

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.276 of 2018

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Baharan Ali, S/o Saheb Hussain, R/o Mohalla- Shukla Toli, P.S.-
Siwan Town, District- Siwan.

.... Petitioner/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Kumar, Adv.

Mr. Animesh Kumar, Adv.

For the State : Mr. Ram Sevak Choudhary, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

C.A.V. ORAL JUDGMENT & ORDER

Date: 10-04-2018

The petitioner has challenged the order dated 01.02.2018, passed by the learned 2nd Additional Sessions Judge-Cum-Special Court (Excise Act), Siwan in connection with Siwan Town P.S. Case No. 568 of 2017, whereby the application preferred on behalf of the petitioner for grant of statutory bail under the provisions of Section 167(2) of the Code of Criminal Procedure, 1973 (*in short "the Cr.P.C."*) has been rejected on the ground that the investigation was completed much before the expiry of 90 days, but the charge-sheet was submitted on the ninetieth day in the



second hour, thereby extinguishing the claim of the petitioner for grant of statutory bail under Section 167(2) of the Cr.P.C.

2. The short facts necessary for disposal of this case are as hereunder.

3. Siwan Town P.S. Case No. 568 of 2017 was instituted for the offences punishable under Sections 30, 36 and 41 of the Bihar Prohibition and Excise Act, 2016 (*in short "the Act"*) with the allegation that on a tip-off that the petitioner is indulging in sale and purchase of prohibited liquor in his house, a raid was conducted, when one person was seen running away from the house. From the premises of the residential house of the petitioner, 18 boxes, each containing 48 plastics bottles of 180 ml. whisky, meant to be sold in Arunachal Pradesh, was found. The aforesaid First Information Report was instituted on 14.10.2017.

4. The petitioner, on coming to know about the institution of the case, surrendered before court below on 31.10.2017. Ninety (90) days from the date of surrender/remand expired on 29.01.2018, entitling the petitioner to apply for statutory bail under the provisions of Section 167(2) of the Cr.P.C.

5. The petitioner filed an application seeking bail under the aforesaid provision on 30.01.2018, in the first



hour. The court below asked for a report from the court office whether the charge-sheet has been submitted in the case. The concerned office staff reported that till 1:30 P.M. on 30.01.2018, no charge-sheet had been filed. Thereafter, the charge-sheet was hurriedly filed after the lunch hours, on the same day, *i.e.* on 30.01.2018, *vide* Charge-sheet No. 10 of 2018.

6. The Court, on taking into considerations the submissions made on behalf of the prosecution that the investigation was concluded much before, *i.e.* on 22.01.2018, but the charge-sheet was only submitted before the Court on 30.01.2018 in the second half, the right of the petitioner to get statutory bail got extinguished for the reason that after the submission of the charge-sheet, the provisions of Section 167(2) of the Cr.P.C. is not applicable and bail would have to be obtained only on the merits of the case, in accordance with the provisions of law.

7. It has been submitted on behalf of the petitioner that at the time of filing of the application seeking statutory bail, an indefeasible right had accrued to him as the application for bail contained the requisite undertaking that the petitioner was ready to abide by the terms and conditions of the bail order and was prepared to furnish the bonds. The report which was called for by the Court also



disclosed that till 1:30 P.M. on the same day, the charge-sheet had not been filed. In that view of the matter, subsequent filing of the charge-sheet in the later half of the day would not result in frustrating the claim of the petitioner, thereby disentitling him from being released on statutory bail under Section 167(2) of the Cr.P.C.

8. As opposed to the aforesaid contention, the learned Additional Public Prosecutor has submitted that the ninetieth day expired on 29.01.2017. In that view of the matter, the police could have filed the charge-sheet on the expiry of the 90th day, *i.e.* 30.01.2018. That apart, it has been submitted that on the same day, *i.e.* on 30.01.2018, both, the application for bail by the petitioner and the charge-sheet were filed, even though the charge-sheet was prepared much earlier. The right of the petitioner got extinguished on submission of the *challan*. If the view of the petitioner is accepted, it has been argued, the proceedings before a criminal Court would be reduced to a kind of musical chair competition where the Magistrate would be under an obligation to umpire as to who came first: the petitioner or the police with the charge-sheet. It was further submitted that in all the cases which are cited as precedents for the *indefeasible right* of an accused, in the event of the charge-sheet not submitted within the statutory period, the order for



grant of bail had been passed, but those could not be made effective because of bail bonds were not furnished by the accused persons.

