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

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Reserved on : 16.11.2023

Pronounced on : 22.12.2023

+ **BAIL APPLN. 3454/2023**

SAKIL AHMAD

..... Petitioner

Through: Mr. Neeraj Kumar Jha,
(appeared through VC
Advocate)

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Satish Kumar, APP for the
State

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant application under Section 439 of the Criminal Procedure Code, 1973 has been filed by the petitioner seeking grant of regular bail in FIR No. 272/2023 registered at police station Govind Puri, District South-East, New Delhi for offence punishable under Section 354 of Indian Penal Code, 1860 and Section 8 of the Protection of Children from Sexual Offence Act, 2012.

2. Briefly stated, the facts of the present case are that a PCR Call vide DD No.3A dated 02/05/2023, regarding physical assault of a 17 years old victim was received at P.S. Govindpuri, New Delhi. The victim had stated that she is living with her parents in Govindpuri,



Kalkaji, New Delhi and is currently studying. It was stated that her mother had called barber Sakil Ahamad i.e. the present applicant/accused to cut her hair and he had visited their home at about 10:30 PM on 01.05.2023. It was stated that the present applicant/accused Sakil Ahamad had molested the minor victim. Thereafter, the present FIR was registered and the medical examination of the victim was conducted at AIIMS, New Delhi. During the course of investigation, present applicant/accused Sakil Ahmad was arrested on 02.05.2023.

3. Learned counsel for the applicant argues that the charge-sheet in the said FIR was filed on the 61st Day. He points out that the first day of the remand in this case i.e. 03.05.2023 is to be included for the purpose of calculating the statutory period of completion of investigation and filing of chargesheet. It is submitted that the day when the accused is remanded is to be included in the statutory period provided under Section 167(2) of Cr.P.C. It is stated that the Investigating Officer has admittedly filed the incomplete chargesheet on 02/07/2023 with noting that "The statement of the witnesses has been recorded and the CDR and location of the victim's parents and accused are being procured. On procurement of the same, the supplementary chargesheet shall be filed. It is stated that the learned Trial Court ought to have granted statutory bail in view of the fact that the chargesheet was not filed within statutory period of 60 days. It is also argued that the learned Trial Court has ignored the fact that the petitioner is entitled to statutory bail. Learned counsel also submits that inadvertently, in the caption of the present application,



he could not mention 'default bail' and has only sought grant of regular bail, and orally prays that the present application be treated as an application seeking default bail.

4. Learned APP for the State argues that the chargesheet in the present case has been filed within the stipulated period of 60 days and there is no lapse on the part of the investigating agency. It is stated that the chargesheet was filed on 02.07.2023 which as per calculation comes within the permissible limit of 60 days if calculated from the day of first remand. It is argued that the allegations against the present applicant are serious in nature and the case involves molestation of a 17 year old victim.

5. This Court has heard arguments addressed by learned counsel for the applicant and learned APP for the State and has perused material on record.

6. The present application has been filed before this Court seeking grant of default bail on the ground that the chargesheet in the present case was not filed within the stipulated period of 60 days as has been mandated by the provisions of Section 167 of Cr.P.C. At this juncture, this Court deems it appropriate to refer to Section 167 of Cr.P.C. which reads as under:

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

(1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub- inspector, shall forthwith



transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in 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;

(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. 1 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;]. 2 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.]

(2A) Notwithstanding anything contained in sub- section (1) or sub- section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub- inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub- section..”

7. Thus, the provisions of Section 167 of Cr.P.C. mandates that the chargesheet in such cases as the present one must be filed within a period of 60 days and on the expiry of the said period, if the chargesheet is not filed then the accused shall be released on default bail.

8. The Hon’ble Apex Court in the case of ***Enforcement Directorate, Government of India v. Kapil Wadhawan & Anr.*** 2023 *LiveLaw* (SC) 249 had held that the day of remand shall be counted within the stipulated period of 60 days as has been mandated by



Section 167 of Cr.P.C. The relevant portion of the judgment reads as under:

