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

Date of decision: 28th AUGUST, 2024

IN THE MATTER OF:

+ **CRL.M.C. 4847/2024**

POOJA AGARWAL

.....Petitioner

Through: Mr. N. Hariharan, Sr. Advocate with
Mr. Prateek Bhalla, Ms. Mallika
Chadha, Ms. Punya Rekha Angara,
Ms. Kumud Nijhawan, Mr.Sharian,
Mr. Aman Akhtar, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Sanjeev Bhandari, ASC with Mr.
Kunal Mittal, Mrs. Spriha Bhandari,
Ms. Charu Sharma, Mr. Arjit Sharma,
Mr. Vaibhav Vats, Advocates.
Insp. Jitendra Singh, SI Shri Bhagwan

+ **CRL.M.C. 4848/2024**

NEERAJ AGARWAL

.....Petitioner

Through: Mr. N. Hariharan, Sr. Advocate with
Mr. Prateek Bhalla, Ms. Mallika
Chadha, Ms. Punya Rekha Angara,
Ms. Kumud Nijhawan, Mr.Sharian,
Mr. Aman Akhtar, Advocates.

versus

STATE (NCT OF DELHI) & ANR.

.....Respondents

Through: Mr. Sanjeev Bhandari, ASC with Mr.
Kunal Mittal, Mrs. Spriha Bhandari,
Ms. Charu Sharma, Mr. Arjit Sharma,
Mr. Vaibhav Vats, Advocates.



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Insp. Jitendra Singh, SI Shri Bhagwan

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

1. Petitioners have approached this Court challenging the Order dated 01.06.2024, passed by the learned Additional Sessions Judge, South East District, Saket Courts, Delhi in CRL. REV. Petitions No.197/2024 & 198/2024, dismissing the Revision Petitions filed by the Petitioners herein against the Orders dated 30.01.2024, passed by the learned Metropolitan Magistrate rejecting the applications filed by the Petitioners herein for grant of default bail under Section 167(2)(a)(ii) of the Cr.P.C.

2. The facts of the present case emanates from FIR No.210/2022, dated 25.10.2022, registered at Police Station Greater Kailash for offences under Sections 304/419/420/196/197/198/201/120B IPC. The facts indicates that a complaint was received at Police Station Greater Kailash-1 from one Mrs. Nasibun Nisha w/o Sh. Asgar Ali R/o H 13/8, Ratia Marg, Sangam Vihar, New Delhi (*hereinafter referred to as 'the Complainant'*). In her complaint, the Complainant has alleged that her husband, namely, Asgar Ali S/o Sh. Sultan Ali, Age - 45 Years, was having acute pain in abdomen. They consulted one local doctor, Julifkar Ali. The said doctor gave an injection to her husband for immediate relief and referred them to Agarwal Medical Centre, E-234, Greater Kailash-1, New Delhi for further treatment. The complaint further states that the Complainant along with her cousin sister - Nikhat, and a friend of her husband - Sachin Sharma, went to Agarwal Medical Centre, Greater Kailash-1, New Delhi on 19.09.2022. It is stated that they reached the said medical centre at around 05 - 5:30 PM. It is stated



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that at the medical centre they met the owner of the medical centre who introduced himself as Dr. Neeraj Agarwal (Petitioner in CRL.M.C. 4848/2024) who told them that he has a super specialist team of doctors including Dr. Jaspreet, who is expert in removing the gallbladder stone. It is stated that Dr. Neeraj Agarwal told the Complainant that the fee of Dr. Jaspreet is Rs.35000/- but if the surgery is done at their centre they will be charged only Rs.25,000/-. They were asked to deposit the surgery fee. It is stated that the Complainant deposited a sum of Rs. 15,000/- and told the doctor that her husband is diabetic and the treatment be done after proper investigation. The complaint further notes that after some time, a nurse, who was standing nearby called one Dr. Pooja (Petitioner in CRL.M.C. 4847/2024) and the said doctor got the BP of the husband of the Complainant checked. It is further stated that after some time one doctor who was wearing jeans and white coat came out of the Operation Theatre (*hereinafter referred to as "OT"*) along with Dr. Neeraj Agarwal and Dr. Neeraj Agarwal told him that surgery of the husband of the Complainant is also to be done. It is stated that when the complainant and her relatives asked Dr. Neeraj Agarwal about Dr. Jaspreet, Dr. Neeraj Agarwal told the Complainant and her relatives that Dr. Jaspreet could not come due to some reasons and that Dr. Mahender is also a good and very old surgeon and has already conducted thousands of stone surgeries. It is stated that at around 06:45 PM the accused took the husband of the Complainant inside the OT and brought him out within 20-25 minutes. It is stated in the complaint that when the husband of the Complainant was brought out of the OT, he was suffering from severe pain and blood was oozing from his belly. It is stated that the Complainant requested the accused to see her husband as his



