In the High Court of Punjab and Haryana at Chandigarh

CRR- 2269 of 2022
Date of Decision: 17.02.2023

Mukesh Kumar

---Petitioner

versus

State of Haryana

---Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Anshuman Dalal, Advocate
for the petitioner

Mr. Gurbir Singh Sidhu, AAG, Haryana

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JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition is seeking setting aside of order dated 12.10.2022 whereby Additional Sessions Judge, Jhajjar has dismissed application of the petitioner seeking permission to furnish bail bonds and surety bonds.

2. The brief facts emerging from record and arguments of both sides are that on the basis of statement of Satish Kumar, FIR No. 322 dated 5.8.2022, under Sections 354, 376-AB, 506 IPC and Sections 6 & 10 of POCSO Act, and Section 3(2)(v) of SC/ST Act (at Police Station, Beri) came to be registered against the petitioner. The petitioner was arrested on 08.08.2022 and remanded to police custody for one day. The petitioner was sent to judicial custody on 09.08.2022.

3. The police failed to file its report in terms of Section 173(1A) Code of Criminal Procedure (for short "the Code") within 60 days from the date of judicial remand of the petitioner. The petitioner moved an

application seeking default bail in terms of Section 167(2) of the Code. The regular Judge was on leave and the matter came up for consideration before Duty Judge, who after seeking report of Ahlmad, came to a conclusion that police has not filed its report within sixty days, in terms of Section 173(1A) of the Code. The Duty Judge vide order dated 10.10.2022 allowed application of the petitioner seeking default bail in terms of Section 167(2) Cr.P.C. and directed the petitioner to furnish bail bonds with two sureties forthwith. The petitioner appended one surety bond duly identified by counsel alongwith his application under Section 167(2) of the Code. The petitioner filed another surety bond, however, he was not released on bail.

4. The petitioner on 11.10.2022 moved an application seeking permission for furnishing bail bonds and surety bonds and State filed application under Section 439(2) of the Code seeking cancellation of default bail. Both the applications came up for consideration before regular Judge who vide impugned order dated 12.10.2022 dismissed application of the petitioner as well of the State. Learned Additional Sessions Judge (Exclusive Court), Jhajjar while passing impugned order observed that there is amendment in Section 173 of the Code, which enjoins police authorities to file challan within sixty days in case of offences punishable under Sections 376, 376-AB, 376B, 376D of IPC etc., however, there is no amendment in Section 167 IPC providing for default bail, thus, petitioner is not entitled to default bail.

5. Learned counsel for the petitioner inter alia contends that it is settled proposition of law that no provision of a Statute can be read in such a way which would make it redundant. The interpretation made by trial Court

of Section 173 (1A) of the Code has made the provision redundant if petitioner is not released on bail in case of non-filing of challan within sixty days. He further submits that learned trial court had no power to cancel bail which was granted by his predecessor in terms of Section 167(2) IPC.

In support of his contention, learned counsel relies upon five Judge bench judgment of Hon'ble Supreme Court in **Nathi Devi vs. Radha Devi Gupta (2005) 2 SCC 271,** a three Judge bench judgment of Hon'ble Supreme Court **J.K. Cotton Spinning and Weaving Mills Company Limited vs. State of UP and others (1961) 3 SCR 185** and a Single Judge judgment of this court in **Jatinder Singh alias Happy vs. The State of Punjab (CRR-1718 of 2021).**

The relevant extracts of the judgments as pointed out and relied upon by petitioner read as:

> ***Nathi Devi vs. Radha Devi Gupta***
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> *"13. The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or*

unreasonableness which may render the statute unconstitutional.

14. It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors. (See State of U.P. and others vs. Vijay Anand Maharaj: AIR 1963 SC 946 ;Rananjaya Singh vs. Baijnath Singh and others: AIR 1954 SC 749 ;Kanai Lal Sur vs. Paramnidhi Sadhukhan: AIR 1957 SC 907;Nyadar Singh vs. Union of India and others: AIR 1988 SC 1979 ;J.K. Cotton Spinning and Weaving Mills Co. Ltd. vs. State of U.P. : AIR 1961 S.C. 1170 and Ghanshyam Das vs. Regional Assistant Commissioner, Sales Tax: AIR 1964 S.C. 766).

15. It is well settled that literal interpretation should be given to a statute if the same does not lead to an absurdity.

