judgebir Singh (supra) also distinguished the case of Ritu Chhabaria (supra) after considering this fact and therefore no benefit can be extended to the applicant in view of the observation made by the Apex Court in the case of Ritu Chhabaria (supra).

37. Further, however, in case of Ashok Kumar Srivastava (supra) on which reliance was placed by learned counsel for applicant this Court (this very Bench) after relying on the judgment of the Apex Court passed in the case of Ritu Chhabaria (supra) observed that as charge-sheet has been filed without sanction which was required for taking cognizance, therefore, charge-sheet is incomplete and accused of that case was directed to be released on default bail but from the order passed by this Bench dated 11.07.2025 it reflects, while passing the same this Bench could not take notice of the judgments of the Apex Court passed in case of Narendra Kumar Amin (supra), Suresh Kumar Bhikamchand Jain (supra) and Judgebir Singh (supra).

38. Further, it also reflects, while passing order in case of Ashok Kumar Srivastava (supra) this Court only relied upon the judgment of the Apex Court passed in case of Ritu Chhabaria (supra) and provisions of Section 173(2) and 173(5) Cr.P.C. could not be exhaustively dealt with.

39. Further, at the time of passing the order in case of Ashok Kumar Srivastava (supra), this Bench also could not consider the fact that facts of the case of Ritu Chhabaria (supra) were quite distinguishable from the facts of the case and in the case of Ritu Chhabaria (supra) it was not the issue before the Apex Court whether if charge-sheet has been filed within stipulated period of time but without sanction then also it can be considered incomplete.

40. Therefore, due to above reasons the decision given by this Bench in the case of Ashok Kumar Srivastava (supra) is per incuriam and therefore no benefit can be given to the applicant on the basis of the case of Ashok Kumar Srivastava (supra).

41. Therefore, from the discussion made above, I find no illegality in the impugned order dated 23.07.2025 passed by the court concerned by which application under Section 167(2) Cr.P.C. of the applicant to release him on default bail has been dismissed.

42. Therefore, considering the facts and circumstances of the case discussed above, in view of this Court, the instant application filed by the applicant is devoid of merits and stands **dismissed** accordingly.

September 4, 2025
AK Pandey

(Sameer Jain,J.)