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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 16th December, 2021*

+ **BAIL APPLN. 4392/2021**
CRL.M.A. 20157/2021

HARPHOOL Petitioner
Represented by: Mr.Gaurav Bindal, Advocate with
Mr.Manoj Kumar, Advocate.

Versus

STATE Respondent
Represented by: Mr.Ravi Nayak, APP for the State
with Inspector Anil Sharma,
P.S.Vigilance, Delhi.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

JUDGMENT : (ORAL)

CRL.M.A. 20157/2021 (for exemption)

1. Exemption allowed subject to just exceptions.
2. Application is disposed of.

BAIL APPLN. 4392/2021

1. By this petition, the petitioner seeks bail in FIR No. 2/2020 under Sections 201/203/217/384/408/409/120B IPC, 20 of the NDPS Act & 13 of the PC Act registered at P.S. Vigilance on the ground that the charge sheet has not been filed within the statutory period of 180 days.
2. Notice. Mr.Ravi Nayak, learned APP for the State accepts notice.

3. A perusal of the petition itself reveals that the petitioner was arrested on 2nd February 2020 in the above-noted FIR, where-after, he was released on interim bail from 24th April 2021 till 27th September 2021. The petitioner prays that this period when he was out on interim bail be counted in the period of 180 days and as the charge sheet has not been filed within the said 180 days, he is entitled to bail under Section 167(2) CrPC.

4. Section 167(2) CrPC reads as under:

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

(1) xxx xxx xxx

(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;]

5. Further, Section 36A(4) of the NDPS Act reads as under:-

36A. Offences triable by Special Courts-

xxx

xxx

xxx

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year 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 one hundred and eighty days".

6. Thus Section 167(2) CrPC empowers the Magistrate to remand the accused to police custody for an initial period of 15 days and thereafter, for a further period of 45 to 75 days in judicial custody without taking cognizance on the charge sheet filed. For offences punishable under Sections 19, 24 or 27A NDPS Act or offences under the NDPS Act involving commercial quantity, the total time period for which the Special Court can remand the accused without taking cognizance on the charge-sheet or complaint extends to 180 days in terms of Section 36A of NDPS Act. In the present case, the petitioner was on interim bail. The petitioner was not remanded to judicial custody by the concerned Special Court during the period of interim bail and as per Section 36A NDPS, the Special Court can remand the petitioner to custody for a total period of 180 days without taking cognizance on the charge-sheet or complaint and the same would not

include the period in which the petitioner was released on interim bail.

7. Hon'ble Supreme Court in the decision reported as 2021 SCC OnLine SC 382 Gautam Navlakha Vs. National Investigation Agency dealing with the issue as to whether broken period of custody can be considered for the purpose of default bail, held as under:-

"72. One of the contentions raised is that the order passed by the High Court of Delhi, is not one passed under Section 167 of the Cr.P.C., for the reason that what the Cr.P.C. contemplates is an order passed by a Magistrate. It, therefore, becomes necessary to consider whether a Court other than a Magistrate can order remand under Section 167. In the first place, going by the words used in Section 167, what is contemplated is that Magistrate orders remand under Section 167(2).

73. Let us, however, delve a little more into the issue. Let us take a case where a Magistrate orders a remand under Section 167 and at the same time, he also rejects the application for bail preferred by the accused. The accused approaches the High Court under Section 439 of the Cr.P.C. The court reverses the order and grants him bail. The accused who was sent to custody means police custody or judicial custody is brought out of his custody and is released on bail pursuant to the order of the High Court. This order is challenged before the Apex Court. The Apex Court reverses the order granting bail. The original order passed by the Magistrate is revived. It is apparent that the accused goes back to custody. Since assuming that the period of 15 days is over and police custody is not permissible, he is sent back to judicial custody. Equally if he was already in judicial custody, the order granting judicial custody is revived. Let us assume in the illustration that the accused was in custody only for a period of 10 days and after the order passed by this Court and the accused who spent another 80 days, he completes, in other words, a total period of custody of 90 days adding the period of custody, he suffered consequent upon the remand by the Magistrate. That is by piecing up these broken periods of custody, the statutory period of 90 days entitling the accused to default bail, is reached. Can it be said that

the order of this Court granting custody should not be taken into consideration for calculating the period of 90 days, upon completion of which the accused can set up a case for default bail. We would think that the mere fact is that it is the Apex Court which exercised the power to remand, which was wrongly appreciated by the High Court in the illustration, would not detract from the custody being authorized under Section 167.

74. Let us take another example. After ordering remand, initially for a period of 15 days of which 10 days is by way of police custody and 5 days by way of judicial custody, the Magistrate enlarges an accused on bail. The High Court interferes with the order granting bail on the basis that the bail ought not to have been granted. Resultantly, the person who on the basis of the order of bail, has come out of jail custody, is put back into the judicial custody or jail custody. The order is one passed by the High Court. The order granting custody by the High Court cannot be treated as one which is not anchored in Section 167 of the Cr.P.C. Therefore, we would think that though the power is vested with the Magistrate to order remand by way, of appropriate jurisdiction exercised by the superior Courts, (it would, in fact, include the Court of Sessions acting under Section 439) the power under Section 167 could also be exercised by Courts which are superior to the Magistrate.

75. Therefore, while ordinarily, the Magistrate is the original Court which would exercise power to remand under Section 167, the exercise of power by the superior Courts which would result in custody being ordered ordinarily (police or judicial custody) by the superior Courts which includes the High Court, would indeed be the custody for the purpose of calculating the period within which the charge sheet must be filed, failing with the accused acquires the statutory right to default bail. We have also noticed the observations of this Court in AIR 1962 SC 1506 (supra). In such circumstances broken periods of custody can be counted whether custody is suffered by the order of the Magistrate or superior courts, if investigation remains incomplete after the custody, whether continuous or broken periods pieced together

reaches the requisite period; default bail becomes the right of the detained person.

76. Equally when an order in bail application is put in issue, orders passed resulting in detaining the accused would if passed by a superior court be under Section 167.

8. As the petitioner has not been remanded beyond the period of 180 days after excluding the period of interim bail, this Court finds no ground to grant default bail to the petitioner for non-filing of the charge-sheet within 180 days of the initial arrest of the petitioner.
9. Petition is dismissed.
10. Order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

DECEMBER 16, 2021/akb