

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

119

CRM-M-1353-2021

Date of decision: 27.01.2021

Shiv Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. U.K. Agnihotri, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana
for respondent-State.

ARUN KUMAR TYAGI, J

(The case has been taken up for hearing through video conferencing.)

1. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure 1973 (for short 'the Cr.P.C.') for setting aside the impugned order dated 14.05.2020 passed by learned Sessions Judge, Karnal whereby order dated 03.04.2020 passed by learned Sub Divisional Judicial Magistrate, Assandh granting default bail to the petitioner in case FIR No.689 dated 15.08.2018 registered under Sections 193, 420, 467, 468, 471, 472, 506 and 120-B of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Assandh, District Karnal was set aside.

2. Briefly stated the facts giving rise to the filing of the present petition are that complainant-Ramphal filed complaint before learned Sub Divisional Judicial Magistrate, Assandh regarding filing of forged documents by the accused in their defence evidence in criminal

24.09.2017 at about 9 a.m. when he was going towards Bus Stand, Kurlan. In compliance with order passed under Section 156(3) of the Cr.P.C. on the above-said complaint, the above-said FIR was registered. The petitioner was arrested on 20.01.2020. The petitioner filed application for grant of default bail on the ground that challan has not been filed within the prescribed period of sixty days in terms of Section 167(2)(a)(ii) of the Cr.P.C. which was contested on the ground that due to offence under Section 467 of the Cr.P.C. being punishable with life imprisonment, challan could be filed within the prescribed period of ninety days under Section 167(2)(a)(i) of the Cr.P.C. which had not expired. Learned Sub Divisional Judicial Magistrate allowed the application vide order dated 03.04.2020. State of Haryana filed revision petition before learned Sessions Judge, Karnal which was allowed vide impugned order dated 14.05.2020. Vide order dated 14.05.2020, learned Sessions Judge, Karnal held that due to maximum sentence imposable under Section 467 of the IPC being life imprisonment, the accused could be detained in custody for the period of ninety days without submission of charge-sheet and accordingly remanded the case to learned Sub Divisional Judicial Magistrate with a direction to pass fresh order keeping in mind the observations made by him.

3. Feeling aggrieved, the petitioner has filed the present petition for setting aside of the impugned order dated 14.05.2020 passed by learned Sessions Judge, Karnal.

4. The petition has been opposed by learned State Counsel in terms of reply filed by way of affidavit of Sh. Gajender Singh, HPS, Deputy Superintendent of Police, Assandh in the Registry which is

taken on record.

5. I have heard arguments addressed by Mr. U.K. Agnihotri, learned Counsel for the petitioner and Mr. Ranvir Singh Arya, learned State Counsel and have gone through the relevant record.

6. Mr. U.K. Agnihotri, learned Counsel for the petitioner has submitted that learned Sessions Judge has failed to consider that no offence under Section 467 of the IPC is made out against the petitioner on a bare perusal of the FIR. Unless a prima facie case under Section 467 of the IPC was found to have been made out against the petitioner, the rigors ancillary thereto could not be applied while considering the question of cancellation of bail granted to the petitioner on the revision petition filed by the respondent-State. The petitioner was arrested in the case on 20.01.2020 and was granted default bail vide order dated 03.04.2020 on the ground of not filing of challan within the prescribed period of sixty days under Section 167(2)(a)(ii) of the Cr.P.C. Order dated 03.04.2020 has been wrongly set aside by learned Sessions Judge vide the impugned order dated 14.05.2020. The expression “not less than ten years” used in Section 167(2)(a)(i) was considered by Hon'ble Supreme Court in the case of ***Rajeev Chaudhary Vs. State of (NCT) Delhi : 2001 (5) SCC 34*** which was further elaborated in the case of ***Rakesh Kumar Paul Vs. State of Assam : 2017 (15) SCC 67*** and Section 167(2)(a)(i) was held to be applicable to offences punishable with minimum sentence of imprisonment for ten years. Since Section 467 of the Cr.P.C. does not prescribe minimum sentence of imprisonment for ten years, Section 167(2)(a)(ii) of the Cr.P.C. was applicable to the same and challan was required to be filed within sixty

days as held by Hon'ble Chhattisgarh High Court in ***CRMP No.2551 of 2018 titled as Shalini Verma and another Vs. State of Chhattisgarh decided on 13.03.2019***. Learned Sessions Judge, Karnal also failed to consider that bail once granted to the petitioner could be cancelled on satisfaction of the parameters laid down under various judgments for cancellation of the bail. Further the matter has also been compromised with the complainant vide compromise dated 17.06.2019. The impugned order dated 14.05.2020 suffers from material illegality and the same may be set aside and order dated 03.04.2020 passed by learned Sub Divisional Judicial Magistrate, Assandh may be restored.

