IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.784 OF 2022

Nandlal Singh Kesar Singh ...Applicant
vs.
The State of Maharashtra ...Respondent

Dr. Uday Warunjikar a/w. Ms. Sana Raees Khan and Mr. Subhash Hulyalkar i/b. Hulyalkar and Associates, for the Applicant.
Mr. A.A. Palkar, APP, for the State.

CORAM : N. J. JAMADAR, J.
ORDER RESERVED ON : JULY 05, 2022
ORDER PRONOUNCED ON : AUGUST 24, 2022

P.C.:

1. The applicant, who is arraigned in C.R. No. 308 of 2019 registered with Barshi City police station for the offences punishable under section 420 read with 34 of Indian Penal Code, 1860 (the Penal Code) and section 3 of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (the MPID Act), has preferred this application for default bail under section 167(2) of the Code of Criminal Procedure, 1973 (the Code).

2. The indictment against the applicant/accused runs as under:-

a] The applicant Nandlal Singh Kesar Singh (A/1) is the Chairman of the group comprising of a number of entities namely Phenomenal Industries Limited, Mumbai, Phenomenal Trading

Company Private Limited, Mumbai, Phenomenal Health Care, Phenomenal Health Care Services Limited and Phenomenal Health Care Maharashtra Private Limited. A branch of Phenomenal Health Care Private Limited, was made operational at Riddhi Siddhi Complex, Shivaji College Road, Barshi. A number of investment schemes were floated and advertised by the said company.

b] Mr. Jayant Burgute (the first informant) lodged report with Barshi City police station with the allegations that he approached the Phenomenal Health Care Private Limited, Barshi branch. Mr. Gautam Mane, the Branch Manager gave information about various policies floated by the said company. It was represented to the first informant that if an amount of Rs. 10,500/- was invested under the Special Economy Membership Plan, the first informant would get double the said amount of deposit i.e. Rs. 21,000/- after completion of 9 years and, in the intervening period, the applicant would get health facilities as well.

c] Based on the representation, the first informant deposited a sum of Rs. 10,500/- on 30th April, 2010. A certificate was issued to him. Company did provide health services/facilities till the year 2016. Thereafter, the company stopped extending those facilities. Thereupon, the first informant demanded the refund of the amount invested by him. However, the amount was not refunded on the pretext that the term of deposit was not over. Eventually, the Barshi branch of the company as well as the head office at Mumbai were closed in the year 2017 and 2018, respectively. Despite the deposit having matured, the maturity amount was not paid to the first informant. It was further alleged that, like the first informant, 9 other persons were also similarly duped to the tune of Rs. 2,64,500/-. Hence, the first informant lodged the report.

d] During the course of investigation, it transpired that like the first informant, the applicant and his associates had received deposits from many investors by making false promise of returning double the amount of deposit and providing health facilities/services during the period of such deposit. The applicant and the co-accused had, thus, defrauded the depositors to the tune of Rs. 2,02,02,501/-.

3. The applicant came to be arrested on 18th December, 2021. He was produced before the jurisdictional Court on 19th December, 2021 and remanded initially to police custody and, later on, judicial custody. On 18th February, 2022 the applicant preferred an application purportedly under section 167(2) of the Code asserting that since the charge-sheet was not lodged against him within 60 days, the applicant was entitled to be released on bail.

4. Pursuant to the direction of the learned Additional Sessions Judge, the Superintendent, District Court, Barshi submitted a report that, on 17th February, 2022 the investigating officer had lodged charge-sheet in C.R. No. 308 of 2019 against the co-accused Shilratna Mane and Gautam Mane.

5. By an order dated 18th February, 2022 the learned Additional Session Judge was persuaded to reject the application holding, inter alia, that since charge-sheet was filed on the 60th day computed after excluding the day of remand i.e. 19th February, 2021, the applicant/accused could not claim default bail. Additionally, it was opined, the offence punishable under section 409 of the Penal Code, which entails punishment for imprisonment for life, might also be attracted.

6. On 25th February, 2022 the applicant again preferred an application for statutory bail under section 167(2) of the Code asserting that he had an indefeasible right to be released on bail as charge-sheet was not lodged despite 60 clear days of the detention of the applicant.