J.K. Cotton Spinning and Weaving Mills Company Limited vs. State of UP and others

7. To remove this incongruity, says the learned Attorney- General, apply the rule of harmonious construction and hold that Clause 23 of the order has no application when an order is made on an application under C. 5(a). On the assumption that under Clause. 5(a) an employer can raise a dispute sought to be created by his own proposed order of dismissal of workmen there is clearly this disharmony as pointed out above between two provisions viz., Clause. 5(a) and C. 23; and undoubtedly we have to apply the rule of harmonious construction. In applying the rule however we have to remember that to harmonise is not to destroy. In the interpretation of statutes the courts, always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every *part of the statute should have effect. These presumptions will have to be made in the case of rule making authority also. On the construction suggested by the learned Attorney-General it is obvious that by merely making an application under Clause 5(a) on the allegation that a dispute has arisen about the proposed action to dismiss workmen the employer can in every case escape the requirements of Clause 23 and if for one reason or other every employer when proposing a dismissal prefers to proceed under Clause 5(a) instead of making an application under C. 23, Clause 23 will be a dead letter. A construction like this which defeats the intention of the rule making authority in Clause 23 must, if possible, be avoided.*

Jatinder Singh alias Happy vs. The State of Punjab.

8. The question which emerges for determination is as to whether the right of an accused to be released on bail under sub-section (2) of Section 167 CrPC would stand extinguished merely on account of failure of the accused to furnish the bail bonds.

14. A perusal of the aforesaid judgment shows that in order to extinguish the right accrued in favour of an accused under Section 167(2) CrPC, the accused must fail to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court. A perusal of the order dated 16.11.2021 (Annexure P-1) granting concession of bail under Section 167(2) CrPC to the petitioner shows that no such time-frame for furnishing bail bonds had been prescribed by the Judge, Special Court, SBS Nagar. It cannot thus be construed that the accused committed a default in *complying with the terms and conditions of the order of bail within the specified time schedule."*

6. Learned State Counsel supporting impugned order submitted that petitioner is involved in the commission of heinous crime and ASJ, Jhajjar has rightly dismissed claim of the petitioner. Duty judge was mis-led by the petitioner and accordingly order under Section 167(2) came to be passed. The interpretation of Section 173(1A) should not be made in such a manner that period prescribed under Section 167 becomes otiose.

7. With the able assistance of Learned counsel for the parties, I have scrutinised the record and heard arguments of both sides.

8. From the pleadings and arguments, following questions arise for the consideration of this court:

i) Whether non-filing of police report in terms of Section 173(1A) of Cr.P.C. would make an accused entitled to default bail in terms of Section 167(2) of Cr.P.C.?

ii) Whether bail once granted in terms of Section 167(2) of Cr.P.C. can be denied on the ground of non-furnishing of bail/surety bonds on the same day?

9. Before dwelling into the issue involved, it would be apt to have bird's eye view of the relevant statutory provisions. Entire controversy revolves around interpretation of Sections 173, 167 and 309 of the Code, thus relevant extracts of these Sections are reproduced as under:-

173. ***Report if police officer on completion of investigation.- (1)****Every investigation under this Chapter shall be completed without unnecessary delay.*

(1A) *The investigation in relation to an offence under sections 376,*

376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code (45 of 1860) shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.

(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;
(b) the nature of the information;
(c) the names of the persons who appear to be acquainted with the circumstances of the case;
(d) whether any offence appears to have been committed and, if so, by whom;
(e) whether the accused has been arrested;
(f) whether he has been released on his bond and, if so, whether with or without sureties;
(g) whether he has been forwarded in custody under section 170.
(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, or 376E of the Indian Penal Code.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given.

Section 167

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 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;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remain 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 paragraph (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 18 years of age, the detention shall be authorised to be in the custody of remand home or recognized social institution.

<u>Section 309(1), (2)</u>

*309. **Power to postpone or adjourn proceedings**.-(1) In every inquiry or trial, the proceedings shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.*

Provided that when the enquiry or trial relates to an offence under Section 376, Section 376A, Section 376 AB, Section 376B, Section 376 C, Section 376 D, Section 376 DA or Section 476 DB of the Indian Penal Code (45 of 1860), the enquiry or trial shall be completed within a period of two months from the date of filing of the charge sheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that-

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that pleasure of a party is engaged in another Court, shall not be a ground of adjournment'

(c)where a witness is present in Court but a party or his pleasure is not present or the party or his pleasure

> *though present in Court, is not ready to examine or cross examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross examination of the witness, as the case may be.*
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> *Explanation 1.- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.*
>
> *Explanation 2.- The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.*

From the reading of above quoted sections, it comes out that in view of Article 22 of Constitution of India read with Section 167 and 57 of the Code, police is supposed to produce before Magistrate every accused within 24 hours from the time of arrest. Magistrate may grant police custody of the accused or may release him on bail or send to judicial custody. In case Magistrate decides to send to custody, the maximum period of custody in terms of Section 167 of the Code cannot be more than 90 days where investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. In other cases, maximum custody period can be 60 days. On the expiry of period of 90/60 days, an accused is entitled to be released on bail if investigation report is not filed and if he is prepared to and does furnish bail.