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condition was getting worse. It is further stated that around 10:45 PM the Complainant's husband was again taken inside the OT, Dr. Pooja gave five-six injections to the husband of the Complainant and Dr. Neeraj tried to give him artificial respiration. It is stated that after some time Dr. Neeraj told the Complainant that her husband has to be shifted to some other hospital and made a referral paper and called the ambulance and sent the husband of the Complainant to Safdarjung Hospital where doctors declared the husband of the Complainant as brought dead. It is stated that the Complainant later on came to know that Mahender, who did surgery upon the husband of the Complainant, and Dr. Pooja, who gave injection to the husband of the Complainant, are not doctors. Dr. Pooja is the wife of Dr. Neeraj. On the said complaint, the present FIR was registered for offences under Sections 304/419/420/196/197/198/201/120B IPC.

3. The Status Report indicates that during the course of enquiry Dr. Neeraj was asked to show the treatment papers of the deceased Asgar Ali but he was not ready to show the treatment papers. The Status Report indicates that Dr. Neeraj was not in the possession of treatment papers of any patient who were under his treatment at the said medical centre and no admission register or any kind of record in respect of any patient was found at the medical centre. It is further stated that during further course of enquiry, Dr. Jaspreet Singh, under whose signature the surgery note dated 19.09.2022 was prepared, was asked to join investigation but he did not join investigation. It is stated that he only joined investigation on 12.10.2022 wherein he revealed that he did not conduct the surgery on the husband of the Complainant and he had merely prepared the surgery note on the direction/request of Dr. Neeraj Agarwal. It is stated that Mahender Singh,



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who conducted surgery on the husband of the Petitioner, was also asked to join investigation but instead of joining investigation, Mahender Singh filed an application for anticipatory bail before the Sessions Court and the same was dismissed.

4. The Petitioners were arrested on 14.11.2023. The charge-sheet has been filed on 11.02.2024. 60th day after arrest of the Petitioners expired on 12.01.2024. Material on record indicates that on 09.01.2024, i.e. on the 57th day of the arrest of the Petitioners, offence under Section 304 IPC in the FIR was specifically converted to Section 304(I) IPC and the same was brought to the notice of the learned Metropolitan Magistrate on 16.01.2024 and the judicial custody of the Petitioners was extended by 14 days.

5. The Petitioners filed applications for default bail on 29.01.2024 contending that since charge-sheet has not been filed within 60 days of the arrest of the Petitioners, they are entitled to be released on default bail. The learned Metropolitan Magistrate, Saket Courts, *vide* Order dated 30.01.2024, dismissed the said applications. The Order dated 30.01.2024 was challenged by the Petitioners by filing the Revision Petitions before the learned Additional Sessions Judge, Saket Court, and the same were also dismissed *vide* Order dated 01.06.2024.

6. Charge-sheet in the present FIR was filed on 11.02.2024, i.e. one day before the expiry of 90 days.

7. Learned Senior Counsel appearing for the Petitioners contends that Dr. Neeraj Agarwal is a qualified MBBS MD doctor by profession and a qualified medical practitioner. He states that the ingredient to attract Section 304(I) IPC is that the act by which the death is caused must be done with the intention of causing death, or causing such bodily injury as is likely to cause



