



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.- 210 OF 2024**

Dinesh Ganesh Indre and Others

... Applicants

Vs.

The State of Maharashtra

...Respondent

Mr. Pankaj More with Nitin Kamble, Sukrut Mhatre, for Applicants.

Ms. Ranjana D. Humane, APP for State-Respondent No. 1

CORAM:- N. J. JAMADAR, J.

HEARD ON:- 18th MARCH, 2024

PRONOUNCED ON:- 26th MARCH, 2024

JUDGMENT :

1. The applicants, who have been arraigned in CR No. 497 of 2023 registered with Malad Police Station, for the offences punishable under Sections 120B, 394, 395 and 412 read with Section 34 of the Indian Penal Code, 1860 (“the Penal Code”), Sections 37 (1)(A) 135 read with Section 142 of Maharashtra Police Act, 1951, have preferred this application to enlarge him on bail.

2. The gravamen of indictment against the applicants and the co-accused is that in pursuance of a criminal conspiracy, on 20th August, 2023, the first informant was robbed of cash of Rs.1,25,00,000/- kept in two bags by threatening to cause death by pointing a knife. It is further alleged that the applicant and the co-accused had

retained the cash amount despite having known that the cash was robbed from the first informant.

3. Applicant No. 1 – Dinesh (A5), the applicant No. 2-Pratik Bhojane (A6) were arrested on 2nd September, 2023 and applicant No. 4-Ravi Yashawante (A8) was arrested on 4th September, 2023.

4. During the course of investigation, it transpired that the co-accused Krushna Godambe (A11), who came to be arrested on 10th September, 2023, was the leader of an organized crime syndicate. Thus, with the prior approval of the competent authority under Section 23(1)(a), the offences punishable under Section 3(1)(ii), 3(2), 3(3), 3(4) of the MCOC Act, 1999 were invoked.

5. Post invocation of MCOCA, the applicant and the co-accused were produced before the Special Court. On 20th November, 2023, an application for extension of period of investigation under Section 21 (2) of the Maharashtra Control of Organized Crime Act, 1999 was filed before the Special Court. By an order dated 28th November, 2023, the learned Special Judge, MCOC Court granted 21 days extension to complete the investigation.

6. The investigating agency moved a proposal for sanction under Sub Section (2) of Section 23 of the MCOCA, 1999. By an order dated 12th December, 2023, the competent authority declined to grant sanction as envisaged by sub -Section (2) of Section 23 of the MCOCA, 1999. Thereupon, on 12th December, 2023, an

application was filed before the learned Special Judge, seeking direction to remit the record and proceedings to the jurisdictional Magistrate as the competent authority refused to grant sanction under Section 23 (2) of the MCOCA, 1999. The learned Special Judge, thus, directed that the record of proceedings be sent to the Court of learned Chief Metropolitan Magistrate. The proceedings in MCOC MA No. 1478 of 2023 were thus disposed of.

7. In the aforesaid backdrop on 13th December, 2023, the applicants preferred an application for default bail under Section 167 (2) of the Code of Criminal Procedure, 1973, before the learned Additional Chief Metropolitan Magistrate, 24th Court, Borivali. On that day, the learned Additional Chief Metropolitan Magistrate directed the prosecution to file its say. In the meanwhile, on 14th December, 2023, the Investigating Officer lodged the charge-sheet at 1.20 pm.

8. By the impugned order, the learned ACMM was persuaded to reject the applications for default bail holding, inter alia, that since the learned Special Judge had extended the period by 21 days and that period was to expire on 18th December, 2023 and, in the meanwhile, on 14th December, 2023, the charge-sheet was lodged, the applicants were not entitled to default bail. The learned Magistrate was also of the view that since the application for default bail had not been finally decided by the Court before filing of the charge-sheet, there was no question of grant of bail under Section 167 (2) of the Code, 1973.

9. Mr. More, the learned Counsel for the applicants submitted that the learned Magistrate committed a manifest error in rejecting the application for default bail by ascribing aforesaid reasons. Mr. More would urge that it is well recognised that the right of an accused to be enlarged on bail in the event the investigation is not completed within the period stipulated under Section 167 (2) is indefeasible. The fact that the Bail Application could not be decided before the filing of the charge-sheet is not at all a relevant consideration. What has to be seen is whether the accused availed the said right. Once, the accused had filed an application for bail on 13th December, 2023 itself, the accused can be said to have availed the said right and they could not have been deprived of the indefeasible right on the premise that when the charge-sheet was filed on the next day, the application for bail was still pending.