Section 173 of the Code provides that police shall complete investigation without delay. Sub-Section (1A) provides for completion of investigation within two months qua offences jotted down therein.

Section 309 comes into play as soon challan is presented. An accused is remanded to judicial custody in terms of sub-section (2) of Section 309 of the Code.

10. Time and again different benches of Hon'ble Supreme Court have laid down following principles for interpretation of statutes:

> *(1) A section has to be construed in entirety and not of one part only and further there should be no attempt to recognize words which are surplusage. AIR 1960 SC 122 Relied.*
> *(2) For determining the purpose of legislation, it is permissible to look into the circumstances which were prevalent at that time when the law was enacted and which necessitated the passing of that enactment. 1992 Supp.(2) SCC 351 Relied.*
> *(3) Where a purposive construction is conceived of or the said principle is sought to be applied, the context becomes an important and influential aspect and when one tries to understand the legislative intention, the meaning from the exposition of the purpose or the effort to have the remedy through the enactment has to be appositely perceived - AIR 1957 SC 832 Relied.*
> *(4) When two constructions are reasonably possible, preference should go to one which helps to carry out the beneficent purpose of the Act and that apart, the said interpretation should not unduly expand the scope of a provision.*
> *(5) It two constructions are possible then the Court must adopt that which will ensure smooth and harmonious working of the*

Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory. AIR 1966 SC 1987 Relied.

(6) It is permissible for courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile.

(7) The duty of Judges is to expound and not to legislate is a fundamental rule. There is, no doubt, a marginal area in which the courts mould or creatively interpret legislation and they are thus finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing. (2001)4 SCC 139 Relied.

(8) By no stretch of imagination a Judge is entitled to add something more than what is there in the statute by way of a supposed intention of the legislature. (1975)2 SCC 810 Relied.

(9) The preamble is not to influence the meaning otherwise ascribable to the enacting parts unless there is a compelling reason for it.

(10) If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow, but if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. (1979)2 SCC 34 Relied.

(11) The Court should not consider any provision out of the

framework of the statute and not view the provisions as abstract principles separated from the motive force behind. (1988)3 SCC 609 Relied.

(12) If the words of statute are clear, there is no question of interpretation and in that context, grammatical construction is required to be accepted as the golden rule. (1986)3 SCC 38 Relied.

(13) While interpreting a social welfare or beneficent legislation one has to be guided by the 'colour', 'content' and the 'context of statutes' and if it involves human rights, the conceptions of Procrustean justice and Lilliputtian hollowness approach should be abandoned - 1995(4) SCT 720 Relied.

(14) If an interpretation is likely to cause inconvenience, it should be avoided, and further personal notion or belief of the Judge as regards the intention of the makers of the statute should not be thought of and, needless to say, for adopting the purposive approach there must exist the necessity. AIR 1957 SC 628 Relied.

(15) Where two or more words susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. They take, as it were, their colour from and are qualified by each other, the meaning of the general word being restricted to a sense analogous to that of the less general. Principle of 'noscitur a sociis' i.e. meaning of word from associated word would be applicable. Godfrey Phillips India Ltd. (2005) 2 SCC 515-Constitution bench.

11. A three judge bench of Hon'ble Supreme Court in **P.T. Rajan v. T.P.M. Sahir (2003) 8 SCC 498** has laid down principles to determine whether a provision is mandatory or not. Relevant extracts read:

Principles as to whether a statute is mandatory or directory

45. *A statute as is well known must be read in the text and context* *thereof. Whether a statute is directory or mandatory would not be dependent on the user of the words "shall" or "may". Such a question must be posed and answered having regard to the purpose and object it seeks to achieve.*

46. *What is mandatory is the requirement of sub-section (3) of Section 23 of the 1950 Act and not the ministerial action of actual publication of Form 16.*

47. *The construction of a statute will depend on the purport and object for which the same had been used. In the instant case the 1960 Rules do not fix any time for publication of the electoral rolls. On the other hand Section 23(3) of the 1950 Act categorically mandates that direction can be issued for revision in the electoral roll by way of amendment in inclusion and deletion from the electoral roll till the date specified for filing nomination. The electoral roll as revised by reason of such directions can therefore be amended only thereafter. On the basis of direction issued by the competent authority in relation to an application filed for inclusion of a voter's name, a nomination can be filed. The person concerned, therefore, would not be inconvenienced or in any way be prejudiced only because the revised electoral roll in Form 16 is published a few hours later. The result of filing of such nomination would become known to the parties concerned also after 3.00 p.m.*