7. On the other hand, Mr. Ranvir Singh Arya, learned State Counsel has submitted that prima facie case as to commission of offence under Section 467 of the Cr.P.C. is made out against the petitioner. One of the sentences imposable under Section 467 of the IPC is life imprisonment. The case is covered by Section 167(2)(a)(i) of the Cr.P.C. and the charge-sheet could be filed within the prescribed period of ninety days. The petitioner was not entitled to grant of default bail on the ground of not filing of challan within the prescribed period of sixty days under Section 167(2)(a)(ii) of the Cr.P.C. Learned Sub Divisional Judicial Magistrate, Assandh acted with material illegality in grant of default bail. Order dated 03.04.2020 has been rightly set aside by learned Sessions Judge, Karnal vide impugned order dated 14.05.2020 which does not suffer from any material illegality. Therefore, the petition may be dismissed.

8. Section 167 of the Cr.P.C. authorises the Magistrate to permit detention of an accused in custody and prescribes the maximum

period for which such detention could be ordered pending investigation and the same reads as under:-

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

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

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

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where no order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case

together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

9. Section 467 of the IPC, which punishes forgery of valuable will, etc. reads as under:-

“Forgery of valuable security, will, etc.—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

10. In the present case the petitioner is alleged, inter alia, to have forged documents/valuable security and to have thereby

committed, besides other offences, offence punishable under Section 467 of the IPC. The question as to whether the petitioner can be said to have committed offence punishable under Section 467 of the IPC has to be determined on the basis of evidence to be produced during trial and is not required to be and cannot be determined at this stage. Suffices it to observe that material on record makes out prima facie case as to commission thereof.

11. The present case involves the question as to whether Section 167(2)(a)(i) of the Cr.P.C. prescribing the period of ninety days for filing of charge-sheet applies to offence under Section 467 of the IPC or Section 167(2)(a)(ii) of the Cr.P.C. prescribing the period of sixty days for filing of charge-sheet applies to the same. The ambiguity in the applicability of the provisions referred to above arises due to use of the expression “offence punishable with imprisonment for a term of not less than ten years” in Section 167(2)(a)(i) of the Cr.P.C.

12. In *Rajeev Chaudhary Vs. State of (NCT) Delhi : 2001 (5) SCC 34* Hon'ble Supreme Court considered the question of interpretation of the expression “offence punishable with imprisonment for a term of not less than ten years” in the context of offence under Section 386 of the IPC punishable with imprisonment upto ten years. In that case the appellant was arrested in connection with an offence punishable under Sections 386, 506 and 120B of the IPC. He was produced before the Metropolitan Magistrate, Delhi on 31.10.1998 and was released on bail vide order dated 02.01.1999 passed by the Metropolitan Magistrate on the ground that charge-sheet was not submitted within sixty days as provided under Section 167(2)(a)(ii) of

the Cr.P.C. That order was challenged before the Sessions Judge, New Delhi by filing Criminal Revision No.22 of 1999. The learned Additional Sessions Judge held that for offence under Section 386 of the IPC period of sentence could be up to 10 years and Section 167(2)(a)(i) of the Cr.P.C. would be applicable and accordingly allowed the said revision application vide order dated 18.08.1999. The High Court held that on a plain reading of Section 167(2)(a)(i) of the Cr.P.C. there seems to be no doubt that offences punishable with death, imprisonment for life or imprisonment for a term of ten years or more would fall under Section 167(2)(a)(i) of the Cr.P.C. and offences which are punishable with imprisonment for less than ten years would fall under Section 167(2)(a)(ii) of the Cr.P.C. and set aside the order passed by the learned Additional Sessions Judge. Hon'ble Supreme Court while dismissing the appeal observed as under:-

“5. From the relevant part of the aforesaid sections, it is apparent that pending investigation relating to an offence punishable with imprisonment for a term "not less than 10 years", the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days. For rest of the offences, period prescribed is 60 days. Hence in cases, where offence is punishable with imprisonment for 10 years or more, accused could be detained up to a period of 90 days. In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider clause (i) of proviso (a) to Section 167(2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for

which punishment could be imprisonment for less than 10 years. Under Section 386 of the Indian Penal Code, imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years.”