7. In the interregnum, there was a development which gives rise

to the dilemma.

8. On 21st February, 2022 the investigating officer filed a report before the learned Additional Session Judge seeking permission to amend the charge-sheet filed on 17th February, 2022. The substance of the report was that the name of the co-accused Shilratna Mane was inadvertently mentioned twice as accused in addition to Mr. Gautam Mane, another co-accused, instead of the applicant Nandlal Singh Kesar Singh. Therefore, the investigating officer be permitted to amend the charge-sheet by incorporating the name of the applicant as the accused, against whom also charge-sheet has been lodged. On 22nd February, 2022 the learned Additional Session Judge granted the said prayer by passing an order "Allowed".

9. Second application dated 25th February, 2022 came to be rejected by the learned Additional Session Judge holding that since the prayer of the investigating officer to correct the name of the accused in the charge-sheet came to be allowed by order by 22nd February, 2022, there was no substance in the submission on behalf of the applicant. The applicant has thus approached this Court.

10. I have heard Dr. Uday Warunjikar, learned counsel for the

applicant and Mr. Palkar, learned APP, for the State at length. With the assistance of the learned counsel for the parties, I have perused the material on record.

11. Dr. Warunjikar, learned counsel for the applicant, would submit that the course adopted by the learned Additional Sessions Judge in permitting the investigating officer to amend the charge-sheet, though innocuous it may appear, has caused serious prejudice to the statutory right of the applicant. Dr. Warunjikar laid emphasis on the fact that on the day the applicant preferred application for default bail i.e. on 18th February, 2022 the Superintendent of the Court had reported that the charge-sheet was lodged against only two co-accused Shilratna Mane and Gautam Mane. Consequently, the attention of the learned Additional Sessions Judge was specifically invited to the fact that the charge-sheet was not lodged against the applicant. Yet the application came to be rejected by order dated 18th February, 2022 without embarking upon primary inquiry as to whether the charge-sheet was lodged against the applicant/accused. Since neither the prosecution alleged that an offence punishable under section 409 of the Penal Code was made out nor there is material to show that the said offence is even remotely attracted to the facts of the case, the

learned Additional Session Judge misdirected himself in rejecting the application on the said ground, urged Dr. Warunjikar.

12. Mr. Palkar, learned APP, on the other hand, submitted that inadvertent mistake in mentioning the name of one and the same co-accused Shilratna Mane twice, is self-evident. As the investigation was completed within the stipulated period of 60 days, the essential condition to authorize further detention can be said to have been fulfilled. Thus, no prejudice was caused to the applicant by allowing the investigating officer to make correction in the name of the accused in the final report under section 173 of the Code. Therefore, according to learned APP, the applicant is not entitled to be released on default bail.

13. As the fate of the application hinges upon the determination of the issue as to whether there is compliance with the mandatory requirement under section 167(2) of the Code, it may be necessary to note few dates which bear upon the controversy. It is not in contest that the applicant was arrested on 18th December, 2021. He was produced before the learned Special Judge on 19th December, 2021 and was remanded to police custody. The date of remand is thus freezed. The fact that charge-sheet was lodged for the offence

punishable under section 420 read with 34 of the Penal Code and and section 3 of the MPID Act by the investigating officer on 17th February, 2022 is also rather incontrovertible. In any event, any controversy as to the date of the lodging of the charge-sheet is put to rest by the endorsement of the Superintendent, District Court, Barshi that charge-sheet was lodged on 17th February, 2022 against the co-accused Shilratna Mane and Gautam Mane.

14. It would be contextually relevant to note that the investigating officer filed further report on 21st February, 2022 seeking permission to carry out correction in the final report in the nature of including the name of the applicant in place of co-accused Shilratna Mane, whose name was mentioned twice. The said prayer was allowed on 22nd February, 2022. It can thus be safely assumed that the name of the applicant came to be shown in the charge-sheet as an accused, who was sent for trial, on 22nd February, 2022, and not before.