48. *Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature.* ***It is a well-settled principle of law that where a statutory functionary is***

asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. *(See Shiveshwar Prasad Sinha v. District Magistrate of Monghyr [AIR 1966 Pat 144 : ILR 45 Pat 436 (FB)], Nomita Chowdhury v. State of W.B. [(1999) 2 Cal LJ 21] and Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana [(1997) 1 CHN 189].)*

49. *Furthermore, a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused. (See Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur [AIR 1965 SC 895 : (1965) 1 SCR 970] , State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] , Venkataswamappa v. Special Dy. Commr. (Revenue) [(1997) 9 SCC 128] and Rai Vimal Krishna v. State of Bihar [(2003) 6 SCC 401] .)*

50. *The Court cannot, it is trite, supply casus omissus. Reference in this regard may be made to Baliram Waman Hiray (Dr) v. Justice B. Lentin (1988) 4 SCC 419 wherein it was observed:*

> *"27. Law must be definite, and certain. If any of the features of the law can usefully be regarded as normative, it is such basic postulates as the requirement of consistency in judicial decision-making. It is this requirement of consistency that gives to the law much of its rigour. At the same time, there is need for flexibility. Professor H.L.A. Hart regarded as one of the leading thinkers of our time observes in his influential book 'The Concept of Law', depicting the difficult task of a judge to strike a balance between certainty and flexibility:*

'Where there is obscurity in the language of a statute, it results in confusion and disorder. No doubt the courts so frame their judgments as to give the impression that their decisions are the necessary consequence of predetermined rules. In very simple cases it may be so; but in the vast majority of cases that trouble the courts, neither statute nor precedents in which the rules are legitimately contained allow of only one result. In most important cases there is always a choice. The judge has to choose between alternative meanings to be given to the words of a statute or between rival interpretations of what a precedent amounts to. It is only the tradition that judges 'find' and do not 'make' law that conceals this, and presents their decisions as if they were deductions smoothly made from clear pre-existing rules without intrusion of the judge's choice.' "

(See also Kanta Devi v. Union of India [(2003) 4 SCC 753 : 2003 SCC (L&S) 592] .)

51. In Tarulata Shyam v. CIT (1977) 3 SCC 305*, it was held that if there be a casus omissus, the defect can be remedied only by legislation and not by judicial interpretation.*

***52.** Rule 22(1)(b) of the 1960 Rules cannot, therefore, be interpreted to mean that publication of the electoral roll must take place before the time of filing nomination and not thereafter.*

12. A two judge bench of Apex Court while adverting with mandatory nature of Section 44A inserted by Haryana Legislature in Punjab Town Improvement Act, 1922 in **Administrator, Municipal Committee**

Charkhi Dadri v. Ramji Lal Bagla, (1995) 5 SCC 272 has held that merely use of expression 'shall' does not make any provision mandatory unless consequences of its non-compliance are not provided. The relevant extracts read:

> *14. In our considered opinion, Section 44-A cannot be held to be mandatory in the sense that non-compliance with it leads to nullification of the acquisition which has already become final. Such non-compliance cannot also result in divesting of title of the trust nor is there any obligation to restore the unutilised portion(s) of land to its erstwhile owners/persons interested. The reasons are the following:*
>
> *(a) The section while using the expression 'shall' does not provide the consequence of non-compliance with its requirement. One of the well-accepted tests for determining whether a provision is directory or mandatory is to see whether the enactment provides for the consequence flowing from non-compliance with the requirement prescribed. (State of U.P. v. Manbodhan Lal Srivastava [AIR 1957 SC 912 : (1958) 2 LLJ 273] .) The proviso to Section 44-A empowers the Government to extend the said period. The proviso does not prescribe the outer limit beyond which extension cannot be granted. Nor does it indicate in any manner that the said power can be exercised by the Government only once and no more.*
>
> *15. A question may then arise, why was the proviso put in at all? What is the purpose it seeks to achieve, if not to give a mandatory character to the requirement in the main limb of*