13. In ***Bhupinder Singh Vs. Jarnail Singh : 2006(3) RCR (Criminal) 677*** appellants No.1 and 2 were arrested on 05.08.2004 and appellant No.3 was arrested on 07.08.2004 for alleged commission of offence under Section 304-B of the IPC punishable with imprisonment which shall not be less than 7 years but which may extend to imprisonment for life. The appellants filed application for grant of default bail on the ground of applicability of Section 167(2)(a)(ii) of the Cr.P.C. and not filing of charge-sheet within sixty days which was rejected by learned Judicial Magistrate First Class, Batala but allowed by learned Additional Sessions Judge, Gurdaspur. The order passed by learned Additional Sessions Judge, Gurdaspur was set aside by the High Court on the ground of applicability of section 167(2)(a)(i) of the Cr.P.C. and the prescribed period of filing of charge-sheet being ninety days. Hon'ble Supreme Court while upholding the order and dismissing the appeal observed as under:-

“14. Where minimum and maximum sentences are prescribed both are imposable depending on the facts of the cases. It is for the Court, after recording conviction, to impose appropriate sentence. It cannot, therefore, be accepted that only the minimum sentence is imposable and not the maximum sentence. Merely because minimum sentence is provided that does not mean that the sentence imposable is only the minimum sentence. The High Court's view in the impugned order that permissible period of filing of challan is 90 days is the correct view. Contrary view expressed by Jharkhand, Delhi and Karnataka High Courts is not correct. Himachal Pradesh, Rajasthan and Punjab and Haryana High Courts taking the view 90 days is the period have expressed the correct view.....”

14. In *Rakesh Kumar Paul Vs. State of Assam : 2017 (15) SCC 67* the petitioner was arrested on 05.11.2016 in case FIR No.936 of 2016 registered on 27.10.2016 under Section 7 and 13(1)(b)(ii) of the Prevention of Corruption Act, 1988 punishable with imprisonment which could extend to ten years in view of amendment of the Prevention of Corruption Act, 1998 by the Lokpal and Lokayukta Act, 2013. Charge-sheet was filed by the police in the case on 24.01.2017. The regular bail application was dismissed by the Special Judge vide order dated 20.12.2016. Application for bail was filed before the High Court without any plea for grant of default bail under Section 167(2)(a)(ii) of the Cr.P.C. on the ground of not filing of charge-sheet within sixty days. However, at the time of arguments before the High Court grant of default bail was prayed for. The High Court rejected the bail application vide order dated 11.01.2017 on the ground of applicability of Section 167(2)(a)(i) of the Cr.P.C. permitting filing of charge-sheet within ninety days while holding that the accused was not entitled to default bail on the ground of not filing of charge-sheet within sixty days. On appeal the matter was listed before Two Judges Bench of Hon'ble Supreme Court comprising Hon'ble Mr. Justice Madan B. Lokur and Hon'ble Mr. Justice Prafulla C. Pant who gave divergent opinions.

15. Hon'ble Mr. Justice Madana B. Lokur while accepting the view taken in *Rajeev Chaudhary Vs. State of (NCT) Delhi : 2001 (5) SCC 34* and ruling in favour of entitlement of the petitioner to grant of default bail under Section 162(2)(a)(ii) of the Cr.P.C. on the ground of

not filing of charge-sheet within sixty days observed as under:-

“25. While it is true that merely because a minimum sentence is provided for in the statute it does not mean that only the minimum sentence is imposable. Equally, there is also nothing to suggest that only the maximum sentence is imposable. Either punishment can be imposed and even something in between. Where does one strike a balance? It was held that it is eventually for the court to decide what sentence should be imposed given the range available. Undoubtedly, the Legislature can bind the sentencing court by laying down the minimum sentence (not less than) and it can also lay down the maximum sentence. If the minimum is laid down, the sentencing judge has no option but to give a sentence not less than that sentence provided for. Therefore, the words not less than occurring in Clause (i) to proviso (a) of Section 167(2) of the Cr.P.C. (and in other provisions) must be given their natural and obvious meaning which is to say, not below a minimum threshold and in the case of Section 167 of the Cr.P.C. these words must relate to an offence punishable with a minimum of 10 years imprisonment.”