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death. He states that no doctor will conduct an operation of a patient with the intention to cause the death of the patient. He states that since 304(I) IPC cannot be attracted to the present case, the Petitioners are entitled to be released on default bail as the investigation ought to have been completed within 60 days of the arrest of the Petitioners as provided under Section 167 of the Cr.P.C. He, therefore, states that the reasons given by the Courts below cannot be sustained. He further submits that Section 167(2)(a)(i) of the Cr.P.C is applicable in cases where the accused is charged with offences punishable with death or in cases where offences are punishable with life imprisonment or in cases where offences are punishable with a minimum sentence of 10 years. He states that since the offence under Section 304(I) IPC is not made out against the Petitioners, the maximum period of remand in the present case was only 60 days and if the police wanted to rope in the Petitioners for an offence under Section 304(I) IPC then it was the duty of the Police to first inform the Magistrate before expiry of 60 days period and obtain suitable orders for remand on the 60th day and not thereafter. He states that failure on the part of the Police to do so would result in grant of default bail to the Petitioners herein. He further contends that it was the duty of the learned Metropolitan Magistrate to ask the Police the need for further custody of the Petitioners since permission extending the remand of the Petitioner was given after the period of 60 days. He states that the Police cannot be permitted to come to the conclusion that the case of the Petitioners will fall under 304(I) just three days before the expiry of 60 days period and if such a procedure is permitted then the Police would be able to circumvent the time period prescribed under Section 167 of the Cr.P.C. in all cases where Section 304 IPC is invoked, and it would be presumed that the time



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period for filing the charge-sheet would automatically extend to 90 days. Learned Senior Counsel states that this procedure would be against the intent of the law.

8. *Per contra*, learned Counsel for the State contends that the application for default bail was filed by the Petitioners on 29.01.2024 and the learned Metropolitan Magistrate had been informed of the fact that the present case was being converted to one under 304(I) IPC and on the said basis further extension of the judicial custody of the Petitioners had been sought for from the learned Metropolitan Magistrate. He states that on 16.01.2024 when the remand Order was passed, no application on the part of the Petitioners was pending for grant of bail. He, therefore, states that the learned Metropolitan Magistrate was perfectly justified in holding that since the FIR has been lodged under Section 304 IPC wherein even under Section 304 (II) IPC the maximum punishment is 10 years, even as per the statutory mandate, the right to default bail shall arise only on the 91st day and not on the 61st day. He also contends that the Petitioners had earlier filed CR. REV. PETs. 46/2024 & 47/2024, before the learned Sessions Judge, and the same was withdrawn by the Petitioners on 17.02.2024 and thereafter the Petitioners have filed CRL. REV. PETs. No.197/2024 & 198/2024. He, therefore, states that the Petitioners ought not to have filed second petitions on the very same ground once they had withdrawn the first petitions.

9. Heard the Counsels for the Petitioners and the State and perused the material on record.

10. The dates, which are relevant for the present case, are as under:

- a) The FIR was registered on 25.10.2022.
- b) The Petitioners were arrested on 14.11.2023.



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- c) The offence under Section 304 IPC was specifically converted to Section 304(I) IPC on 09.01.2024, i.e. on the 57th day of the arrest of the Petitioners.
- d) The 60th day of the arrest of the Petitioners ended on 12.01.2024.
- e) The fact of converting the offence under Section 304 IPC to one under Section 304(I) IPC was brought to the knowledge of the learned Metropolitan Magistrate on 16.01.2024.
- f) Charge-sheet has been filed on 11.02.2024, i.e. on the 89th day of the arrest of the Petitioners.

11. Section 167 (2) of the Cr.P.C reads as under:

"(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 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



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for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence."

12. A perusal of the abovementioned Sections shows that the chargesheet against an accused person has to be filed within 90 days of arrest of the accused in cases where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years, and in cases related to other offences, the maximum period of within which chargesheet can be filed is 60 days from the date of arrest of the accused.

13. It is now well settled that the right to be released on bail if the investigation is not completed within a period specified is indefeasible.

14. In the present case, the FIR did not specify as to whether it has been registered under Section 304(I) IPC or 304(II) IPC. The part of the police diary which has been filed along with the written statement submission indicates that on 09.01.2024, i.e. just three days before the expiry of 60 days period, the police has converted the offence under Section 304 IPC to 304(I) IPC and this fact has not been brought to the notice of the learned Magistrate before the expiry of 60 days and it was brought to the notice of the Magistrate only on 16.01.2024, i.e. after the expiry of 60 days period, while seeking additional 14 days judicial custody of the Petitioners.

15. The short question which, therefore, arises before this Court is as to whether the order of remand passed after 60 days was correct and whether the Magistrate ought to have been informed that the case had been converted to an offence punishable under Section 304(I) IPC on the 60th day of the



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arrest of the Petitioners.