Section 44-A? Having regard to the totality of circumstances [including those mentioned under (b) and (c) occurring hereinafter] we are of the opinion that it appears to be a form of governmental control over those statutory bodies. If the trust does not execute the scheme within the period of five years — and the Government does not see sufficient reason to extend time therefor — the Government may take any of the steps contemplated by Chapter V-A, which chapter was introduced by the Haryana Legislature by the very same Amendment Act (17 of 1973) which introduced Section 44-A. Chapter V-A vests in the Deputy Commissioner the power of control over the trusts. Section 55-A empowers the Deputy Commissioner to call for information, statements, accounts and reports from the trusts and to enquire generally into their working and affairs. Section 55-B confers upon the Deputy Commissioner the power to suspend any resolution or order of the trust. More important, Section 55-C empowers the Deputy Commissioner to provide for performance of duties in case of default of the trust in performing its duties. Section 55-C reads as follows:

"55-C. Power to provide for performance of duties in case of default of trust.— (1) When the Deputy Commissioner after due enquiry, is satisfied that a trust has made default in performing any duty imposed on it by this Act, or by any order or rule made under this Act, he may, by an order in writing duly supported with reasons fix a period for the performance of the duty; and should it not be performed within the period so fixed,

he may appoint some person to perform it, and may direct that the expenses thereof shall be paid, within such time as he may fix, by the Trust.

(2) Should the expense be not so paid, the Deputy Commissioner may make an order directing the person having the custody of the balance of the trust fund to pay the expense, or so much thereof, as may from time to time be possible, from that balance in priority to all other charges against the same.”

16. The section is self-explanatory and needs no elaboration at our hands. Section 44-A has to be read and understood along with this section which means that the Deputy Commissioner will have to take action under Section 55-C, in case of the failure of the trust to execute the scheme within the period of five years. If the time is extended under the proviso and yet the trust fails to execute the scheme within the extended time, the Deputy Commissioner can—ought to—resort to Section 55-C. Sections 55-D and 55-E make the acts and orders of the Deputy Commissioner subject to Government's order. It, therefore, cannot be said that Section 44-A or its proviso have no purpose behind them or that they are a mere surplusage.

(b) The more important and substantial reason, of course, is that Section 44-A does not provide expressly or by necessary implication that non-compliance therewith results in nullification of the acquisition or in the divesting of title of the trust or that on such non-compliance, the land acquired has to be restored to its erstwhile owners/claimants. It does not also

provide, what should happen to the compensation already received by them. Evidently all these aspects could not have been left to be inferred. These are very vital matters and not matters of mere procedure. The divesting of title is a matter of substance and not a formality. So is the restoration of land, return of compensation received, interest, if any, to be paid on such returned amount, compensation for any development and improvements, if any, made on the land by the trust within the period aforesaid. Absence of any provision for the above matters, in our opinion, shows conclusively that the provision in Section 44-A is only directory notwithstanding the use of expression 'shall' therein. The said provision is meant to impress upon the trust and its authorities, the desirability of the time-frame within which the schemes should ordinarily be executed. But to construe the said admonition as leading to the consequences suggested by the respondents' counsel would amount not only to reading words into the section which are not there but to reading a whole lot of substantive and procedural provisions into it which the legislature has not thought fit to provide for. Acceptance of the contention urged by the learned counsel for the respondents would entail several complications and situations for which there is no provision in the Act. According to the learned counsel only the land which has not been utilised for the scheme is liable to be restored to its erstwhile owners, but not the land which has already been utilised. A question arises what is 'utilisation'? Suppose, a road *is laid and other amenities provided but the construction of buildings contemplated by the scheme has not taken place. Is it a case of utilisation or not? It may also happen that the nature and character of the land has been changed after acquisition. If so, the question arises whether the land has to be restored to its original owners in the condition in which it was acquired or in the condition in which it is on the expiry of the prescribed period or in the condition in which it is at the time of restoration. What about refund of compensation already received by the erstwhile owners? Whether they are liable to pay any interest thereon or whether they are entitled to any damages for the deprivation for the period they have been kept out of possession? These are only a few problems which may arise and are mentioned only to emphasise that not providing for all these matters is a sure indication of the provision in Section 44-A not being mandatory in the sense it is sought to be understood by the respondents.*

(c) Yet another feature to be noticed is the placement of the Section 44-A. It occurs in Chapter IV which provides for preparation and publication of the schemes under the Act. Chapter V speaks of powers and duties of the Trust where a scheme has been sanctioned and Chapter VI contains provisions relating to acquisition of land required for execution of the scheme and other incidental matters. If the legislature intended to say that failure to execute the scheme within the time prescribed in Section 44-A leads to nullification of

acquisition with all the attendant consequences, the section should have found its place in Chapter VI — and with specific and clearer language.

13. In the light of statutory provisions and law laid down by Hon'ble Supreme Court, questions raised by petitioner are hereby examined and answered.

Question No. (i): Whether non-filing of police report in terms of Section 173(1A) of Cr.P.C. would make an accused entitled to default bail in terms of Section 167(2) of Cr.P.C.?