10. Mr. More further submitted that even the view of the learned Magistrate that since the Special Court had extended the time by 21 days and the said time had not expired on the day the charge-sheet was lodged and, therefore, the applicants were not entitled to claim statutory bail under Section 167 (2) of the Code, 1973 is flawed. Once the Special Court remitted the proceedings to the Court of learned Magistrate, upon the sanction being refused by the competent authority, the rights of the accused must be governed by the provisions contained in Section 167 of the Code, 1973 and the order of extension of time to complete the investigation does not survive to defeat the rights of the accused, urged Mr. More.

11. To lend support to this submission, the learned Counsel for the applicants placed reliance on a Division Bench judgment of this Court in the case of **Naresh s/o Netram Nagpure Vs. The State of Maharashtra**¹. It was urged that in the said case, the Division Bench has explicitly recorded that the day on which sanction was refused by the authority, would have to be considered to be the day on which the extended period of custody expired and, therefore, the right to seek default bail would arise on the immediate next day. It was submitted that the aforesaid pronouncement is on all four with the facts of the case as the applicants had applied for default bail, a day before the charge-sheet was filed.

12. Ms. Humane, the learned APP, resisted the prayer for bail. It was submitted that the learned Magistrate committed no error in negating the plea of the accused for default bail. Laying emphasis on the fact that the extended period for completion of investigation granted by the learned Special Court was yet to expire on the day the charge-sheet was lodged, Ms. Humane would urge that the applicants right for default bail cannot be said to have crystallized on the day the charge-sheet was lodged. Had the charge-sheet been lodged, after the expiry of the extended period, the applicant would have been entitled to seek bail on the ground of default in completion of investigation, submitted Ms. Humane.

1 Cri. WP 817 of 2022 dated 23 Dec. 2022

13. I have given anxious consideration to the submissions canvassed across the bar. In the light of the facts of the case and the submissions canvassed by the Counsel for the parties, the pivotal question which crops up for consideration is :

when the right of the accused to seek default bail accrues where during the extended period for completion of investigation, the competent authority declines to grant sanction under Section 23 (2) of MCOC Act, 1999 ?

14. Before adverting to explore an answer the aforesaid question, the facts which are rather incontrovertible deserve to be noted. The applicant Nos. 1 and 2 were arrested on 2nd September, 2023. The applicant No. 4 was arrested on 4th September, 2023. Since the applicants and the co-accused have been arraigned for the offences punishable under Sections 120B, 394, 395 and 412 read with Section 34 of the Penal Code, 1860, the case would be covered by the Sub Clause (i) of Clause (a) of the proviso to Section 167 (2) of the Code, 1973. Before the period of 90 days could expire, on 28th November 2023, in exercise of the power conferred under Section 21 (2), the Special Court extended the period to complete the investigation by 21 days. The said extended period was to expire on 18th December, 2023.

15. As noted above, the competent authority declined to grant sanction to prosecute the applicants and the co-accused for the offences punishable under MCOCA, 1999 on 12th December, 2023. On the very day, the learned Special Court was moved and the matter was remitted to the jurisdictional Magistrate. On the

following day i.e. 13th December, 2023, the applicants filed an application for default bail. It is a matter of record that on 14th December, 2023, the charge-sheet was lodged.

16. In the backdrop of the aforesaid facts, the question, framed above, deserves determination. The provisions of Section 167, relevant for the purpose of determination of the aforesaid question, read as under :

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

(1).....

(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;”

17. Relevant part of Section 21 of the MCOC Act, 1999 providing for modified application of the provisions contained in the Code, reads as under :

“21. Modified application of certain provisions of the Code

(1)

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section (2), -

(a) the references to “fifteen days,” and “sixty days,” wherever they occur, shall be construed as references to “thirty days” and “ninety days”, respectively;

(b) after the proviso, the following proviso shall be inserted, namely : -

Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period upto one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days.”

18. A conjoint reading of Section 167(2) of the Code with Section 21 of the MCOC Act, 1999 would indicate that further proviso inserted by Section 21 of the MCOC Act, 1999, empowers the Special Court to extend the time prescribed by the proviso to Section 167 of the Code upto 180 days on the basis of the report of the

Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the stipulated period of 90 days.

19. Evidently, the right of default bail which would have otherwise accrued to an accused if the investigation is not completed within 90 days, would stand deferred till the expiry of the extended period where the Special Court extends the time to complete the investigation in relation to a case involving the offence punishable under the MCOC Act, 1999. Save and except the extended period for completion of investigation by the orders of the Special Court, the other parameters which govern the entitlement to default bail remain intact. It is, therefore, necessary to first consider the nature and import of the right to default bail.