16. Learned Counsel for the Petitioner has drawn the attention of this Court to a Judgment passed by the Co-ordinate Bench of this Court in Varun Goyal v. State NCT of Delhi, **2023 SCC OnLine Del 1292**, wherein the Co-ordinate Bench of this Court has observed as under:

"48. Police has all the rights to investigate an offence in all respect. It is the duty of the Police to not only investigate but also find out during the course of investigation if any other offence is also attracted in the alleged incident.

49. However, at the same time, it cannot be left to the whims of the Police to come to the Court after the expiry of 60 days and to contend that they are also investigating offences which are much serious in nature than initially alleged and, thereby, leaving the Court as well as the accused guessing as to the period when the statutory right under Section 167(2) of Cr. P.C. can be availed.

50. It is for this reason that whenever the stat, during the course of investigation, finds that certain other sections are added than what are mentioned in the FIR or what the initial allegations referred to, they add such additional sections and bring it to the knowledge of the Magistrate. For instance, during the course of investigation of an allegation of Section 420, IPC if it is found that the forgery has been committed, leading to the investigation in relation to Sections 467, 468 etc. of IPC, the Police is within its powers to add such sections and point this out to the Magistrate.

51. However, the said exercise is required to be done before the expiry of a period of 60 days or else the accused would be left at the whim and mercy of the Police who will get an opportunity to defeat the right of the accused under Section 167(2) of Cr. P.C.



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52. It is not in doubt that while investigating an offence in relation to accident, the Police is free to also investigate whether the same involves the offence in relation to culpable homicide of such nature so as to entitle them to complete investigation within the extended period of 90 days from the date of initial detention. The same has to be brought to the knowledge of the Magistrate before expiry of period of 60 days after which the accused gets an indefeasible right to apply for a bail in terms of Section 167(2) of Cr. P.C..

53. The same can be brought to the knowledge of the Magistrate by means of applications seeking remand which are necessarily to be filed after expiry of the judicial custody after every 15 days. In addition, it is the duty of the Magistrate to ask the Investigating Agency, especially, when the term of the remand asked for goes beyond the total period of 60 days, the need for such custody and whether the Police is investigating such offences which entitles them to complete the investigation in extended period of 90 days.

54. In the absence of any such information to the Magistrate or any request of such nature, it should be presumed that investigation is required to be completed within a period of 60 days, unless the FIR is initially registered in relation to offences which attracts punishment of death, imprisonment up to life or more than 10 years. It is not in doubt that up to the 59th day, the investigating agency can gather material during the course of investigation which would lead to further investigation in relation to more serious offences giving them extended period to complete investigation within a period of 90 days. But the same, in my opinion, should be immediately brought to the knowledge of the Magistrate because that involves the



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personal liberty of the accused who is entitled to be released on bail on expiry of 60 days if the investigation is not complete.

55. In so far as Section 304, IPC, is concerned, it should be seen from the FIR and the statement recorded during the course of investigation up to the filing of the application under Section 167 as to whether the investigation is in relation to Part 'I' or Part 'II'. The same, in my opinion, cannot be decided on the basis of the reply filed by the Police to the application under Section 167, which is filed after 60 days, in the absence of the same being reflected in the case diary. In order to avoid any ambiguity, the same should be brought to the knowledge of the Magistrate before the expiry of the period of 60 days, whether the investigation relates to offence falling under Part I of Section 304, IPC or Part II of Section 304, IPC.

56. Merely showing or filing a reply that the investigation is in relation to Part I, in my opinion, is not sufficient because that would give whimsical powers to the Police authorities to mention any section in order to defeat the right of the accused. It is then the duty of the Magistrate to see at the stage when the application is filed, as to whether there is any substance for making such statement and should not wait for filing of the chargesheet. " (emphasis supplied)

17. This Court is in agreement with the view expressed by the Co-ordinate Bench of this Court in the abovementioned Judgment. It was the duty of the Police to inform the Magistrate at least on the 60th day that the Police has decided to convert the offence under Section 304 IPC to 304(I) IPC and that they would be seeking additional remand in the present case. Failure to do that thus results in an indefeasible right being enured to the Petitioners to be released on bail on the 61st day.