Sole contention of the petitioner is that Section 173(1A) of the Code is a mandatory provision, thus, non-filing of police report in all offences which are jotted down in Section 173 (1A), would result into entitlement of an accused to default bail in terms of Section 167(2) of the Code. Any other interpretation would render the amendment redundant and it is settled proposition of law that no provision made by legislature can be interpreted by courts in such a manner which would make it redundant or otiose.

By Criminal Law Amendment Act, 2018, Union Legislature has carried out amendment in different Sections of IPC, POCSO Act, Evidence Act and Cr.P.C. Sole object of the amendment was to make penal provisions qua offences against women under the age of 16 years and 12 years more stringent and effective. Amendment of Section 173 of the Code was one of these amendments. Language of Section 173(1A) of the Code is plain and unambiguous. It provides that police shall file its report within 2 months from the date of registration of FIR.

As per petitioner, Sub-Section (1A) of Section 173 of the Code is a mandatory provision and if it is not held so, it would become redundant.

Contention of the petitioner at the first blush seems to be quite impressive and attractive whereas situation is entirely different. Sub-Section (1A) has been inserted to expedite filing of police report in case of crime against women and children. Its object is not to extend some benefit to the accused. As per petitioner, non-compliance of Section 173(1A) of the Code would entail indefeasible right of bail granted by Section 167(2) of the Code. If this contention of the petitioner is accepted, there are all possibilities for other accused to raise plea that police cannot file challan as soon as statutory period of 2 months expires. Section 173(1A) no doubt mandates police to file report within stipulated time but no consequence is provided either in Section 173 itself or any other provision of the Code or IPC. In the absence of amendment, the period of 60 or 90 days prescribed under Section 167 of the Code cannot be assumed to be curtailed. Section 167, in case of serious offences provides for 90 days period and all the offences contemplated under Section 173(1A) are indubitably serious offences. Thus, if interpretation as advanced by petitioner is accepted, it would amount to curtailing the period of 90 days prescribed under Section 167 for offences where sentence prescribed is 20 years or life. Amendment to Section 173 would prove bonanza for an accused instead of an obligation of police to expedite investigation to do justice with a victim. As per Section 173(1), it is duty of investigating officer to complete investigation at the earliest. Section 173(1A) of the Code is enjoining additional duty upon police officers to complete investigation whereas Section 167(2) provides for indefeasible right of bail, in case of non-filing of police report. For non-completion of investigation within prescribed period of 2 months, there may be so many reasons especially involvement of third agencies like medical staff, FSL etc. Thus, it would not be safe to conclude and hold that Section 173(1A) is mandatory and its non-compliance would result into creation of right of default bail in terms of Section 167(2) of the Code.

There is another angle of the matter. Section 173(1A) provides for completion of investigation within 2 months from the date of registration of FIR and period of 60/90 days prescribed under Section 167(2) comes into play after remand. It is not necessary that an accused is arrested on the date of registration of FIR. An accused may be arrested after the expiry of 2 months from the date of FIR. Therefore, in a given case, if an accused is not apprehended by police within 2 months from the registration of FIR, if contention of petitioner is accepted, the accused would be entitled to bail on the date of arrest. This situation demolishes edifice of the petitioner's argument.

In view of above facts and discussion, it is hereby held that non-filing of police report within 2 months as contemplated under Section 173(1A) would not make an accused eligible to default bail under Section 167(2) of the Code.

11. **Question No. (ii) Whether bail once granted in terms of Section 167(2) of Cr.P.C. can be denied on the ground of non-furnishing of bail/surety bonds on the same day?**

The petitioner has contended that duty judge granted bail on the expiry of 60 days from the date of remand, however, petitioner was not initially released on the ground of non-furnishing of bail bonds on the same day. No sooner did duty judge allowed application of the petitioner seeking default bail, the petitioner became entitled to bail and regular judge had no authority to decline to accept bail bonds. A co-ordinate bench of this court in **Jatinder Singh alias Happy (Supra)** after considering various judgments of Apex Court has lucidly enunciated that bail granted under Section 167(2) cannot be denied on the ground of non-furnishing of bonds forthwith. Thus, petitioner deserves to be released.

There is no quarrel with the proposition that right of default bail granted under Section 167(2) Cr.P.C. is an indefeasible right and it cannot be taken away on the ground of non-furnishing of bail bonds immediately. Requirement of Section 167(2) Cr.P.C. is only to avail right of default bail.