20. 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 crystallized. However, a facet of action or inaction, which myriad situations throw up, continues to give rise to the controversy about the entitlement for default bail, in the facts peculiar to a given case. Broad principles, however, are well nigh 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, refrained from passing an order or passed a wrong order also do not defeat the said right.

21. 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.

22. 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**². 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 :-

17. Before we proceed to expand upon the parameters of the right to default bail under Section 167(2) as interpreted by various

2 (2021) 2 Supreme Court Cases 485.

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 sub-section (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 758-760) 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;
- (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....

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.

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).

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.

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)

23. 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.

24. The Supreme Court has explicated in 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.

25. 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.

26. On the aforesaid touchstone, it may be necessary to delve into the justifiability of the rejection of the application by the learned Magistrate on the ground that on the day the chargesheet was lodged by the Investigating Officer, the application for default bail had yet not been decided. Such approach is plainly in dissonance with the avowed object of incorporating indefeasible right of an accused to be enlarged on bail in the event of default on the part of the investigating agency to complete the investigation within the statutorily mandated period.

27. 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.

28. 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**³ 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, 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) to Section 167(2) that 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.

(emphasis supplied)

29. In the case of **Bikramjit Singh vs. State of Punjab**⁴ 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

3 (1996) 1 Supreme Court Cases 722.

4 (2020) 10 Supreme Court Cases 616.

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)

30. In the light of the aforesaid enunciation of law, especially in the cases of M. Ravindran (supra) and Bikramjit Singh (supra), once the twin condition of default in filing the charge-sheet within the prescribed period and the action on the part of the accused to avail the right is satisfied, the statutory right under section 167(2) of the Code catapults into a fundamental right as further detention falls foul of the personal liberty guaranteed under Article 21 of the Constitution of India. The learned Magistrate, therefore, committed a gross error in law in declining to entertain the prayer for default bail on the specious ground that he had yet not decided the application preferred by the applicant on the day the chargesheet was lodged. Time and again, such practice of deferring the application for default bail and thereby contributing in defeating the right to default bail, have been severally deprecated.

31. This leads me to the core question of the effect of extension of time by the Special Court for completion of investigation. Ordinarily, when the Special Court

extends the time and the chargesheet is lodged within the extended period, there is no occasion for invocation of the provision conferring right to default bail. If the chargesheet is not lodged within the extended period, there ought not to be any obfuscation as to the entitlement to the default bail. The controversy arises where the period for completion of investigation is extended by the Special Court and during the currency of this extended period, the competent authority declines to give sanction to take cognizance of the offences under MCOC Act, 1999.

32. Whether the refusal to grant sanction to take cognizance under Section 23(2) of the Act, 1999 impairs the order extending the time for completion of investigation ? At what point of time such extended period terminates, where the competent authority declines to grant sanction ? As a necessary corollary, at what point of time, the right to seek default bail accrues, in such a case ? These are the questions which crop up for consideration in such situations.

33. In the case of **Naresh Netram Nagpure (Supra)**, a Division Bench of this Court had an occasion to consider the aforesaid questions in a somewhat similar fact-situation. In the said case, the learned Special Judge had extended the time to complete the investigation by 90 days and it was to expire on 23 August 2022. A day prior, on 22 August 2022, the competent authority declined to grant sanction to prosecute the Petitioners therein under the provisions of the MCOC Act, 1999. On the very day, the Petitioners filed an application for default bail. Simultaneously,

chargesheet also came to be filed by the Investigating Officer on that day itself.

34. The Division Bench, in the backdrop of the aforesaid facts, considered the question as to whether the refusal to grant sanction for prosecution under the MCOC Act, 1999 by itself would invalidate the grant of extension of time by the Special Court. Comparing and contrasting the provisions contained in Section 23(2) which contain an interdict against taking cognizance of the offence under the MCOC Act, 1999 without the previous sanction of the competent authority, and the provisions contained in Section 21(2) of the Act, 1999, which modify the application of Section 167(2) of the Code to cases involving offences under the MCOC Act, 1999, the Division Bench enunciated that once the Special Court after giving reasons extends period of investigation upto 180 days, refusal of sanction would not take away the extended period of 90 days granted by the Special Court or even curtail the extended period granted by the Special Court. The detention of the Petitioners after 90 days, thus, cannot be said to be unauthorized detention.