9. In the present case, no order of bail was passed by the Magistrate/Designated Judge but information regarding submission of the charge-sheet was sought for. Without seeking information regarding the correctness of the assertion of the petitioner, a Magistrate/Court is not expected to blindly accept the statement made on his behalf. The report came at 1:30 P.M. and the charge-sheet was filed thereafter. There remains, it was again argued, no doubt that now whatever be the merits of the case, the petitioner would not be entitled to statutory bail.

10. In order to appreciate the contentions of the parties, it would first be necessary and convenient to extract the provisions of Section 167(2) of the Cr.P.C., which reads as follows:-

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

(1) x x x x x x x

(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-

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

[(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



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

[*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.]

[*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 woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.]

11. In case of ***Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors. (1994) 4 SCC 602*** and in case of ***Sanjay Dutt vs. State Through C.B.I., Bombay (II) (1994) 5 SCC 410***, one of the issues before the Hon'ble Supreme Court was the proper construction of Clause (bb) of sub-Section (4) of Section 20 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (*in short "the TADA Act"*), indicating the nature of right of an accused to be released on bail thereunder, on the default to complete investigation



within the time allowed therein.

12. Section 20 of the TADA Act prescribes the modified application of the Cr.P.C. The effect of sub-Section (4) of Section 20 is to apply Section 167 of the Cr.P.C. in relation to a case involving an offence punishable under the TADA Act, subject to the modifications indicated therein. One of the modifications, made in Section 167 of the Cr.P.C. by Section 20(4) of the TADA Act, is to require the investigation in any offence under the TADA Act to be completed within a period of 180 days with the further proviso that the Designated Court is empowered to extend that period up-to one year, if it is satisfied that it is not possible to complete the investigation within the said period of 180 days, on the report of the Public Prosecutor, indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of 180 days. This gives rise to the right of the accused to be released on bail on expiry of the said period of 180 days or the extended period on default to complete the investigation within the time allowed.

13. In case of ***Hitendra Vishnu Thakur*** (*supra*), the Supreme Court summarized the law in paragraph 30 of the judgment:

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.

(emphasis provided)

14. What was categorically held in the aforesaid case by the Supreme Court was that the Designated Court was under an obligation to release an accused on bail as the *indefeasible right* had accrued to him on account of default of the prosecution to file the charge-sheet within the prescribed time, when such an accused would seek statutory bail and would show his preparedness to furnish the bail bond as directed by the Court. In case of ***Sanjay Dutt*** (*supra*), the Constitution Bench of the Supreme Court, after referring to the case of ***Hitendra Vishnu Thakur*** (*supra*) and other cases, held that 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 Cr.P.C., in default of completion of the investigation and filing of the charge-sheet within the time allowed, is a right which enures to, and is enforceable by the accused, but only from the time of default till the filing of *challan*. The aforesaid right shall not survive or remain enforceable on the *challan* being filed. If the accused applies for bail 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 Cr.P.C. The right of the accused to be released on bail, after the filing of the charge-sheet, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the charge-sheet, only under the provisions relating to grant of bail applicable at that stage.

