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2 Mr. Patil, learned senior Counsel for the applicant, submits that the applicant came to be arrested on 24/03/2021 and was produced before the learned Special Judge, Pune on 25/03/2021. Considering the offences alleged to have been levelled against the applicant, it was mandatory on the part of investigating officer to file charge-sheet within 90 days from the first day of remand. Since it was not done, the applicant moved bail application under Section 167(2) of the Cr.P.C. on 23/06/2021. However, the learned Special Judge rejected the application on the ground that the first day of remand has to be excluded. According to learned senior Counsel, there are catena of decisions which hold that the first day of remand has to be included. Learned senior Counsel although submitted number of decisions but he places reliance on the latest order of the Hon'ble Apex Court dated February 23, 2021 passed in **Criminal Appeal Nos. 701-702 of 2020** in between **Enforcement Directorate, Government of India V/s Kapil Wadhawan and Anr. Etc.** According to learned senior Counsel, in view of above order the learned Special Judge materially erred in law as well as in facts in coming to the conclusion that first day of remand is to be excluded after calculating the period and verifying of the charge-sheet under Section 167(2) of the Cr.P.C.

3 Mr.Dedhia, learned APP, on the other hand, would justify the impugned order. According to learned APP, the Special Judge rightly excluded the day of first remand while calculating the period of limitation.

4 In view of above submissions, following ponderable question of law arises for consideration:-

“Whether the day of remand has to be included or excluded while computing the period of 90 days or 60 days, as contemplated in Section 167(2)(a) of the Cr.PC.?”

5 In **Enforcement Directorate Government of India V/s Kapil Wadhawan and Anr. Etc.**, the Hon’ble Apex Court made following observations at para 4 and 8:

Para 4:

“ The moot question has been considered by this Court in various matters, but there is divergence of opinion on how the period available for completing the investigation is to be computed. Some judgments have favoured the exclusion of date of remand, while few other cases have taken a contrary view.”

Para 8:

“Since the earlier position of law was not considered and the latest decision is of a 3 judges bench, it is necessary for a bench of appropriate strength to settle the law taking note of the earlier precedents. Unless the issue is appropriately determined, the courts across the country may take decision on the issue depending upon which judgment is brought to the court’s notice or on the courts own understanding of the law, covering default bail under Section 167(2)(a)II of Cr.P.C.”

6 There is no dispute to the fact that the applicant was produced for the first time for the purposes of remand before the learned Special Judge on 25/03/2021. I agree with the learned senior Counsel for the applicant that the applicant is entitled to get default bail on account of default of investigating agency.

7 It is also clear from the impugned order that the charge-sheet came to be filed on 24/06/2021. Learned senior Counsel for applicant is right when he argues that the applicant is entitled to get default bail on account of default of the investigating agency to complete the investigation within 90 days from the date of first remand of the applicant. In my view, the first day of the remand has to be included while computing the period of limitation. I am unable to agree with the

contention of the learned APP that the first day of remand is to be excluded for the purpose of computation of default bail. Needless to say the 90 days would start running from the date of first remand. The application for default bail was moved on 23/06/2021 whereas charge-sheet came to be filed on 24/06/2021.

8 An indefeasible right accrues to an accused on the failure of the prosecution to file charge-sheet within the period specified under the proviso to sub-section (2) of Section 167 of the Cr.PC. and the said right can be availed of by an accused if he/she prepared to offer and does furnish bail. The right to default bail, as has been held by the Hon'ble Apex Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled.

9 For the aforesaid reasons, I am inclined to allow the application. Hence, the following order.

ORDER

(i) **Applicant-Rahul Shivaji Khomane is directed to be released on**

bail in connection with C.R. No. 0736 of 2020 registered by Alankar Police Station, Pune City on his executing PR. bond in the sum of Rs. One Lakh, with one or more sureties in the like amount.

(ii) The applicant shall attend the Alankar Police Station, Pune City every Monday from 12-00 p.m. to 3-00 p.m. till further orders.

(iii) The applicant shall furnish the details of the place of residence and their contact numbers to the Investigating Officer, on being released on bail.

(iv) The applicant shall not leave India without prior permission of the Special Court. The applicant- Rahul Shivaji Khomane shall surrender his passport, if any, to the Alankar Police Station, Pune City.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of the case so as to dissuade them from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

(vi) Bail before the trial Court.

(vi) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V. G. BISHT, J.)

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