35. The Division Bench, inter alia, observed as under :

“18. Thus, extending further time of 90 days for completing the investigation by the Special Judge is one thing and giving sanction by the A.D.G.P. is a different thing. Once, the Special Court after giving reasons has extended the period of investigation upto 180 days, the refusal of sanction will not take away the extended period of 90 days granted by the Special Court or even curtail the extended period granted by the Special Court. The detention here was authorized by a legal order of the Court under Section 21(2)(b) of the MCOC Act, after considering the material

then available with the police and with reasoned order and it was never challenged and, therefore, it became a final order. The detention of the Petitioners after 90 days thus can not be said to be unauthorized detention.

.....

20. For the aforesaid reasons, we do not find force in the argument of the learned Senior Counsel for the Petitioners that in the wake of refusal of sanction by the A.D.G.P. the authorized period of detention would reduce to 90 days and any further detention would be unauthorized. Thus, the period for completing the investigation here would have expired only on completion of 180 days i.e. on 23/08/2022 and not before that.”

36. It would be contextually relevant to note that after recording the aforesaid view, the Division Bench examined the issue from another perspective, namely, on the assumption that the order to extend the period for completion of investigation would cease to have any effect at the end of the day on which the sanction was refused.

37. Mr. More, learned Counsel for the Applicant, laid emphasis on the enunciation by the Division Bench from the aforesaid perspective. The observations of the Division Bench in paragraphs 21 and 22 are material and, hence, extracted below :

“21. The issue can be examined from a different angle. If we assume for the sake of argument that the effect of the order refusing sanction to prosecute the accused as amounting to not disclosing of any offence under the MCOC Act, the further consequence thereof would, at the most, be that the custody extension order will cease to have any effect at the end of the day on which sanction is refused and till that day, the extension order

would have to be held as valid. Even from this view point, the petitioners are not entitled to be released on default bail as the essential condition required for accrual of indefeasible right under Section 167(2) of Cr.P.C. to the petitioners is not fulfilled. This can be seen from the facts available on record, which show that charge-sheet has been filed on 22/08/2022 and on the same day, the application under Section 167(2) of Cr.P.C. was moved by the petitioners. Of course, it is the contention of the learned Counsel for the petitioners that the application of the petitioners was filed about 30 minutes before the charge-sheet was filed and, therefore, their application was first in point of time and as such there was an accrual of right of default bail to the petitioners. The argument, in our view, is really not relevant for deciding the controversy involved in the petition. The reason being that, the day on which sanction was refused by the authority, would have to be considered to be the day on which the extended period of custody expired and, therefore, the right to seek default bail would arise on the immediate next day. It also means that when sanction is refused, as for example on Monday, this day of Monday would be the last day on which extended period of custody would come to an end, though in normal circumstances it would have expired later, and therefore, the Investigating Officer would have to take care that he files the final report on that day or otherwise he risks the grant of default bail to the accused. This is because of the fact that the provisions made under Section 167(2) of Cr.P.C. speak not in terms of hours, minutes and seconds, but only in terms of number of days completed. For the purpose of ascertaining as to when the period of authorized custody comes to an end, it is only the number of completed days, which is relevant and not the time at which the event having the effect of rendering the custody as unauthorized took place.

22.If we examine the issue from the above alternative, which we have proposed only by way of assumption and for the sake of argument, still the petitioners cannot be said to be fulfilling the essential requirement of Section 167(2) of Cr.P.C. in order to avail of right of default bail. The

application under Section 167(2) of Cr.P.C. was filed by them on 22/08/2022 and that was the day when the sanction to prosecute the petitioners was refused. It was thus the day which became the last day of their authorized custody, which was otherwise extended up to 23/08/2022. Therefore, the right to avail of default bail in terms of Section 167(2) of Cr.P.C. really arose in their favour only from 23/08/2022.”

38. The aforesaid observations would indicate that the Division Bench has recorded a view that the day, the sanction to prosecute for the offence punishable under the MCOC Act, 1999 is refused by the competent authority, ought to be reckoned as the last day on which the extended period of detention would stand expired, and, therefore, the right to seek default bail would arise on the immediate next day. It was observed that the day on which the sanction was refused would be the last day on which the extended period of custody would come to an end, though in normal circumstance it would have terminated with the extension granted by the Special Court and, therefore, the investigating officer would have to take care that he files the final report on that day, otherwise he risks the grant of default bail to the accused. Mr. More laid particular emphasis on these observations.