16. Hon'ble Mr. Justice Prafulla C. Pant took the contrary view as to applicability of Section 167(2)(a)(i) of the Cr.P.C. to the case and observed as under:-

“20. From the above analogy, I am of the opinion that the intention of the legislature was that if an offence was punishable with imprisonment upto ten years, then it falls within the provision of Section 167(2)(a)(i) of the Code, and the permissible period for investigation is ninety days. The intention of the Legislature in extending the permissible time period from sixty days to ninety days for investigation is to include the offences in which sentence awardable is at least ten years or more. Therefore, as discussed above, though the expression not less than ten years used in Section 167(2)(a)(i) of the Code has created some ambiguity, the real intention of the legislature seems to include all such offences wherein an imprisonment which may extend to ten years is an awardable sentence. In other words, for offences wherein the punishment may extend to ten years imprisonment, the permissible period for filing charge sheet shall be ninety days, and only after the period of ninety days, the accused shall be entitled to bail on default for non filing of the charge sheet.....”

17. The matter was referred to Hon'ble Mr. Justice Deepak

Gupta and His Lordship while holding that Section 167(2)(a)(ii) of the Cr.P.C. was applicable to the case observed as under:-

“30. In view of the above discussion, my findings are as follows:

1. I agree with both my learned brothers that the amendment made to the Prevention of Corruption Act, 1988 by the Lokpal and Lokayuktas Act, 2013 applies to all accused charged with offences under this Act irrespective of the fact whether the action is initiated under the Lokpal and Lokayuktas Act, 2013, or any other law;

2. Section 167(2)(a)(i) of the Code is applicable only in cases where the accused is charged with (i) offences punishable with death and any lower sentence; (ii) offences punishable with life imprisonment and any lower sentence and (iii) offences punishable with minimum sentence of 10 years;

3. In all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of default bail after 60 days in case charge-sheet is not filed.

4. The right to get this bail is an indefeasible right and this right must be exercised by the accused by offering to furnish bail.”

18. The position of law which emerges from judgments of Hon'ble Supreme Court in ***Rajeev Chaudhary Vs. State of (NCT) Delhi : 2001 (5) SCC 34*** and ***Rakesh Kumar Paul Vs. State of Assam : 2017 (15) SCC 67*** is that period of detention of the accused person in custody under Section 167(2)(a)(i) of the Cr.P.C. would be ninety days for the (i) offences punishable with death, (ii) offences punishable with imprisonment for life and (iii) offences punishable with imprisonment for a term "not less than 10 years" which has been interpreted to mean "imprisonment for 10 years or more" and for rest of the offences including the offences punishable with imprisonment for a term upto ten years, it would be of sixty days.

with life imprisonment or with imprisonment which may extend to ten years, the case falls in the second category of offences punishable with life imprisonment or lower punishment and Section 167(2)(a)(i) of the Cr.P.C. prescribing the period of ninety days for filing of the charge-sheet under Section 173(2) of the Cr.P.C. is applicable to the case. Admittedly, in the present case charge-sheet was filed on 07.04.2020 before expiry of the prescribed period of ninety days. Therefore, the petitioner is not entitled to grant of default bail on the ground of applicability of Section 167(2)(a)(ii) and not filing of charge-sheet within the prescribed period of sixty days.

