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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CRL.M.C. 4092/2018 & CRL.M.A. 29936/2018**

**PANKAJ MEHRA**

..... Petitioner

Through: Mr. Sanjay Sharma with Mr. Karan  
Sachdeva & Ms. Richa Sharma,  
Advocates.

versus

**THE STATE N.C.T. OF DELHI**

..... Respondent

Through: Mr. Amit Ahlawat, APP with Insp.  
Sudhir Kumar, P.S. Shalimar Bagh.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER**

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**14.08.2018**

1. The petitioner was arrested during the course of investigation into FIR No. 504/2017 of police station Shalimar Bagh for the offences punishable under Sections 302/120B/34 Indian Penal Code, 1860 (IPC) and Sections 25 & 27 of Arms Act, 1959 on 26.10.2017. It is admitted case of the petitioner that on 23.01.2018 he had moved an application through counsel seeking release on bail by default on the ground the charge-sheet had not been filed and the period of 90 days requisite under Section 167 of Code of Criminal Procedure, 1973 (Cr.P.C.) was expiring.

2. On being asked, the counsel for the petitioner fairly concedes that 23.01.2018 happened to be the 89<sup>th</sup> day after arrest, the petitioner being in custody. The 90<sup>th</sup> day would expire on 24.01.2018. It does appear that the charge-sheet was submitted on 23.01.2018, but the Magistrate initially posted it for consideration to 27.01.2018. When on 24.01.2018 he was

dealing with application under Section 167 Cr.P.C., which had been moved on 23.01.2018, apparently prematurely, the Metropolitan Magistrate took cognizance on the charge-sheet and issued process by directing that the petitioner be called through production warrant for 29.01.2018, cancelling the date 27.01.2018 at the same time.

3. The reliance on the part of the petitioner on *Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J. Kulkarni (AIR 1992 SC 1768)* is misplaced. The cognizance was taken on 90<sup>th</sup> day, *albeit* on the Magistrate being reminded of the need by the petitioner himself by moving an application under Section 167 Cr.P.C. prematurely on 23.01.2018. The cognizance having been taken on 90<sup>th</sup> day, no occasion for release of the petitioner by default had arisen.

4. There is no merit in the submission of the petitioner that the Magistrate had no jurisdiction to cancel the date of 27.01.2018. Given the need for urgency, the Magistrate was within his competent jurisdiction to pre-pone the hearing. The reference to the decision of the Supreme Court in *Adalat Prasad v. Rooplal Jindal & Ors., Crl. Appeal no.91/2002, decided on 25.08.2004* in this context is mis-conceived.

5. The petition and the accompanying application are dismissed.

**R.K.GAUBA, J**

**AUGUST 14, 2018**

*srb*