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18. The punishment for an offence under Section 299 IPC has been prescribed under Section 304 IPC. Section 304 IPC reads as under

"304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

19. Section 304 IPC is thus a very peculiar section which prescribes punishment with imprisonment for life or imprisonment for a term which may extend to 10 years in such cases if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death. Section 304 IPC also prescribes that if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death then the maximum period of imprisonment is 10 years or with fine or both. The period for filing the chargesheet would depend upon as to whether the case is being charged under Section 304(I) IPC or Section 304(II) IPC. If the FIR is silent on this aspect and the police diary is also silent on this aspect then the Magistrate cannot grant remand for more than 60 days and on the 60th day, the case should be placed before the Magistrate to see if



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further remand is necessary or not.

20. In the opinion of this Court in a case under Section 304 IPC where the police diary does not indicate that the accused is likely to be charged for an offence which is punishable under Section 304(I) IPC then the Magistrate must ensure that the period of remand does not extend more than 60 days. In the present case, remand for 14 days was ordered on the 02.01.2024 and the remand was further extended upto 16.01.2024 while the 60th day ended on the 12.01.2024. The Magistrate ought not to have extended the remand beyond 12.01.2024. The police diary did not indicate that the Petitioners are likely to be charged for an offence which would attract imprisonment for life under Section 304(I) IPC on 02.01.2024 and resultantly the remand upto 16.01.2024 was not permissible. The offence under Section 304 IPC was specifically converted to one under Section 304(I) IPC on the 09.01.2024 which is no doubt before the 60th day but it ought to have been brought to the knowledge of the Magistrate on the 12.01.2024 i.e., on the expiry of the 60th day and the Magistrate on the 12.01.2024 ought to have applied his mind whether further period of remand could be granted or not. This Court is, therefore, of the opinion that in every case of an offence of culpable homicide not amounting to murder punishable under Section 304 IPC if the FIR is registered wherein a person could either be punished under Section 304(I) or 304(II) IPC then the fact that Police has decided to convert the offence specifically under Section 304(I) must be placed before the Magistrate within 60 days. If, on the date of the order of extension of remand, the Police Diary does not indicate that the case has not been converted to an offence under Section 304(I) IPC then the Magistrate cannot permit remand beyond 60 days from the date of arrest. On the 60th day, the



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Magistrate has to apply his mind to decide as to whether the remand has to be extended further after examining the case diary. The fact that the police has sufficient material to convert the offence under Section 304 IPC to one under Section 304(I) IPC must be brought to the knowledge of the Magistrate before the expiry of 60th day and failure to do so will result in depriving the accused of their right to apply for default bail in terms of Section 167(2) Cr.P.C and it will be violative of Article 21 of the Constitution of India.

21. A person who is accused only of an offence punishable under Section 304 IPC, which can be either offence under Section 304(I) IPC or 304(II) IPC, cannot be detained beyond the period of 60 days without informing the Magistrate before 60 days period ends, so that the Police is not in a position to circumvent the period of detention to suit their convenience. It is well settled that if there is an ambiguity then the ambiguity has to be construed in favour of the accused.

22. The Apex Court in Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67 has observed as under:

"65. Keeping in view the legislative history of Section 167, it is clear that the legislature was carving out the more serious offences and giving the investigating agency another 30 days to complete the investigation before the accused became entitled to grant of "default bail". It categorises these offences in the three classes:

I. First category comprises of those offences where the maximum punishment was death.

II. Second category comprises of those offences where the maximum punishment is life imprisonment.



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III. The third category comprises of those offences which are punishable with a term not less than 10 years.

66. In the first two categories, the legislature made reference only to the maximum punishment imposable, regardless of the minimum punishment, which may be imposed. Therefore, if a person is charged with an offence, which is punishable with death or life imprisonment, but the minimum imprisonment is less than 10 years, then also the period of 90 days will apply. However, when we look at the third category, the words used by the legislature are “not less than ten years”. This obviously means that the punishment should be 10 years or more. This cannot include offences where the maximum punishment is 10 years. It obviously means that the minimum punishment is 10 years whatever be the maximum punishment.