A three judge bench of Hon'ble Supreme Court speaking through Justice R.F. Nariman in ***Bikramjit Singh v. State of Punjab*, (2020) 10 SCC 616,** after noticing its earlier judgments, has adverted at length with the question of default bail and held:

> ***33.*** *In a fairly recent judgment reported as Rakesh Kumar Paul v. State of Assam [Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401] , a three-Judge Bench of this Court referred to the earlier decisions of this Court and went one step further. It was held by the majority judgment of Madan B. Lokur, J. and Deepak Gupta, J. that even an oral application for grant of default bail would suffice, and so long as such application is made before the charge-sheet is filed by the police, default bail must be granted. This was stated*

in Lokur, J.'s judgment as follows: (SCC pp. 98-99 & 101-102, paras 37-41, 45-47 & 49)

"37. This Court had occasion to review the entire case law on the subject in Union of India v. Nirala Yadav [Union of India v. Nirala Yadav, (2014) 9 SCC 457. In that decision, reference was made to Uday Mohanlal Acharya v. State of Maharashtra [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 and the conclusions arrived at in that decision. We are concerned with Conclusion (3) which reads as follows: [Union of India v. Nirala Yadav, (2014) 9 SCC 457], SCC p. 472, para 24:

'24. ..."13. (3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate." (Uday Mohanlal case [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453] , SCC p. 473, para 13)"

38. This Court also dealt with the decision rendered in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] and noted that the principle laid down by the Constitution Bench is to the effect that if the *charge-sheet is not filed and the right for "default bail" has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge-sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.*

39. This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to Mohd. Iqbal Madar Sheikh v. State of Maharashtra [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722] wherein it was observed that some courts keep the application for "default bail" pending for some days so that in the meantime a charge-sheet is submitted. While such a practice both on the part of the prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for "default bail" during the interregnum when the statutory period for filing the charge-sheet or challan expires and the submission of the charge-sheet or challan in court.

Procedure for obtaining default bail

40. In the present case, it was also argued by the learned counsel for the State that the petitioner did not apply for "default bail" on or after 4-1-2017 till 24-1-2017 on which date his indefeasible right got extinguished on the filing of the charge-sheet. Strictly speaking, this is correct since the petitioner applied for regular bail on 11-1-2017 in the Gauhati High Court — he made no specific application for grant of "default bail". However, the application for regular bail filed by the accused on 11-1-2017 did advert to the statutory period for filing a charge-sheet having expired and that perhaps no charge-sheet had in fact being filed. In any event, this issue was argued by the learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court [Rakesh Kumar Paul v. State of Assam, 2017 SCC OnLine Gau 573] did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the petitioner did not make any application for default bail — such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for "default bail" or an oral application for *"default bail" is of no consequence. The court concerned must deal with such an application by considering the statutory requirements, namely, whether the statutory period for filing a charge-sheet or challan has expired, whether the charge-sheet or challan has been filed and whether the accused is prepared to and does furnish bail.*

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.

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Application of the law to the petitioner

45. On 11-1-2017 Rakesh Kumar Paul v. State of Assam [Rakesh Kumar Paul v. State of Assam, 2017 SCC OnLine Gau 573] when the High Court dismissed the application for bail filed by the petitioner, he had an indefeasible right to the grant of "default bail" since the statutory period of 60 days for filing a charge-sheet had expired, no charge-sheet or challan had been filed against him (it was filed only on 24-1-2017) and the petitioner had orally applied for "default bail". Under *these circumstances, the only course open to the High Court on 11-1-2017 was to enquire from the petitioner whether he was prepared to furnish bail and if so then to grant him "default bail" on reasonable conditions. Unfortunately, this was completely overlooked by the High Court.*

46. It was submitted that as of today, a charge-sheet having been filed against the petitioner, he is not entitled to "default bail" but must apply for regular bail — the "default bail" chapter being now closed. We cannot agree for the simple reason that we are concerned with the interregnum between 4-1-2017 and 24-1-2017 when no charge-sheet had been filed, during which period he had availed of his indefeasible right of "default bail". It would have been another matter altogether if the petitioner had not applied for "default bail" for whatever reason during this interregnum. There could be a situation (however rare) where an accused is not prepared to be bailed out perhaps for his personal security since he or she might be facing some threat outside the correction home or for any other reason. But then in such an event, the accused voluntarily gives up the indefeasible right for default bail and having forfeited that right the accused cannot, after the charge-sheet or challan has been filed, claim a resuscitation of the indefeasible right. But that is not the case insofar as the *petitioner is concerned, since he did not give up his indefeasible right for "default bail" during the interregnum between 4-1-2017 and 24-1-2017 as is evident from the decision of the High Court rendered on 11-1-2017 [Rakesh Kumar Paul v. State of Assam, 2017 SCC OnLine Gau 573]. On the contrary, he had availed of his right to "default bail" which could not have been defeated on 11-1-2017 and which we are today compelled to acknowledge and enforce.*

47. Consequently, we are of the opinion that the petitioner had satisfied all the requirements of obtaining "default bail" which is that on 11-1-2017 he had put in more than 60 days in custody pending investigations into an alleged offence not punishable with imprisonment for a minimum period of 10 years, no charge-sheet had been filed against him and he was prepared to furnish bail for his release, as such, he ought to have been released by the High Court on reasonable terms and conditions of bail.