15. When can an accused be said to have availed of his *indefeasible right* for being released on bail under the proviso to Section 167(2) of the Cr.P.C., if the charge-sheet is not filed within the period stipulated thereunder, was clearly explained in case of ***Uday Mohanlal Acharya vs. State of Maharashtra (2001) 5 SCC 453 : AIR 2001 SC 1910.***

16. In the aforesaid case, the accused was remanded to custody by the order of a Magistrate, in connection with a case instituted against him under Sections 406 and 420 of the Indian Penal Code read with Maharashtra Protection of Interest of Depositors (Financial Establishment) Act, 1999 (*in short "the MPID Act"*), on 17.06.2000. The period of 60 days for filing of charge-sheet was completed on 16.08.2000. On the next day, *i.e.* on 17.08.2000, an application for bail was filed before the Magistrate under Section 167(2) of the Cr.P.C., which was rejected by the



learned Magistrate by holding that the provisions of Section 167(2) had no application to cases pertaining to MPID Act. The matter travelled to Bombay High Court from a learned Single Judge to a Division Bench of the same Court. Before the matter could be taken-up for hearing by the Division Bench, charge-sheet was filed before the learned Trial Judge on 30.08.2000. The Division Bench disagreed with the opinion of the learned Trial Judge that the provisions of Section 167(2) of the Cr.P.C. did not apply to MPID Act, but refused to concede to the accused therein statutory bail on the sole ground that with the submission of the charge-sheet, the enforceable right in favour of the accused did not survive. In coming to the aforesaid conclusion, the Division Bench of the Bombay High Court also relied upon the judgment in case of **Sanjay Dutt** (*supra*).

17. The Three-Judge Bench of the Supreme Court (*Hon'ble Mr. Justice B.N. Agrawal dissenting*), in case of **Uday Mohanlal Acharya** (*supra*), on a consideration of several other cases in that regard, viz. **Hitendra Vishnu Thakur** (*supra*), **Sanjay Dutt** (*supra*), **Dr. Bipin Shantilal Panchal vs. State of Gujrat, (1996) 1 SCC 718** and **State of M.P. vs. Rustam & Ors., 1995 Supp (3) SCC 221** etc., concluded as follows:

13. x x x x x x x x



1. Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days on the whole.

2. Under the proviso to the aforesaid sub-section (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than in the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.

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.

4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court



will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

5. If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then so-called indefeasible right of the accused would stand extinguished.

6. The expression "if not already availed of" used by this Court in *Sanjay Dutt case* must be understood to mean when the accused filed an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in para (a) of the proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.

(emphasis provided)

18. The Bench recorded further in the same paragraph of the judgment as follows:-

"With the aforesaid interpretation of the expression "availed of" if the charge-sheet is filed



subsequent to the availing of the indefeasible right by the accused then that right would not stand frustrated or extinguished, necessarily therefore, if an accused entitled to be released on bail by application of the proviso to sub-section (2) of Section 167, makes the application before the Magistrate, but the Magistrate erroneously refuses the same and rejects the application and then the accused moves the higher forum and while the matter remains pending before the higher forum for consideration, a charge-sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby, and on the other hand, the accused has to be released on bail. Such an accused, who thus is entitled to be released on bail in enforcement of his indefeasible right will, however, have to be produced before the Magistrate on a charge-sheet being filed in accordance with Section 209 and the Magistrate must deal with him in the matter of remand to custody subject to the provisions of the Code relating to bail and subject to the provisions of cancellation of bail, already granted in accordance with the law laid down by this Court in the case of Mohd. Iqbal v. State of Maharashtra.”

(emphasis provided)

Applying the principles laid down, the Supreme Court was of the view that the accused in that case had availed of his right on 17.08.2000 by filing an application for being released on bail and offering therein to furnish bail in question and hence was entitled to be released on statutory



bail. The order of the Division Bench of Bombay High Court was set-aside and it was directed that the accused be released on bail, but on such terms and conditions which would be to the satisfaction of the learned Magistrate, who would further be entitled to deal with the accused in accordance with law since the charge-sheet had been submitted.

