

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1814 OF 2025**

Pankaj Balu Khandbhor ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Zaid Anwar Qureshi for the Applicant.

Mr. T. G. Khan, APP for the State.

Mr. Doijad, API, Vadgaon Maval Police Station.

CORAM : ASHWIN D. BHOBE, J.

DATED : 29th JULY, 2025

P.C.:

1. Heard Mr. Zaid Anwar Qureshi, learned Advocate for the Applicant and Mr. T. G. Khan, learned APP for the State.
2. Applicant (Accused No.9) is before this Court seeking bail under Section 167 (2) read with Section 439 of the Code of Criminal Procedure, 1973, in connection with C. R. No.12 of 2021 registered with Vadgaon Maval Police Station, Pune, for the offences punishable under Sections 302, 307, 143, 147, 148, 149, 427, 354, 341, 504, 506, of the Indian Penal Code, 1860 and Section 135 of the Bombay Police Act, 1951.
3. Mr. Zaid Qureshi, learned Advocate for the Applicant states that Crime No.12 of 2021 is upon committal to the Court of the Additional Sessions Judge, Vadgaon Maval, Pune is registered as Sessions Case No.478 of 2022.
4. There are 9 Accused in the present crime. Six Accused

persons were arrested during investigation. Applicant is one amongst the three Accused persons, who were absconding.

5. Charge-sheet against the six Accused persons was filed on 15.04.2021.

6. Charge-sheet under Section 299 of Cr.PC. was filed against the Applicant and the two other Accused persons who were absconding at the time of submission of the said charge-sheet on 15.04.2021.

7. Applicant after having failed in his attempt to secure pre-arrest bail, surrendered before the Court of the Judicial Magistrate First Class, Vadgaon on 10.07.2024.

8. Report under Section 173 (8) of Cr.PC. was filed on 18.12.2024.

9. Applicant asserting his right of default bail filed application under Section 167(2) of Cr.PC. before the Court of Judicial Magistrate First Class, Vadgaon Maval. Ground raised in the said application was failure of the prosecution to file supplementary charge-sheet within 90 days from the date (10.07.2024) of Applicant's surrender before the Court. Said application was dismissed by the Court of Judicial Magistrate First Class, Vadgaon Maval, vide order dated 16.10.2024.

10. Criminal Revision Application No.17 of 2024, filed by the Applicant before the Court of Additional Sessions Judge Vadgaon Maval, was dismissed on 23.01.2025.

11. Mr. Zaid Qureshi, learned Advocate for the Applicant submits

that the Applicant having surrendered before the Court on 10.07.2024, prosecution was under a legal obligation to file supplementary charge-sheet within a period of 90 days, considering the maximum punishment prescribed for the offences charged against the Applicant. Failure of the prosecution to file the supplementary charge-sheet, has resulted in the Applicant being entitled to default bail under Section 161(2) of the Cr.P.C.

12. Mr. T. G. Khan, learned APP for the State, though, does not dispute the fact of supplementary charge-sheet not being filed against the Applicant within 90 days from 10.07.2024, submits that the Applicant would not be entitled to default bail under Section 167(2) of Cr.P.C. as the Applicant had surrendered before the Court after having failed in securing pre-arrest bail.

13. Section 167(2) of the Cr. P. C. reads as follows:

“ 167. Procedure when investigation cannot be completed in twenty-four hours.-(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole 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-

¹[(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, shall authorise the detention of the accused person in custody under this if he is satisfied that adequate grounds exist for doing so, but no Magistrate 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 (1) ninety days, where the investigation relates to an offence 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;]

²[(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.]

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

³[Explanation 1. For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.]

⁴[Explanation II. If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be:]

⁵[Provided further that in case of woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.]”

14. Fact of Applicant being arrested on 10.07.2024, is not in dispute. Charge-sheet filed on 15.04.2021 showed the Accused as absconding. Offences charged in C.R. No.12 of 2021 relates to

punishment which is not less than 10 years. Prosecution did not file supplementary charge-sheet, within 90 days from 10.07.2024.

15. Section 167(2) of Cr. P.C. confers an indefeasible right for default bail to an Accused. Upon the expiry of the period of 90 days from 10.07.2024, the Applicant was entitled to his indefeasible right under Section 167(2) of Cr.P.C. for default bail.

16. In view of two conflicting decisions rendered by the learned Single Judge's of this Court in the case of Anil Somdatta Nagpal and Lalit Somdatta Nagpal Vs. The State of Maharashtra¹, and the view in the case of Pankaj Vs. The State of Maharashtra and Ors.², matter was referred to the Hon'ble Larger Bench. The Hon'ble Larger Bench has upheld the view taken in the case of Pankaj (supra).

17. In the case of Pankaj (supra), this Court in paragraph No.21 has observed 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

1 2006 Cri.LJ.1307

2 Criminal Writ Petition No.475 of 2016

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."

18. Law on entitlement of default bail is no longer *res-integra*. Applicant has made out a case for entitlement of his indefeasible right under Section 167(2) Cr. P.C. and therefore is entitled to be released on bail. This application is allowed.

19. Mr. T. G. Khan, learned APP raised apprehensions about the

Applicant threatening and interfering with the prosecution witnesses if released on bail. In response thereto, Mr. Zaid Qureshi, on instructions from Applicant states that the Applicant shall not enter the territorial jurisdiction of Pune district till the conclusion of the trial of Sessions Case No.478 of 2022. Statement accepted.

20. In view of the above, the present Bail Application is allowed, on the following conditions:

- a) Applicant is directed to be released on bail in connection with C. R. No.12 of 2021 registered with Vadgaon Maval Police Station, Pune on his furnishing PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of Court of Additional District Judge, Vadgaon Maval.
- b) Applicant shall attend and regularly appear before the Court of the Additional District Judge, Vadgaon Maval as and when required and/ or on each date of hearing, unless specifically exempted by the Court.
- c) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of the case so as to dissuade such person from disclosing the facts to the Court or any police officer and shall not tamper with evidence.
- d) Applicant upon his release, within 3 days shall furnish to the Investigation Officer, Vadgaon Maval Police Station, Pune his residential address with proof and the contact number and to keep the Investigation Officer intimated

about the change in the same from time to time.

e) Applicant shall not enter the territorial jurisdiction of Pune District, till the conclusion of trial in Sessions Case No.248 of 2022.

21. The Bail Application No.1814 of 2025 is allowed in the above said terms.

(ASHWIN D. BHOBE. J.)