15. At this stage itself it is necessary to note that, prima facie, the offence punishable under section 409 of the Penal Code, does not seem to have been made out. Neither the prosecution has alleged criminal breach of trust. Nor the allegations, even if taken at par

and construed rather generously, indicate that the accused held special fiduciary capacity envisaged by section 409 of the Penal Code. Therefore, the question of entitlement for default bail is required to be determined on the premise that the case would be covered by clause (ii) of proviso (a) to sub section (2) of section 167 of the Code.

16. By a catena of decisions, the legal position as regards the right of an accused to be released on bail, under section 167(2) of the Code, has been almost crystallized. However, a facet of action or inaction, which myriad situations throw up, gives rise to the controversy, in the facts peculiar to a given case. Broad principles, however, are well neigh settled. Firstly, the right to default bail, as is evident, accrues on account of the default on the part of the investigating agency in not completing the investigation within the period stipulated by section 167 (2) of the Code and, in cases where an extended period is prescribed by the governing statute, within the extended period. Secondly, while considering the application for default bail, the merits of the allegations against the applicant are not at all germane. Thirdly, once the right of default bail accrues, in the sense that the accused has 'availed' the said right by filing an application for release on bail, the subsequent act on the part of the

investigating agency to lodge the charge-sheet does not deprive the accused of the said right upon default on the part of investigating agency, the right is cemented as an indefeasible right. Fourthly, factors like the Court did not entertain the application or passed a wrong order also do not defeat the said right.

17. Over a period of time, there has been a significant development in law. The right to default bail under section 167 (2) of the Code has increasingly been seen through the prism of right to life and personal liberty under Article 21 of the Constitution of India. The right to default bail is construed to be a facet of fair procedure guaranteed under Article 21 of the Constitution of India.

18. A useful reference, in this context, can be made to a three Judge Bench judgment of the Supreme Court in the case of **M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence**[1]**.** In the said case, the Supreme Court extensively adverted to the nature of interplay between the 'right to default bail' and 'fundamental right to life and personal liberty'. The observations in paragraph 17 are instructive and hence extracted below :-

1 (2021) 2 Supreme Court Cases 485.

17. Before we proceed to expand upon the parameters of the right to default bail under Section 167(2) as interpreted by various decisions of this Court, we find it pertinent to note the observations made by this Court in *Uday Mohanlal Acharya* on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows:(SCC p.472 para13)

> "13......Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to subsection (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution."

17.1 Article 21 of the Constitution of India provides that *"no person shall be deprived of his life or personal liberty except according to procedure established by law".* It has been settled by a Constitution Bench of this Court in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2), CrPC and the safeguard of 'default bail' contained in the Proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law.

17.2 Under Section 167 of the Code of Criminal Procedure, 1898 ('1898 Code') which was in force prior to the enactment of the CrPC, the maximum period for which an accused could be remanded to custody, either police or judicial, was 15 days. However, since it was often unworkable to conclude complicated investigations within 15 days, a practice arose wherein investigative officers would file 'preliminary chargesheets' after the expiry of the remand period. The State would then request the magistrate to postpone commencement of the trial and authorize further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final chargesheet was filed. The Law Commission of India in Report No. 14 on *Reforms of the Judicial Administration* (Vol. II, 1948, pages 758760) pointed out that in many cases the accused were languishing for several months in custody without any final report being filed before the Courts. It was also pointed out that there was conflict in judicial opinion as to whether the magistrate was bound to release the accused if the police report was not filed within 15 days.

17.3 Hence the Law Commission in Report No. 14 recommended the need for an appropriate provision specifically providing for continued remand after the expiry of 15 days, in a manner that *"while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual."* Further, that the legislature should prescribe a maximum time period beyond which no accused could be detained without filing of the police report before the magistrate. It was pointed out that in England, even a person accused of grave offences such as treason could not be indefinitely detained in prison till commencement of the trial.