67. While interpreting any statutory provision, it has always been accepted as a golden rule of interpretation that the words used by the legislature should be given their natural meaning. Normally, the courts should be hesitant to add words or subtract words from the statutory provision. An effort should always be made to read the legislative provision in such a way that there is no wastage of words and any construction which makes some words of the statute redundant should be avoided. No doubt, if the natural meaning of the words leads to an interpretation which is contrary to the objects of the Act or makes the provision unworkable or highly unreasonable and arbitrary, then the courts either add words or subtract words or read down the statute, but this should only be done when there is an ambiguity in the language used. In my view, there is no ambiguity in the wording of Section 167(2) of the Code and, therefore, the wise course would be to follow the principle laid down by Patanjali Shastri, C.J. in Aswini Kumar



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Ghose v. Arabinda Bose [Aswini Kumar Ghose v. Arabinda Bose, (1952) 2 SCC 237 : AIR 1952 SC 369] , where he very eloquently held as follows: (SCC p. 263, para 26)

“26. ... It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute.”

In Jugalkishore Saraf v. Raw Cotton Co. Ltd. [Jugalkishore Saraf v. Raw Cotton Co. Ltd., AIR 1955 SC 376] , S.R. Das, J., speaking for this Court, held as follows: (AIR p. 381, para 6)

“6. ... The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning.”

68. External aids of interpretation are to be used only when the language of the legislation is ambiguous and admits of two or more meanings. When the language is clear or the ambiguity can be resolved under the more common rules of statutory interpretation, the court would be reluctant to look at external aids of statutory interpretation.

69. Gajendragadkar, J., speaking for this Court in Kanai Lal Sur v. Paramnidhi Sadhukhan [Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907] held : (AIR p. 910, para 6)

“6. ... the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself.”



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70. These sound principles of statutory construction continue to hold the field. When the natural meaning of the words is clear and unambiguous, no external aids should be used.

71. A bare reading of Section 167 of the Code clearly indicates that if the offence is punishable with death or life imprisonment or with a minimum sentence of 10 years, then Section 167(2)(a)(i) will apply and the accused can apply for “default bail” only if the investigating agency does not file charge-sheet within 90 days. However, in all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of “default bail” after 60 days in case charge-sheet is not filed.

72. Even if I were to assume that two views are possible and third category envisaged in Section 167(2)(a)(ii) is ambiguous, as suggested by learned Brother Pant, J., then also I have no doubt in my mind that a statute which curtails the liberty of a person must be read strictly. When any human right; a constitutional fundamental right of a person is curtailed, then the statute which curtails such right must be read strictly. Section 167 of the Code lays down the procedure established by law by which a person can be deprived of his personal liberty guaranteed to him under Article 21 of the Constitution of India. If two meanings could be attributed to such a provision then the courts must lean towards liberty and accept that interpretation of the statute which upholds the liberty of the citizen and which keeps the eternal flame of liberty alive. If words are ambiguous then also the court should be reluctant to accept that interpretation which curtails the right of a human being of being free.

(emphasis supplied)



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23. The Apex Court in Judgebir Singh alias Jasbir Singh Samra alias Jasbir and Others v. National Investigation Agency, **2023 SCC OnLine SC 543**, has observed as under:

"31. The scheme of the CrPC as noticed above clearly delineates that the provisions of Section 167 of the CrPC give due regard to the personal liberty of a person. Without submission of chargesheet within 60 days or 90 days as may be applicable, an accused cannot be detained by the police. The provision gives due recognition to the personal liberty....."

24. The Apex Court in Union of India v. Nirala Yadav, **(2014) 9 SCC 457**, has observed as under:

"24. Thereafter the Court culled out six conclusions which are necessary to be reproduced. They are: (Uday Mohanlal Acharya case [(2001) 5 SCC 453 : 2001 SCC (Cri) 760] , SCC pp. 473-74, para 13)

"(1) Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days on the whole.

(2) Under the proviso to the aforesaid sub-section (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than in the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.

(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



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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.

(4) When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

(5) If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.

(6) The expression 'if not already availed of' used by this Court in Sanjay Dutt case [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in para (a) of the proviso



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to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.” "

25. The Apex Court in Enforcement Directorate v. Kapil Wadhawan, (2024) 7 SCC 147 has observed as under:

"40. In order to avoid long incarceration of an accused only because the investigation is being carried out in a leisurely manner, the legislature was prompted, to confer a right on the accused to be released on default bail if he is prepared to offer bail bond and the investigation may still continue. This is why the General Clauses Act cannot be made applicable to sub-section (2) of Section 167.