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Conclusion

49. The petitioner is held entitled to the grant of "default bail" on the facts and in the circumstances of this case. The trial Judge should release the petitioner on "default bail" on such terms and conditions as may be reasonable. However, we make it clear that this does not *prohibit or otherwise prevent the arrest or re-arrest of the petitioner on cogent grounds in respect of the subject charge and upon arrest or re-arrest, the petitioner is entitled to petition for grant of regular bail which application should be considered on its own merit. We also make it clear that this will not impact on the arrest of the petitioner in any other case."*

34. *Deepak Gupta, J. in his concurring opinion agreed with Lokur, J. as follows: (Rakesh Kumar Paul case[Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67] , SCC pp. 111-12, paras 82 & 86)*

"82. The right to get "default bail" is a very important right. Ours is a country where millions of our countrymen are totally illiterate and not aware of their rights. A Constitution Bench of this Court in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] has held that the accused must apply for grant of "default bail". As far as Section 167 of the Code is concerned, Explanation I to Section 167 provides that notwithstanding the expiry of the period specified (i.e. 60 days or 90 days, as the case may be), the accused can be detained in custody so long as he does not furnish bail. Explanation I to Section 167 of the Code reads as follows:

'Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in para (a), the accused shall be detained in custody so long as he does not furnish bail.'

This would, in my opinion, mean that even though the period had expired, the accused would be deemed to be in legal custody till he does not furnish bail. The requirement is of furnishing of bail. The accused does not have to make out any grounds for grant of bail. He does not have to file a detailed application. All he has to aver in the application is that since 60/90 days have expired and charge-sheet has not been filed, he is entitled to bail and is willing to furnish bail. This indefeasible right cannot be defeated by filing the charge-sheet after the accused has offered to furnish bail.

***

86. I agree and concur with the conclusions drawn and directions given by the learned Brother Lokur, J. in paras 49 to 51 of his judgment."

35. *P.C. Pant, J., however, dissented holding: (Rakesh Kumar Paul case[Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401] , SCC p. 123, para 113)*

"113. The law laid down as above shows that the requirement of an application claiming the statutory right under Section 167(2) of the Code is a prerequisite for the grant of bail on default. In my opinion, such application has to be made before the Magistrate for enforcement of the statutory right. In the cases under the Prevention of Corruption Act or other Acts where Special Courts are constituted by excluding the jurisdiction of the Magistrate, it has to be made before such Special Court. In the present case, for the reasons discussed,

since the appellant never sought default bail before the court concerned, as such is not entitled to the same."

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.*

In view of law laid down by Hon'ble Supreme Court, right of default bail becomes complete as soon an application for grant of default bail is made on the expiry of 60/90 days. Non-adjudication of application under Section 167(2), wrong application of law and facts, rejection of bond or surety cannot deprive an accused from his valuable right whereas in the case in hand, the petitioner moved an application on the expiry of 60 days from the date of remand and in the application, the petitioner claimed that police in terms of Section 173(1A) has failed to file report within 2 months, thus, indefeasible right of default bail in terms of Section 167(2) has accrued to him. The petitioner mis-read the law and thereafter mis-led the court. Regular judge was on leave and duty judge could not examine inter se relation as well as effect of 173(1A) over the right created by Section 167(2). Nobody can take advantage of his mis-representation or mistakes of others. It is a clear case of mis-representation on the part of petitioner and at the most unintentional mistake on the part of duty judge. The petitioner cannot take advantage of the situation which he has created by mis-representing and mis-reading actual legal position.

It is not a case where court has not accepted bail bond of petitioner inspite of his entitlement to default bail whereas it is case where petitioner is not entitled to default bail, however, on account of above stated facts and circumstances, duty judge by mistake passed order of default bail in favour of the petitioner. The duty judge though granted bail yet did not accept bail which saved the situation from miscarriage and travesty of justice.

In view of above narrated facts and findings, present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

17.02.2023
paramjit

Whether speaking/reasoned : Yes
Whether reportable : Yes