



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4253 OF 2024**

Akshay Shiva Gaikwad			
Kunal Shiva Gaikwad	...		Applicants
versus			
The State of Maharashtra	...		Respondent

Mr. Santosh Deshpande, for Applicants.
Mr. H.J.Dedhia, APP for State.
PSI Sanjay Bore, Malad Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 4 DECEMBER 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicants, who are arraigned in C.R.No.497 of 2023 registered with Malad Police Station for the offences punishable under Section 120B, 394, 395 and 412 read with Section 34 of the Indian Penal Code, Sections 37(1)(A), 135 read with Section 142 of the Maharashtra Police Act, 1951, have preferred these applications to enlarge them on default bail.
3. 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 on the point of knife. The applicants were arrested on 3 September 2023.
4. At the outset, Mr. Deshpande, learned Counsel for the Applicants

submitted that by an order dated 26 March 2024 in BA No.210 of 2024, this Court has already released Dinesh Ganesh Indre (A5), Pratik Bhojane (A6) and Ravi Yashwante (A8) on bail, after an elaborate consideration of the entitlement for default bail. The applicants are also entitled to the same dispensation as the only change is that the abovenamed accused had preferred application for bail under Section 167(2) of the Code of Criminal Procedure on 13 December 2023. Whereas, the applicants have filed such bail application on 14 December 2023. However, that does not make any significant difference as the chargesheet was not lodged before the applicants filed the bail application. Subsequent filing of the chargesheet on the very day, according to Mr. Deshpande, does not defeat the indefeasible right of the applicants.

5. Mr. Dedhia, learned APP, resisted the prayer for bail. It was submitted that the applicants cannot claim parity with Dinesh Ganesh Indre and Others, who have been enlarged on bail, as those co-accused had filed applications for bail a day prior to the lodging of the chargesheet. In contrast, on the very day on which the applicants filed application for default bail, the IO had lodged the chargesheet. Therefore, the learned Magistrate committed no error in rejecting the application for default bail.

6. At the outset, it is necessary to note that the applicants have filed certified copies of the bail application and the common order passed by the

learned Magistrate in the said bail application and the Bail Application No.3549 of 2023 preferred by the co-accused Dinesh Indre and Others. It appears that the applicants had filed application for bail at 11.16 a.m., on 14 December 2023.

7. In the aforesaid order dated 26 March 2024, this Court noted that the Investigating Officer lodged the chargesheet on 14 December 2023 at 1.20 p.m. In order to ensure that there is no factual error as regards the time of the filing of the chargesheet, I have perused the documents annexed to BA No.210 of 2024, wherein the applicants therein had produced certified copy of the chargesheet, which bears an endorsement by the Judicial Clerk attached to the Court of learned Metropolitan Magistrate that 103 days were completed and the chargesheet was lodged on 14 December 2023 at 1.20 p.m.

8. Evidently, certified copies of the bail application and the chargesheet make it unmistakably clear that the bail application was filed prior in point of time on 14 December 2023. As a necessary corollary, an inference becomes inescapable that the chargesheet was lodged by the Investigating Officer after the applicants-accused availed the right to default bail under Section 167(2) of the Code.

9. In the order dated 26 March 2024, after adverting to the decisions of the Supreme Court in the cases of **M. Ravindran vs. The Intelligence**

Officer, Directorate of Revenue Intelligence¹ Mohamed Iqbal Madar

Sheikh and Others vs. State of Maharashtra² and Bikramjit Singh vs.

State of Punjab³ this Court had observed, inter alia, as under :

“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 Liberation Sansthe 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 Maharashtra⁴** wherein the Supreme Court directed that the statutory right should not be defeated by keeping the

1 (2021) 2 SCC 485

2 (1996) 1 SCC 722

3 (2020) 10 SCC 616

4 (1996) 1 Supreme Court Cases 722.

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 she 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**⁵ the legal position was reiterated in the following words:-

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

5 (2020) 10 Supreme Court Cases 616.

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.”

10. The aforesaid enunciation of law applies with equal force to the claim of the applicants for default bail. I find substance in the submission of Mr. Deshpande, learned Counsel for the Applicants, that the only change in the case of the applicants from that of Dinesh Indre and other co-accused is that the applicants had filed the application for bail on 14 December 2023, a day later than Dinesh Indre and others; who had filed bail application on 13 December 2023. However, that does not make any significant qualitative difference as the chargesheet was not lodged till the applicants had availed the right to default bail. Chargesheet came to be filed after the applicants availed the right, albeit on the same day. An indefeasible right, thus, accrued

to the applicants. It cannot be, and could not have been, defeated by the subsequent filing of the chargesheet. I am, therefore, inclined to allow the application.

11. 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.)