39. I am conscious that in paragraph 22, the Division Bench has clarified that the analysis in paragraph 21 was on the basis of an assumption and for the sake of argument only. Yet the consideration by the Division Bench cannot be said to be bereft of any precedential value. An interpretation based on the text and context of

the provisions contained in MCOC Act, 1999 fortifies the aforesaid view of the Division Bench.

40. First and foremost, the text of sub-Section (2) of Section 21, (extracted above), would indicate that the modification introduced by insertion of a further proviso to Section 167(2) shall apply only in relation to cases involving the offence punishable under the MCOC Act, 1999. It is plain, for modified application of Section 167(2), there must exist a case involving the offence punishable under the MCOC Act, 1999. It would be a contradiction in terms, to urge that, the extended period for completion of investigation, as granted by the Special Court, would continue to operate even when the competent authority declines to grant sanction to prosecute for the offence punishable under MCOC Act, 1999. In that event, strictly speaking, there would be no case involving an offence under MCOC Act, 1999. Sans sanction by the competent authority, the Special Court cannot take cognizance of the offences under the MCOC Act, 1999. The previous sanction of the competent authority is thus a jurisdictional condition. If the jurisdictional condition is not fulfilled, the extension which was granted by the Special Court, in the wake of the invocation of the provisions contained in MCOC Act, 1999, must cease to operate as the provisions contained in Section 21(2) of the Act, 1999 would itself cease to have any application thence.

41. The answer to the question cannot be premised on the legality of the

order extending the period of detention. Refusal to grant sanction to prosecute will not relate back to render the order of the Special Court extending the time for investigation illegal. Therefore, the detention beyond the period of 90 days pursuant, to the lawful order passed by the Special Court, cannot be said to be illegal or unauthorized. However, once the competent authority refuses to grant sanction for prosecution, the justification for continued detention by invoking the provisions contained in Section 21(2) of the Act, 1999 may become incongruous. It is in this context, the observations of the Division Bench that the extended period comes to an end on the day the competent authority refuses to grant sanction under Section 23(2) of the Act, 1999 appear pertinent and determinative.

42. Secondly, as noted above, the question has to be decided keeping in view the enunciation by the Supreme Court that Section 167(2) of the Code is the subset of overarching fundamental right guaranteed under Article 21 of the Constitution of India. The determination should be informed by the spirit of imperativeness of upholding the fundamental right to life and personal liberty under Article 21.

43. In the case of **M. Ravindran (supra)**, the Supreme Court in terms observed that 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, and that principle is applicable in the case of procedures providing for the curtailment of the liberty of the accused.

44. In the case at hand, the learned Magistrate proceeded to hold that as the extended period of 21 days was to expire on 18 December 2023 and the chargesheet was lodged on 14 December 2023, the right to default bail did not accrue even though on 12 December 2023 itself, the competent authority had declined to grant sanction for prosecution under the Act, 1999 and on the following day i.e. 13 December 2023, the applicants had “availed” the right to default bail by filing the application.

45. In my considered view, the aforesaid approach cannot be countenanced. It may lead to anomalous consequences. It would imply that if the Special Court extends the time for investigation, say on 89th day, by a further 90 days, and on 92nd day, the competent authority refuses sanction for prosecution under the MCOC Act, 1999, the detention of the accused would still be authorized till 180th day. Such a construction has the propensity to impair the cherished personal liberty irredeemably. The correct approach which is in consonance with the constitutional guarantee under Article 21, would be to hold that once the competent authority declines to grant sanction under Section 23(2) of the Act, 1999, the extended period for completion of investigation, would terminate on the day the competent authority declines to grant sanction and on the next day, the right to seek default bail, in the event chargesheet is not filed, accrues to the accused.

46. I am, therefore, inclined to hold that, in the case at hand, the learned Magistrate was not justified in rejecting the application for default bail. Since the

applicants had 'availed' their right to default bail by filing an application on 13 December 2022, a day before the chargesheet came to be lodged, the indefeasible right of the applicants stood cemented and, thus, they deserve to be released on bail.

47. Hence, the following order :

: ORDER :

- (i) The Application stands allowed.
- (ii) The Applicants be released on bail in C.R.No.497 of 2023 registered with Malad Police station on furnishing a PR bond in the sum of Rs.30,000/- each and one or two sureties in the like amount to the satisfaction of the trial Court.
- (iii) The applicants shall mark their presence at Malad Police Station on first Monday of every alternate month in between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.
- (iv) The applicants shall not tamper with the prosecution evidence. The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, the applicants shall furnish their contact numbers and residential addresses to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicants shall regularly attend the proceedings before the

jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for default bail.

Application disposed.

(N.J.Jamadar, J.)