

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2472 OF 2022
WITH
INTERIM APPLICATION NO. 2592 OF 2024

Sunil Vitthal Wagh

.....Applicant

Vs.

The State of Maharashtra

.....Respondent

Mr. Shailesh Kharat a/w Mr. Sajid Mhat a/w Mr. Onkar Chaudhari
a/w Mr. Ashwet Bhoir for the applicant
Ms. Mahalakshmi Ganapathy, APP for the State
Mr. Ronge, HC/186, SDPO Office, Pandharpur
Mr. Londhe, PC/1423 Division Solapur Rural

IRESH
MASHAL

CORAM : GAURI GODSE, J.

DATE : 18th JULY 2025

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ORDER:

1. Heard learned counsel for the applicant and the learned APP.

2. This application is filed by accused no. 25 for releasing him on bail under Section 167 (2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) in connection with CR No. 244/2018 registered with Pandharpur City Police Station for offences punishable under

sections 3(1)(i), 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999, sections 302, 303, 120(B), 201, 143, 147, 148 read with 149 of the Indian Penal Code, sections 3, 4, 25, 5, 27 of the Indian Arms Act and section 135 of the Maharashtra Police Act. The application was filed for his release on bail before the Special Judge (MCOCA) at Pandharpur. The application was rejected on 11th March 2022.

3. As the application is for default bail, the reference to the facts of the case is not necessary. I have perused the papers for the facts relevant to deciding the applicant's right to default bail. The chargesheet was filed on 15th September 2018, where the applicant's status was shown as an absconder, and the chargesheet was as per Form 5-B as per Section 299 of Cr.P.C. The applicant was subsequently arrested on 28th August 2021 and remanded to police custody. On the prosecution's application, police custody was extended until 9th September 2021. Thereafter, judicial custody was granted.

4. After the applicant's date of arrest, the period of 180 days for completion of the investigation was over on 24th February

2022. On 28th February 2022, the applicant filed an application under section 167(2) of Cr.P.C. The prosecution opposed the application through a report dated 2nd March 2022. The application for release on bail under Section 167(2) of Cr.P.C. was filed on the ground that the investigation was not completed and the chargesheet was not filed within a period of 180 days from the date of the applicant's arrest and the first remand.

5. Learned counsel for the applicant submits that in view of the two conflicting views of the learned Single Judges of this Court in the case of *Anil Somdatta Nagpal and Lalit Somdatta Nagpal Vs. The State of Maharashtra*¹ and in the case of *Pankaj Vs. The State of Maharashtra and others*² an order was passed by a third Single Judge of this Court for referring the matter to a Larger Bench. Learned counsel for the applicant points out the Judgment dated 19th December 2024, passed by the Larger Bench deciding the reference on the two conflicting views of two learned Single Judges of this Court. The Reference Court held that the decision in the case of *Pankaj* is appropriate and felicitous with the object

¹ 2006 Cri. L. J. 1307

² Criminal Writ Petition No. 475 of 2016

of section 167(2) of Cr.P.C. Learned counsel for the applicant therefore, submits that in view of the decision in the case of *Pankaj* with similar facts, the present applicant would be entitled to be released on bail in view of section 167(2) of Cr.P.C.

6. Learned counsel for the applicant relied upon relevant paragraphs in the case of *Pankaj* to support his submissions. He submits that the applicant was shown as absconding in the first chargesheet. After his arrest, a remand was sought for the completion of the investigation, but it was not completed within the stipulated time. Hence, the applicant would be entitled to avail himself of his indefeasible right of default bail, which he can assert at any time before the supplementary chargesheet is filed.

7. Learned counsel for the applicant relies upon paragraph 21 of the Judgment in the case of *Pankaj* to support his submissions that even in the present case, after the applicant was arrested and remanded to police custody, the period of 180 days expired on 24th February 2022 and thus, the applicant was entitled to his indefeasible right under section 167(2) of Cr.P.C. for default bail.