41. Moreover, excluding the date of the remand order would also result in a break in the continuity of the custody of the accused which begins on his date of arrest under Section 56 and continues till the stipulated 60/90 day period, under Section 167. Additionally, it is to be noted that when we include the date of remand order as the first day of the stipulated remand period, there arises no fixed 60-day period for which the accused is remanded. Once the Magistrate authorises remand, irrespective of the time of the day, when he does so, the prosecution, in each case will have a varying period of custody which may range in a moving cursor manner from a spectrum of 59 days and 23 hours or so to 59 days and 1 hour or so for offences covered under proviso (a)(ii) of Section 167(2). The exact period of remand for an accused is subject to the first gaze of the Magisterial court and the signing of the remand order.



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42. This explains the finding in Chaganti [Chaganti Satyanarayana v. State of A.P., (1986) 3 SCC 141 : 1986 SCC (Cri) 321] that the General Clauses Act is inapplicable to Section 167CrPC, as there is no definite “from” period from which the stipulated remand, may commence. Moreover, the fact that the date of remand is included and not excluded from the stipulated period, is based on the pivotal consideration that personal liberty of the individual commands that any lacuna in the specificity of the law has to be so interpreted in the accused's favour.

43. The learned ASG placing reliance on Econ [Econ Antri Ltd. v. Rom Industries Ltd., (2014) 11 SCC 769 : (2014) 4 SCC (Civ) 284 : (2014) 3 SCC (Cri) 551] and Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329] to contend that Section 9 of the General Clauses Act would be applicable to Section 167CrPC, as there is a particular time period fixed, irrespective of a “from” and “to” stipulation, within which investigation is to be done. This we find to be fallacious as there is no fixed time period under which the investigation is to be completed. As explained above, when we include the date of remand in the stipulated 60/90 day period under Section 167, then it would result in a varying remand period not exactly amounting to a neat 60/90 days' time. Thereby, making the General Clauses Act, inapplicable.

44. Section 57CrPC 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 scrutinise 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



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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 56CrPC 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 Section 167(2)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.

45. Furthermore, if an accused is remanded by a Magistrate on say, 1-1-2023, then, the police, post judicial scrutiny, is empowered to investigate, starting on the same day, as per Section 167CrPC, 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 167CrPC 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.

46. In 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 while examining the ratio in Union of India v. Nirala Yadav [Union of India v. Nirala Yadav, (2014) 9 SCC 457 : (2014) 5 SCC (Cri) 212] and Uday Mohanlal Acharya v. State of Maharashtra [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] , 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



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in completion of the investigation within the prescribed period. The opinion in Sanjay Dutt v. State [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] was also considered, wherein the Constitution Bench laid down that if the charge-sheet is not filed and the right for “default bail” has ripened into the status of indefeasibility, such right cannot be frustrated by the prosecution.

26. Applying the said law to the facts of the present case, the Petitioner has originally been charged with offences under Section 304 IPC without specifying as to whether it is 304(I) or 304(II) IPC. On 09.01.2024, i.e. just three days before the expiry of 60 days' period, the police has converted the offence under Section 304 IPC to 304(I) IPC and this fact has been brought to the notice of the learned Magistrate only on 16.01.2024, i.e. on the 64th day of the arrest of the Petitioners. The matter was placed before the Magistrate on the 02.01.2024. As stated above, on 02.01.2024, in the police diary, the offence was one under Section 304 IPC by which the Petitioners could have been either punished for a period which may extend upto life or upto 10 years. The Magistrate, therefore, ought to have listed the matter for remand on the 12.01.2024 which is the day when the 60th day ends and on the same day the Petitioners should have been informed that the case has been converted to one under Section 304(I) IPC because on that date, the Petitioners' right to apply for default bail arose.

27. The Petitioners filed applications for default bail on 29.01.2024, i.e. the 77th day, and till then the charge-sheet was not filed. The Charge-sheet has only been filed on 11.02.2024, i.e. the 89th day. The Petitioner was, therefore, entitled to default bail before the filing of the chargesheet.