17.4 The suggestion made in Report No. 14 was reiterated by the Law Commission in Report No. 41 on *The Code of Criminal Procedure, 1898* (Vol. I, 1969, pages 76-77). The Law Commission re-emphasized the need to guard against the misuse of Section 344 of the 1898 Code by filing 'preliminary reports' for remanding the accused beyond the statutory period prescribed under Section 167. It was pointed out that this could lead to serious abuse wherein *"the arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner."* Hence the Commission recommended fixing of a maximum time limit of 60 days for remand. The Commission considered the reservation expressed earlier in Report No. 37 that such an extension may result in the 60 day period becoming a matter of routine. However, faith was expressed that proper supervision by the superior Courts would help circumvent the same.

17.5 The suggestions made in Report No. 41 were taken note of and incorporated by the Central Government while drafting the Code of Criminal Procedure Bill in 1970. Ultimately, the 1898 Code was replaced by the present CrPC. The Statement of Objects and Reasons of the CrPC provides that the Government took the following important considerations into account while evaluating the recommendations of the Law Commission:

> "3. The recommendations of the Commission were examined carefully by the Government, keeping in view among others, the following basic considerations:
>
> (i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;
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> (ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and
>
> (iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community."

17.6 It was in this backdrop that Section 167(2) was enacted within the present day CrPC, providing for time limits on the period of remand of the accused, proportionate to the seriousness of the offence committed, failing which the accused acquires the indefeasible right to bail. As is evident from the recommendations of the Law Commission mentioned supra, the intent of the legislature was to balance the need for sufficient time limits to complete the investigation with the need to protect the civil liberties of the accused. Section 167(2) provides for a clear mandate that the investigative agency must collect the required evidence within the prescribed time period, failing which the accused can no longer be detained. This ensures that the investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This also ensures that the Court takes cognizance of the case without any undue delay from the date of giving information of the offence, so that society at large does not lose faith and develop cynicism towards the criminal justice system.

17.7 Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three Judge Bench of this Court in Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67, which laid down certain seminal principles as to the interpretation of Section 167(2), CrPC though the questions of law involved were somewhat different from the present case. The questions before the three Judge Bench in Rakesh Kumar Paul were whether, firstly, the 90 day remand extension under Section 167(2)(a)(i) would be applicable in respect of offences where the maximum period of imprisonment was 10 years, though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under Section 167(2) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90 day limit is only available in respect of offences where a minimum ten year imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in lieu of a written application. This was based on the reasoning that the Court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows:(SCC pp.95-96 & 99, paras 29, 32 & 41)

> "29. Notwithstanding this, the basic legislative intent of completing investigations within twenty four hours and also within an otherwise time bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete investigations, the legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a prolonged or indefinite period. It is for this reason and also to hold the investigating

> agency accountable that time limits have been laid down by the legislature....
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> 32. ......Such views and opinions over a prolonged period have prompted the legislature for more than a century to ensure expeditious conclusion of investigations so that an accused person is not unnecessarily deprived of his or her personal liberty by remaining in prolonged custody for an offence that he or she might not even have committed. In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned counsel for the State.
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> 41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court." (emphasis supplied).
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> Therefore, the Courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21.

17.8 We may also refer with benefit to the recent judgement of this Court in *S. Kasi v. State Through The Inspector of Police Samaynallur Police Station Madurai District* (Criminal Appeal No. 452 of 2020 dated 19 th June, 2020), 2020 SCC OnLine SC 529, wherein it was observed that the indefeasible right to default bail under Section 167(2) is an integral part of the right to personal liberty under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasized that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge-sheet.

> 17.9 Additionally, it is well settled that in case of any ambiguity in the construction of a penal statute, the Courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.
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> 17.10 With respect to the CrPC particularly, the Statement of Objects and Reasons (supra) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the three fold objectives expressed by the legislature namely ensuring a fair trial, expeditious investigation and trial, and setting down a rationalized procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21.
>
> 17.11 Hence, it is from the perspective of upholding the fundamental right to life and personal liberty under Article 21 that we shall clarify and reconcile the various judicial interpretations of Section 167(2) for the purpose of resolving the dilemma that has arisen in the present case.

(emphasis supplied)

19. The aforesaid exposition indicates that the Supreme Court, construing the right to default bail as a manifestation of the constitutional guarantee under Article 21, has, in terms, observed that section 167(2) of the Code is nothing but a legislative exposition of the constitutional safeguard that, no person shall be detained except in accordance with rule of law.