20. In ***CRMP No.2551 of 2018 titled as Shalini Verma and another Vs. State of Chhattisgarh decided on 13.03.2019*** (relied upon by learned Counsel for the petitioner) the petitioners were arrested on 22.08.2018 in connection with crime No.182 of 2018 initially registered under Section 420 read with Section 34 of the IPC to which Section 467 of the IPC was added later. Application for grant of default bail was filed on the ground of not filing of charge-sheet within sixty days which was dismissed on the ground of the prescribed period being ninety days in view of the punishment provided under Section 467 of the IPC. Hon'ble Chhattisgarh High Court, while relying on the observations in ***Rajeev Chaudhary Vs. State of (NCT) Delhi : 2001 (5) SCC 34*** and ***Rakesh Kumar Paul Vs. State of Assam : 2017 (15) SCC 67*** particularly para No.25 of the opinion given by Hon'ble Mr. Justice Madan B. Lokur, held that there was no minimum sentence of imprisonment of not less than ten years under Section 467 of the IPC and the period of detention of the accused person would be sixty days

instead of ninety days. The relevant paragraph of the judgment of Hon'ble Chhattishgarh High Court is reproduced as under:-

*“From bare perusal of above section, it is clear that the punishment provided therein is imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, which shows that **minimum sentence of imprisonment of 'not less than 10 years' is not there.** And therefore, as held by Hon'ble the Supreme Court in the case of 'Rajeev Chaudhary (Supra)' and 'Rakesh Kumar Paul (Supra)', since Section 467 of IPC is not an offence punishable **with a minimum of 10 years imprisonment**, the period of detention of the accused person in custody would be sixty (60) days instead of ninety (90) days.”(emphasis supplied)*

21. However, with due respect I disagree with the view taken by Hon'ble Chhattisgarh High Court in ***CRMP No.2551 of 2018 titled as Shalini Verma and another Vs. State of Chhattisgarh decided on 13.03.2019*** as Hon'ble Chhattisgarh High Court did not notice that in ***Rajeev Chaudhary Vs. State of (NCT) Delhi : 2001 (5) SCC 34*** Hon'ble Supreme Court held in clear terms that the expression “not less than” would mean **imprisonment should be ten years and more and should cover only those offences for which punishment could be imprisonment for a clear period of ten years or more.** This aspect of the matter was also clarified in the opinion given by Hon'ble Mr. Justice Deepak Gupta in sub para 2 of para 30 which is, at the cost of repetition, reproduced hereunder:-

*“Section 167(2)(a)(i) of the Code is applicable only in cases where the accused is charged with (i) offences punishable with death and any lower sentence; (ii) **offences punishable with life imprisonment and any lower sentence** and (iii) offences punishable with minimum sentence of 10 years;” (emphasis supplied)*

22. In view of the law laid down by Hon'ble Supreme Court in ***Rajeev Chaudhary Vs. State of (NCT) Delhi : 2001 (5) SCC 34*** and

Rakesh Kumar Paul Vs. State of Assam : 2017 (15) SCC 67 offence under Section 467 of the IPC which is punishable with life imprisonment or imprisonment upto ten years falls in the second category of **offences punishable with life imprisonment or any lower sentence** and attracts Section 167(2)(a)(i) of the Cr.P.C. permitting the period of ninety days for filing of charge-sheet and does not fall in the category of other offences punishable with imprisonment up to ten years warranting applicability of Section 167(2)(a)(ii) of the Cr.P.C. prescribing the period of sixty days for filing of charge-sheet.

23. It follows from the above discussion that order dated 03.04.2020 passed by learned Sub Divisional Judicial Magistrate, Assandh granting default bail to the petitioner on the ground of applicability of Section 167(2)(a)(ii) of the Cr.P.C. and not filing of charge-sheet within sixty days suffered from material illegality and has been rightly set aside by learned Sessions Judge, Karnal vide impugned order dated 14.05.2020.

24. Since learned Sessions Judge, Karnal, in exercise of revisional powers, merely set aside the order dated 03.04.2020 passed by learned Sub Divisional Judicial Magistrate, Assandh, learned Session Judge, Karnal cannot be said to have cancelled the bail under Section 439(2) of the Cr.P.C. and was not, therefore, required to consider the parameters for cancellation of bail. Similarly, the mere fact that the petitioner had allegedly compromised the matter with the complainant was not relevant for decision of the question of grant of default bail and did not entitle the petitioner to grant of default bail on the basis of the compromise.

25. Consequently, the impugned order dated 14.05.2020 passed by learned Sessions Judge, Karnal does not suffer from any illegality and is not liable to be set aside.

26. Accordingly, the present petition, being devoid of any merit, is hereby dismissed.

27.01.2021

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No