28. Section 167 Cr.P.C gives the power to the Magistrate to direct for



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detention of an accused in police or judicial custody, if such further detention is necessary. It is now well settled that the order directing remand of an accused is a judicial function and it is not an executive order and while adjudicating as to whether it is necessary to extend the remand, the Magistrate has to satisfy himself as to whether the material placed before him justify such remand, i.e. whether there are reasonable grounds to extend the remand of the persons who is in custody. The Magistrate has to see whether it is necessary to extend the remand or not and this requires the investigating agency to send the case diary along with the remand report to enable the Magistrate to take a decision, after application of his mind, as to whether there is need to extend the remand of the accused or not. The Apex Court in Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314, has observed as under:

"24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a



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mechanical manner."

29. There may be cases where, after statutory bail is granted, the police, on investigation, comes to a conclusion that the accused has committed an offence which can be punished for life, the Police has the right to re-arrest the accused.

30. The right of the Petitioners under Article 21 of the Constitution of India has, therefore, been clearly violated on 13.01.2024 owing to the failure on the part of the police not to inform the Magistrate on the 12.01.2024 i.e., on the date when 60th day ended, that the Petitioners can now face imprisonment upto a period of life. As also noticed by a Co-ordinate Bench of this Court in Varun Goyal vs. State of NCT of Delhi, **2023 SCC OnLine Del 1292**, it cannot be left to the whims of the police to come to the Court after the expiry of 60 days and to contend that they are investigating an offence which is more serious in nature than initially alleged, thereby, leaving the Court as well as the accused guessing as to the period when the statutory right under Section 167(2) Cr.P.C can be availed of. The Order extending the remand of the Petitioners is not a mere Ministerial Order and the Magistrate has to apply his mind to see whether further remand has to be given or not, whether the exercise by the police in converting the case to one under Section 304(I) IPC, wherein punishment for life can be given, is proper or not. The Magistrate need not hold a mini trial to ascertain as to whether further investigation should be permitted or not or whether the Petitioners can be released on bail. Since two interpretations are possible, as rightly pointed by the Counsel for the Accused, the interpretation favouring the accused must be taken. As stated, the Petitioners in the present case, have been deprived of their right to know that the case has been converted to



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one where they can be sentenced imprisonment for life and the Magistrate has not been informed that such a conversion has taken place. This Court is also of the opinion that in the case of 304 IPC, the question as to what should be the imprisonment, can be ascertained only at the conclusion of trial and for an offence under Section 304 IPC, the period of investigation should only be 60 days and not 90 days unless the facts undisputedly indicate that the intention of the accused was to cause death, or cause such bodily injury as is likely to cause death, as this would be more in favour of the accused and in consonance with the right guaranteed under Article 21 of the Constitution of India.

31. This Court is, therefore, of the opinion that the Petitioners are entitled to statutory bail under Section 167(2) Cr.P.C.

32. In view of the above, this Court is inclined to enlarge the Petitioners on bail on the following conditions:

- a) The petitioners shall give a security in the sum of Rs.1,00,000/- each with two sureties in the like amount to the satisfaction of the Trial Court;
- b) The Memo of Parties shows that the Petitioners are residing at E-234, Greater Kailash, New Delhi. The Petitioners are directed to continue to reside at the same address and in case there is any change in the address of the Petitioners, the Petitioners are directed to intimate the same to the Investigating Officer;
- c) The Petitioners are directed not to leave the city of Delhi without the permission of the concerned Court.
- d) The Petitioners are directed not to indulge in the business of running any medical centre.



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- e) The Petitioners are directed to report to the local police station once in every week, i.e. on every Wednesday at 10:30 AM and the Petitioners shall be released within half an hour after completing the formalities;
- f) The Petitioners are directed to give all their mobile numbers to the Investigating Officer and keep them operational at all times;
- g) The Petitioners shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner;
- h) The Petitioners are directed not to contact the Complainant or any of her family members.
- i) The Petitioners are directed to attend all the Court proceedings.
- j) In case it is established that the petitioners have tried to influence the witnesses or tamper with the evidence, the bail granted to the petitioners shall stand cancelled forthwith.

33. The petitions are disposed of along with all the pending application(s), if any.

34. Be it noted that this Court has not made any observations on the merits of the case.

35. It is made clear that on further investigation if the Police comes to a conclusion that the Petitioners have committed an offence which can be punished with life imprisonment, the Police has the right to re-arrest the Petitioners.

SUBRAMONIUM PRASAD, J

AUGUST 28, 2024

Rahul