“....36. Section 57 of the CrPC mandates that the accused be produced before a Magistrate within 24 hours of arrest and under Section 167(2) the Judicial Magistrate is required to scrutinize the executive action and determine whether the rights of the accused are not subjugated by police action. The separation of the Executive and the Judicial exercise of power, ultimately protects an individual’s personal liberty which is also constitutionally protected under Articles 21 and 22(2). If the date of remand ordered by a Magistrate is ignored, then an accused even though in custody, the same will not be counted within the 60/90 day period. The custody on the date of remand is distinct from the arrest of an accused under Section 56 CrPC as that is considered as a period prior to production before the Magistrate. By this logic, even if the accused is under custody it would neither be under Section 56, nor under 167(2) of the CrPC. This will lead to an apparent legal vacuum. This can however be avoided if the remand period is considered from the very day of the remand order. Furthermore, if an accused is remanded by a Magistrate on say, 01.01.2023, then, the police, post judicial scrutiny, is empowered to investigate, starting on the same day, as per Section 167 CrPC, irrespective of whether the police actually commence investigation on the same day. **So, if the police is empowered to investigate an accused person on the day of the remand order itself, the 60/90 day stipulated period, upon whose expiry, the right of default bail accrues to the accused, should logically be calculated from that day itself. Ignoring the date of remand under Section 167 CrPC in the 60/90 day period, would in our opinion, militate against the legislative intent of providing an accused protection from being in prolonged custody, because of slothful investigation.**

37. In Rakesh Kumar Paul vs. State of Assam²⁴ a three-judge Bench of this Court while examining the ratio in Union of India vs. Nirala Yadav²⁵ and Uday Mohanlal Acharya vs. State of Maharashtra,²⁶ observed that on the expiry of the 60/90 day period 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 completion



of the investigation within the prescribed period. The opinion in Sanjay Dutt Vs. Bombay through C.B.I.27 was also considered, wherein the Constitution Bench laid down that if the chargesheet is not filed and the right for “default bail” has ripened into the status of indefeasibility, such right cannot be frustrated by the prosecution.

50. Since there exists vacuum in the application and details of Section 167 CrPC, we have opted for an interpretation which advances the cause of personal liberty. The accused herein were remanded on 14.05.2020 and as such, the chargesheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on 13.07.2020 which was the 61st day of their custody. Therefore, the right to default bail accrued to the accused persons on 13.07.2020 at 12:00 AM, midnight, onwards. On that very day, the accused filed their default bail applications at 8:53 AM. The ED filed the chargesheet, later in the day, at 11:15 AM. Thus, the default bail Applications were filed well before the chargesheet. In Ravindran (supra) and Bikramjit (supra), which followed the Constitution Bench in Sanjay Dutt (supra) it was rightly held that if the accused persons avail their indefeasible right to default bail before the chargesheet/final report is filed, then such right would not stand frustrated or extinguished by any such subsequent filing. **We therefore declare that the stipulated 60/90 day remand period under Section 167 CrPC ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period, as we notice will extend beyond the permitted 60 /90 days’ period resulting in unauthorized detention beyond the period envisaged under Section 167 CrPC. In cases where the chargesheet/final report is filed on or after the 61st/91st day, the accused in our considered opinion would be entitled to default bail. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused...”**

(Emphasis supplied)



9. Thus, as per the Hon'ble Apex Court, the provision of Section 167 of Cr.P.C. provides an infeasible right to default bail which arises at the very moment of expiry of the stipulated period of 60 days. The investigating agency is under this obligation to file the chargesheet within the stipulated period and if the same is filed beyond this period then the accused will have an infeasible right to default bail.

10. Coming to the merits of the present case, the applicant/accused was arrested on 02.05.2023 and the remand order was issued on 03.05.2023. The date of remand of the accused has to be seen as the date of beginning of the stipulated period of 60 days as held by Hon'ble Supreme Court in the case of ***Enforcement Directorate, Government of India v. Kapil Wadhawan & Anr. (Supra)***. The chargesheet in the present case was prepared on 01.07.2023 and was filed before the learned Trial Court on 02.07.2023 as recorded in order dated 02.07.2023 passed by the learned Trial Court. Thus, the period of consideration before this Court is from 02.05.2023 to 02.07.2023. It is noted that as per calculation, the total number of days taken for the filing of chargesheet in the present case thus come to be 61 days, which is more than the stipulated period of 60 days as has been mandated by the provision of Section 167 of Cr.P.C.

11. Thus, in view of the aforesaid discussion and the fact that the chargesheet was not filed within the stipulated period of 60 days as mandated by Section 167 of Cr.P.C., this Court is inclined to grant default bail to the applicant on his furnishing personal bond in the sum of Rs.25,000/- with one surety of the like amount to the



satisfaction of the Trial Court/Successor Court/Link Court/Duty Judge concerned on the following terms and conditions:

- i) The applicant shall not leave the country without prior permission of the concerned Court.
- ii) The applicant shall not directly or indirectly make an attempt to influence the witnesses or tamper with the evidence in any manner.
- iii) In case of change of residential address/contact details, the applicant shall promptly inform the same to the concerned Court.

12. Accordingly, the present bail application stands disposed of in above terms.

13. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 22, 2023/zp