19. Similar view has been expressed again by a Three-Judge Bench of the Supreme Court in case of ***Sayed Mohd. Ahmad Kazmi vs. State (Government of NCT of Delhi) & Ors. (2012) 12 SCC 1.***

20. However, the Supreme Court struck a different note in case of ***Sadhwi Pragyna Singh Thakur vs. State of Maharashtra, AIR 2011 SC (Supp) 755.*** In the aforesaid case, a contention was raised that the judgment rendered by the High Court declining to enlarge the accused on bail, was violative of the mandate of Articles 22(1) and 22(2) of the Constitution of India and also violative of the statutory provisions in drafted under Section 167(2) of the Cr.P.C. In the aforesaid case, the accused was under detention from 10.10.2008 and 90 days had expired on 09.01.2009 and the charge-sheet was filed on 20.01.2009. The accused filed an application under Section 167(2) of the Cr.P.C. read with Section 21(4) of the Maharashtra Control of



Organized Crime Act, 1999 and also under Section 439 of the Cr.P.C. The Supreme Court in the aforesaid case, in paras 21, 22 and 23, held as follows:

21. There is yet another aspect of the matter. The right under Section 167(2) of the Cr.P.C. to be released on bail on default if charge-sheet is not filed within 90 days from the date of first remand is not an absolute or indefeasible right. The said right would be lost if charge-sheet is filed and would not survive after the filing of the charge-sheet. In other words, even if an application for bail is filed on the ground that charge sheet was not filed within 90 days, but before the consideration of the same and before being released on bail, if charge sheet is filed, the said right to be released on bail would be lost. After the filing of the charge-sheet, if the accused is to be released on bail, it can be only on merits. This is quite evident from Constitution Bench decision of this Court in *Sanjay Dutt v. State* (1994) 5 SCC 410 [Paras 48 and 53(2)(b) : (1994 AIR SCW 3857)]. The reasoning is to be found in paras 33 to 49. This principle has been reiterated in the following decisions of this Court :

(1) *State of M.P. v. Rustam and others* 1995 Supp. (3) SCC 221, para 4, (2) *Dr. Bipin Shantilal Panchal v. State of Gujarat* (1996) 1 SCC 718 para 4 : (AIR 1996 SC 2897 : 1996 AIR SCW 734). It may be mentioned that this judgment was delivered by a Three Judge Bench of this Court. (3) *Dinesh Dalmia v. CBI* (2007) 8 SCC 770 para 39 : (AIR 2008 SC 78 : 2007 AIR SCW 6112), and (4) *Mustaq Ahmed Mohammed Isak and others v. State of*



Maharashtra (2009) 7 SCC 480 para 12 : (*AIR 2009 SC 2772 : 2009 AIR SCW 4202*).

In *Uday Mohanlal Acharya v. State of Maharashtra* (2001) 5 SCC 453 : (*AIR 2001 SC 1910 : 2001 AIR SCW 1500*), a Three Judge Bench of this Court considered the meaning of the expression "if already not availed of" used by this court in the decision rendered in case of *Sanjay Dutt* and held in para 48 and held that if an application for bail is filed before the charge-sheet is filed, the accused could be said to have availed of his right under Section 167(2) even though the Court has not considered the said application and granted him bail under Section 167(2), Cr.P.C. This is quite evident if one refers para 13 of the reported decision as well as conclusion of the Court at page 747.

22. It is well settled that when an application for default bail is filed, the merits of the matter are not to be gone into. This is quite evident from the principle laid down in *Union of India v. Thamisharasi and others* (1995) 4 SCC 190 : (*1995 AIR SCW 2543*) para 10 placitum c-d.

23. From the discussion made above, it is quite clear that even if an application for bail is filed on the ground that charge sheet was not filed within 90 days, before the consideration of the same and before being released on bail if charge-sheet is filed, the said right to be released on bail, can be only on merits. So far as merits are concerned the learned counsel for the appellant has not addressed this Court at all and in fact bail is not claimed on merits in the present appeal at all.



