

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.994 OF 2022**

Adnan Misbahuddin Khan & Anr. .. Petitioners

Versus

The State of Maharashtra & Anr. .. Respondents

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Ms.Anjali Awasthi for the Petitioners.

Ms.A.A.Takalkar, A.P.P. for the State/Respondent.

Mr.Jigar Agarwal for the Intervenor.

PSI Shri D.S.Salve attached to Mankhurd Police Station,
present.

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**CORAM: BHARATI DANGRE, J.
DATED : 17th JUNE, 2022**

P.C:-

1. By the present writ petition, the petitioners have called in question the order passed by the Metropolitan Magistrate, 52nd Court, Kurla, Mumbai in C.C.No.5200525/PW/2022, thereby rejecting the application seeking default bail under Section 167(2) of the Criminal Procedure Code (for short, “**the Cr.P.C.**”) by holding that the charge-sheet is produced before the Court firstly and, thereafter, the bail application was filed and, therefore, it cannot be said that the accused have availed the right available to them, under the provision.

2. The sequence of events relevant to decide the entitlement of the petitioners for default bail is noted as under:-

The petitioners were arraigned as accused in a crime, invoking Sections 420, 504, 506 read with Section 34 of the IPC and they came to be arrested on 30/12/2021. On the first remand, which took place on the very same date, they were remanded to judicial custody and continued to remain in the said custody. The petitioners preferred bail application before the Sessions Court, which came to be rejected on 05/02/2022.

The petitioners contend that they filed default bail application on 28/02/2022 before the learned Magistrate, since the prosecution has failed to file the charge-sheet within the period of 60 days from the date of first remand, and claimed their entitlement for default bail.

3. The learned counsel Ms.Anjali Awasthi would vehemently submit that on the said date, the Advocate for the petitioners reached the court room to file the application for default bail at around 10.50 a.m., but was orally instructed to mention the matter before the learned Magistrate. When the matter was mentioned before the learned Magistrate, he directed the application to be placed before him, when it was

mentioned at 11.02 a.m.. It is argued that the concerned Advocate waited for his turn and at 11.50 a.m., the Magistrate passed an order on the default bail application, calling say of the Public Prosecutor and Judicial Clerk. At that time, police constable of Mankhurd Police Station went to the office of the Judicial Clerk and instead of filing say on default bail application, he gave charge-sheet to the Judicial Clerk of Court Room No.57 at 12.30 p.m. The Magistrate was informed that the charge-sheet was already filed. The Court refused to entertain the bail application on the ground that the charge-sheet is filed and this is an erroneous approach is the submission of Advocate Awasthi. By canvassing that indefeasible right is vested in the accused, if the charge-sheet is not filed on expiry of period of 60 days, she would submit that the order passed by the learned Magistrate is invalid.

4. In contrast, the learned A.P.P. Ms.Takalkar and Advocate Jigar Agarwal for the informant, would give a different version. Their argument, is to the effect that the charge-sheet was filed earlier and the application was filed later and, therefore, it cannot be said that the petitioners have availed of the indefeasible right accruing to them, which is enforceable only prior to filing of charge-sheet and it does not survive or

remain enforceable on the challan being filed, if it is not already availed of.

5. I have considered the respective submissions and perused the impugned order. In paragraph 13 of the order, the learned Magistrate has recorded the events, which occurred in his Court in the following words :-

“13. In this case the Learned Counsel for the accused went to the Registry (Clerk of the Court) of this Court at 11.00 a.m. on 28.02.2022, for presentation of bail application under section 167 of the Criminal Procedure Code. However, the concerned clerk told the Learned Counsel for the applicant to present the application directly before the Court. Thereafter, Learned Counsel for the accused appeared before the Court for filing his bail application under provisions of section 167 of the Criminal Procedure Code. However, at 11.00 a.m. daily board of ready and unready cases was called and the Learned Counsel for the accused could not submit his application before the Court directly. However, he was present before the Court at the time of calling of daily board. The concerned Police Constable of Mankhurd Police Station submitted charge-sheet for signature of the Court. This Court put signature on the charge-sheet and sent it for registration. Thereafter, the Learned Counsel for the accused submitted his bail application. Therefore, the bail application and charge-sheet both were submitted before this Court at the same time. If, this fact is considered, then the charge-sheet is filed before the Court before filing of bail application by the Learned Counsel of the accused. However, it is the fact that the Learned Counsel for the accused was present before the Court registry of this

Court at 11.00 a.m. for filing of his bail application. His application was not accepted by the concerned clerk and he was directed to present the bail application directly before the Court. Therefore, Learned Counsel for the accused presented the bail application at 12.20 p.m. before the Court. The charge-sheet was filed at 12.00 p.m.”

6. It is further recorded in the order that after filing of the application, the Court called say of the Judicial Clerk and the A.P.P. and the Judicial Clerk filed his/her say that the charge-sheet is already filed before the Court and, therefore, the learned Magistrate recorded as under :-

“Therefore, it is clear that charge-sheet was filed firstly and thereafter, the Learned Counsel for the accused filed the bail application before the Court.”

7. The learned counsel for the accused filed the bail application at 12.20 p.m. whereas the charge-sheet is filed at 12.00 a.m. and after filing of the charge-sheet, the right of default bail of the accused is extinguished, is the finding recorded by the learned Magistrate.

There is no reason to disbelieve the learned Magistrate, who has clearly recorded the sequence of events in the impugned order. I have also perused the record which would

reveal that on the application seeking default bail, the learned Magistrate had called for say of the Judicial Clerk and the A.P.P., who had clearly endorsed as under :-

“On perusal of record it seems that the Judicial Clerk filed charge-sheet today and the accused has filed bail application under Section 167 of Cr.P.C., but already charge-sheet is filed and the offence is non-bailable and the amount involved in the matter is huge and, therefore, the application is not tenable as there is no ground to consider default bail and, therefore, application be kindly rejected.”

8. The law on Default Bail is crystallized in the latest judgment of the Hon'ble Supreme Court in the case of *M.Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence*¹ and while construing the scope of Section 167(2) of the Cr.P.C. and recognising the indefeasible right to default bail under Section 167(2), Their Lordships have considered the said right as an integral part of right to personal liberty under Article 21 of the Constitution. By deliberating upon the earlier pronouncements, it has been reiterated that once the accused files the application for bail under the proviso of Section 167(2), he is deemed to have “availed of” or enforced

¹ (2021) 2 SCC 485

his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail notwithstanding pendency of the bail application; or subsequent filing of the charge-sheet or a report seeking extension of time by the prosecution before the Court; or filing of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court. It is categorically held that the accused is deemed to have exercised his right to default bail under Section 167(2) of the Cr.P.C., the moment he files the application for bail and offers to abide by the terms and conditions of the bail.

The law, being crystallized to the above effect, has to be applied, considering the facts involved.

9. In the present case, it is noticed by the learned Magistrate that the application for default bail has been filed subsequent to the filing of the charge-sheet, and, since the disputed question of fact cannot be gone into, the finding rendered by the learned Magistrate on the factual aspect not being shown to be perverse, does not warrant any interference.

Accordingly, the impugned order is upheld, and the writ petition is rejected.

(SMT. BHARATI DANGRE, J.)