20. The Supreme Court has exposited in a clear terms that

section 167(2) has to be interpreted by keeping in mind the three-fold objectives expressed by the legislature namely ensuring a fair trial, expeditious investigation and trial, and setting down a rationalized procedure that protects the interests of indigent sections of society. Those objects are subsets of the overarching fundamental right guaranteed under Article 21.

21. What is of salience is the enunciation by the Supreme Court that the practical application of the mandate contained in section 167(2) of the Code, in a given case, should be informed by the spirit of imperativeness of upholding the fundamental right to life and personal liberty under Article 21.

22. In the case at hand, the central issue that come to the fore is whether the action of the investigating officer of including the name of the applicant as an accused, who is sent for trial, by seeking correction in the charge-sheet beyond the stipulated period of 60 days, constitutes an endevour to defeat the statutory right to bail. Since this endevour of the investigating officer had the imprimatur of the learned Special Judge, the question of the correctness of the said approach also warrants consideration.

23. It has been judicially recognized that once the period of detention expired, sans charge-sheet having been lodged, and the accused manifested the intent to avail the right by making an application, no subterfuge to defeat the indefeasible right can be countenanced. The factors like the bail application was not decided or wrongly decided or subsequently charge-sheet came to be filed or a report seeking extension of period of detention came to be filed and allowed, are of no significance. Such attempts of defeating the indefeasible right have been consistently repelled by the Courts.

24. A profitable reference, in this context, can be made to a three Judge Bench judgment of the Supreme Court in the case of **Mohamed Iqbal Madar Sheikh and Others vs. State of Maharashtra**[2] wherein the Supreme Court directed that the statutory right should not be defeated by keeping the applications pending till the charge-sheets are submitted, so that the right, which had accrued, is extinguished and defeated. The following observations of the Supreme Court are material and, hence, extracted below:

> 12. During hearing of the appeal, it was pointed out by the counsel appearing on behalf of the appellants that some courts in order to defeat the right of the accused to be released on bail under proviso (a) to Section 167(2) after expiry of the statutory period for completion of the investigation, keep the applications for bail pending for some days so that in the meantime,

2 (1996) 1 Supreme Court Cases 722.

charge-sheets are submitted. Any such act on the part of any court cannot be approved. If an accused charged with any kind of offence, becomes entitled to be released on bail under proviso (a) lo Section 167(2) that statutory right should not be defeated by keeping the applications pending till she charge-sheets are submitted, so that the right which had accrued is extinguished and defeated. ....

(emphasis supplied)

25. Recently, in the case of **Bikramjit Singh vs. State of Punjab**[3] the legal position was reiterated in the following words:-

> 36. A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted.

(emphasis supplied)

26. In the light of the aforesaid enunciation of law, especially in the cases of **M. Ravindran** (supra) and **Bikramjit Singh** (supra), once the twin conditions of default in filing the charge-sheet within the prescribed period and the action on the part of the accused to avail the right are satisfied, the statutory right under section

3 (2020) 10 Supreme Court Cases 616.

167(2) of the Code catapults into a fundamental right as the further detention falls foul of the personal liberty guaranteed under Article 21 of the Constitution of India.

27. Reverting to the facts of the case, keeping in view the aforesaid legal conspectus, the thrust of the submission on behalf of the prosecution seems that it was a bonafide mistake on the part of the investigating officer in not including the name of the applicant while lodging the charge-sheet. Inadvertence is writ large as the name of the co-accused Shilratna Mane, was twice mentioned instead that of the applicant. Since the investigation was complete within the stipulated period, in no case, right to default bail would accrue.