Later, in the case of ***Union of India through C.B.I. vs. Nirala Yadav alias Raja Ram Yadav alias Deepak Yadav AIR 2014 SC 3036***, the Two-Judge Bench of the Supreme Court, on a re-look at all cases on this aspect, affirmed the proposition of law with respect to the effect of not filing the charge-sheet or an application for extension of custody, prior to the expiry of the period and held that the day an accused filed an application for benefit of the default provision under Section 167(2) of the Cr.P.C., the Court is required to pass an order in terms thereof (Section 167(2) Cr.P.C.) and any adjournment by the Magistrate would only be taken as an unnecessary procrastination which would frustrate the legislative mandate. A Court cannot, it was observed, act to extinguish the right of an accused, if the law so confers on him. *Law has to prevail.*

21. While coming to the aforesaid conclusion, the Bench also held that the observations made by the Supreme Court in case of ***Sadhwi Pragyna Singh Thakur (supra)***, ran counter to the principles laid down in case of ***Uday Mohanlal Acharya (supra)***, which was followed in case of ***Union of India vs. Hassan Ali Khan & Anr. 2011 AIR SCW 6592*** and in case of ***Sayed Mohd. Ahmad Kazmi (supra)***.

22. Thus from a conspectus of all the decisions referred to above, it is very clear that if the charge-sheet is



not filed within the statutory period and an accused in custody prefers an application before the Court concerned seeking statutory bail in terms of Section 167(2) of the Cr.P.C., indicating his willingness to subscribe to any of the conditions of the bail, he ought to be released on bail forthwith as any procrastination in passing a requisite order by the Court concerned, would only lead to the prosecution taking advantage of the time gap in filing the charge-sheet hurriedly and thereby, frustrating the claim of the accused.

23. In case in hand, the application for bail under Section 167(2) of the Cr.P.C. was filed on the expiry of the 90 days before the submission of the charge-sheet. The report sought for from the court office also indicated the same. Later, the prosecution filing the charge-sheet, would not dilute or extinguish the right of the petitioner/accused to be released on bail under the provisions of Section 167(2) of the Cr.P.C.

24. In the present case, the petitioner had already *availed of* his right under Section 167(2) of the Cr.P.C. and the filing of the charge-sheet in the later half of the day would be of no consequence, so far as the right and entitlement of the petitioner to be granted statutory bail is concerned.

25. It is also relevant here in this context to



point out that Section 91 of the Bihar Prohibition and Excise Act, 2016 provides for the procedure for launching prosecution, which reads as hereunder:

91. Procedure for launching Prosecution.—(1) As soon as a violation of any of the provisions of the Act is detected, the excise officer or the police officer, of the rank of assistant sub inspector and above, shall register a case under the Act.

(2) The excise officer or police officer concerned shall then proceed for investigation of the case.

(3) After investigation of the case, he shall file a Report within Sixty-Days from the date of registration of the case.

(4) The Report so filed shall be deemed to be a Police Report for the purposes of Section 173(2) and Section 190 of the Code of Criminal Procedure, 1973 (Act 2 of 1974).

(5) The Collector shall ensure that the aforementioned Report is filed in time and shall also monitor effective prosecution of the cases before the Courts.

(6) The Superintendent of Police shall closely monitor the status of cases filed by the police officers under this Act and shall submit period reports to the Excise commissioner and the Collector.

From the perusal of Sub-Clause (3) of Section 91 of the Act, it becomes clear that whatever be the sentence prescribed for any one of the offences under the



Act, the investigation has to be completed within 60 days from the date of the registration of the case. Sub-Clause (4) of Section 91 of the Act further specifies that the report so filed after investigation shall be deemed to be a police report for the purposes of Section 173(2) and Section 190 of the Cr.P.C. In that view of the matter, the right accrued to the petitioner long before, but since no application was filed by him on the presumption that 90 days is the requisite time for filing charge-sheet, the petitioner would be deemed to have availed of his right only on filing of his petition.

26. For the reasons aforesaid, the order passed by the learned court below, dated 01.02.2018, is not fit to be sustained in the eyes of law and is, therefore, set-aside.

27. The petitioner is directed to be released on statutory bail, but subject to the terms and conditions of bail to be decided by the learned court below on receipt/production of a copy the present order.

28. The application stands allowed.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	26.03.2018
Uploading Date	10.04.2018
Transmission Date	10.04.2018