8. The initial dates, as referred to by the learned counsel for

the applicant, are not disputed. I have perused the papers for the relevant dates as pointed out by the learned counsel for the applicant. There is no dispute that the applicant had already applied for his indefeasible right to be released under section 167(2) of Cr.P.C. before the supplementary chargesheet was filed after completing the investigation, so far as the applicant is concerned. The legal principles settled in the Larger Bench's decision support the grounds raised on behalf of the applicant. The view taken in the case of *Pankaj*, which is upheld by the Larger Bench, reads in paragraph 21 of the Judgment as under:

"Now, it is clear to us that for ascertaining whether or not the right of default bail has been made available to the applicant, the date on which that charge-sheet is filed which marks the completion of investigation against the accused, is relevant. If further investigation is started against an accused arrested after filing of first charge-sheet in which he is shown as absconding accused, completion of investigation would be declared only by the act of filing of supplementary charge-sheet against him. If

the supplementary charge-sheet against such an accused is not filed within 90 days or 60 days, as contemplated under Sections 167(2)(a)(i) and (ii) of the Code of Criminal Procedure, the accused would get the right of default bail, which he can assert anytime thereafter but before filing of the supplementary charge-sheet subsequently. The period of 90 days or 60 days so contemplated under Section 167(2)(a) is essentially the period for which the Magistrate may authorise the detention of the accused. In other words, a police officer must complete the investigation within the period of 90 days or 60 days, as the case may be, or otherwise, it would not be possible for the Magistrate to authorise detention pending investigation. Therefore, any charge-sheet which marks completion of an investigation against the accused under detention would have to be filed within such stipulated period computed from the date of arrest of the accused against whom it is filed. In the instant case, although, the first charge-sheet was filed on 06/11/2015, it was filed by showing this applicant as absconding accused. This applicant came to

be arrested by the order of the learned Additional Sessions Judge passed on 06/02/2016, when he surrendered on that date before that Court and on that very day, this applicant was remanded to police custody till 12/02/2016. On 12/02/2016, the Investigating Officer made an application for extension of his police custody remand, but that was rejected and the applicant was remanded to magisterial custody till 17/02/2016. The supplementary charge-sheet came to be filed in the afternoon of 06/05/2016. The application asserting the right of default bail was filed by the applicant at 11:00 a.m. of 06/05/2016. During the period of detention of the applicant, initially in the police custody and later on in the magisterial custody, between 12/02/2016 and 17/02/2016 and also thereafter, although no order extending custody remand was passed, police indeed made further investigation. These are all admitted facts and it is clear from them that when the first charge-sheet was filed on 06/11/2015, investigation as against this applicant was not completed and it came to concluded only on 06/05/2016, when the supplementary

charge-sheet was filed in the afternoon. The 6th day of May, 2016 was the 91st day from the date of arrest of the applicant i.e. 06/02/2016, and the supplementary charge-sheet came to be filed after this applicant had already asserted his right of default bail by filing an application on the same day but at 11:00 a.m. much before filing of the supplementary charge-sheet in the afternoon. Therefore, the learned Additional Sessions Judge did not have any option but to release the applicant on bail by making him available his indefeasible right of default bail under the law. As it was not done by the learned Additional Sessions Judge, now this Court would have to step in and allow the applicant to realise his such right. Accordingly, I find that the applicant is entitled to be released on bail in view of his right arising under Section 167(2) of the Code of Criminal Procedure.”

9. Learned APP submits that the chargesheet was filed on 28th February 2022 after the applicant applied to avail of the default bail. She submits that six offences are registered against the

applicant. She submits that, as far as the other accused are concerned, some of them have been released on bail on the condition that they would not enter the jurisdiction of the Pandharpur City Police Station, except to attend the dates before the Trial Court. She therefore submits that similar conditions be imposed.

10. The law on entitlement to default bail is no longer res integra. Thus, in view of the aforesaid admitted facts of the case and the well-settled legal principles on the indefeasible right of the accused under section 167(2) of Cr. P.C., the applicant is entitled to be released on bail.

11. The application is therefore allowed by passing the following order.

ORDER

I. The applicant be released on bail in connection with CR No. 244/2018 registered with Pandharpur City Police Station for offences punishable under sections 3(1)(i), 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999, sections 302, 303, 120(B),

201, 143, 147, 148 read with 149 of the Indian Penal Code, sections 3, 4, 25, 5, 27 of the Indian Arms Act and section 135 of the Maharashtra Police Act on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.

II. The applicant shall not enter the jurisdiction of Pandharpur City Police Station, except to attend the dates before the Trial Court till the conclusion of the Trial.

III. The applicant shall regularly attend all the dates in the Trial Court.

IV. The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses, or any person concerned with the case.

V. The applicant shall submit particulars of the place of residence and contact number in the Trial Court, and the same shall not be changed without the leave of the Trial Court.

VI. If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

12. Bail Application is disposed of in the above terms.

13. In view of disposal of bail application, pending interim/civil applications, if any, are disposed of as infructuous.

[GAURI GODSE, J.]