28. I would deal with the submission of bonafide mistake a little later. I am, however, not impelled to accede to the submission on behalf of the prosecution that the factum of completion of investigation within the statutory period, by itself, obviates the application of the proviso to sub section 167(2) of the Code and the detention becomes authorized. To say so, the litmus test of completion of investigation and thereby sustain further detention of an accused beyond the prescribed period is the act of lodging of the

charge-sheet. Mere completion of investigation, without a positive manifestation thereof in the nature of the lodging the final report under section 173 of the Code, is of no consequence. Moreover, the charge-sheet is also required to be lodged in a Court which is competent to take cognizance of the offences. Filing of charge-sheet in a Court, which is not otherwise competent to take cognizance of the offence, cannot be construed to be a curable irregularity and thereby dis-entitle the accused from the right to default bail.

29. In the case at hand, what is of critical significance is the fact that on 18th February, 2022, the 61st day of the detention of the applicant, the applicant professed to avail the right to default bail asserting that charge-sheet was not lodged against him. As noted above, the Superintendent of the Court made an endorsement on the application that charge-sheet was lodged on 17th February, 2022 against two of the co-accused only. On that day, indisputably the applicant was not the person who was sent for trial.

30. The learned Additional Session Judge, it seems, did not advert to the aforesaid aspect of the matter. The application was rejected on the premise that charge-sheet was within the statutory period. It is not the case that till the rejection of the first application on 18th

February, 2022, the investigating officer had moved for inclusion of the name of the applicant. Such application came to be preferred on 21st February, 2022, before which the learned Additional Sessions Judge had already negatived the prayer of the applicant for default bail.

31. Had the applicant not professed to avail the right to be released on bail on 61st day of the detention and the name of the applicant came to be included in the charge-sheet, by way of correction or otherwise, and subsequent thereto, the applicant had applied for default bail, different considerations would have come into play. Evidently, on the 61st day, when the applicant sought to enforce his statutory right to bail, there was no charge-sheet against him. Rejection of the application at that moment by the learned Additional Session Judge appeared to be without justifiable reason.

32. The prosecution's stand based on a bonafide error, deserves to be appreciated in the light of the hard and incontrovertible fact that on the date of the rejection of the application, there was no charge-sheet against the applicant. That brings in the element of the approach to be adopted.

33. In my considered view, it would be taking a formalistic view of the matter, if the Court were to construe, the act of seeking correction in the charge-sheet by incorporating the name of the applicant as a bonafide error and relate the same back to the date of the lodging of the charge-sheet. Such a view would trample upon the indefeasible right, which accrued to the applicant, in the intervening period, and which he had promptly availed on the 61st day of the detention.

34. To put it in other words, the submission on behalf of the prosecution that incorporating the name of one and the same co-accused twice was apparently a bonafide and inadvertent mistake, at the first blush, appears alluring. However, the said submission, if considered through the perspective of constitutional guarantee, does not merit countenance. The said submission can only be accepted by consciously ignoring the facts that on 61st day no charge-sheet was lodged against the applicant, the applicant availed the right to default bail by filing an application and the learned Additional Session Judge incorrectly negatived such prayer. In my view, it would be legally impermissible to do so.

35. The upshot of the aforesaid discussion and consideration is

that the applicant deserves to be released on bail.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant Nandlal Singh Kesar Singh be released on bail in connection with C.R. No. 308 of 2019 registered with Barshi City police station, Solapur on furnishing a P.R. Bond in the sum of Rs. 50,000/- (Fifty Thousand) with one or two sureties in the like amount, to the satisfaction of learned Additional Sessions Judge, Barshi.

3] The applicant shall remain within the jurisdiction of learned Sessions Judge, Barshi and shall not leave the area without prior permission of the learned Sessions Judge, for a period of six months from the date of his release.

4] The applicant shall attend Barshi City police station on first Monday of every month in between 10 am to 12 noon for a period of six months and thereafter once in a three months i.e. first Monday of January, April, July and October of each year till the conclusion of the trial.

5] The applicant shall give the details of his address where he would stay during the period of first six months after his release and the place at which he would reside after the said period, to the Police Inspector, Barshi City police station.

6] The applicant shall surrender his passport before the learned Additional Sessions Judge, Barshi. If the applicant does not hold the passport, he shall file affidavit to that effect before the learned Additional Sessions Judge.

7] The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses and shall not try to establish communication with any of the co-accused.

8] The applicant shall regularly attend the proceedings before the jurisdictional Court.

All the parties to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)