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Crl.O.P.No.10065 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-01-2026

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THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NO.10065 of 2025

R. Rakesh

... Petitioner/ A2

Vs

Union of India Rep. by,
The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit, Ambattur
Chennai – 600 077.
(NCB No.48/01/08/2023)

... Respondent/ Complainant

PRAYER : Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to grant bail to the petitioner/accused in C.C.No.20 of 2024 pending on the file of the learned Additional District Judge, Special Court for EC & NDPS Cases, Coimbatore.

For Petitioner(s) : Mr. B. Kumar, Senior Advocate
For Mr.Arvind Jayakar

For Respondent(s) : Mr. N.P. Kumar
Special Public Prosecutor



ORDER

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The petitioner, who was arrested and remanded to judicial custody on 24.06.2023 in C.C.No.20 of 2024 pending on the file of the learned Additional District Judge, Special Court for EC & NDPS Cases, Coimbatore, for the offences punishable under Sections 8(c) r/w 20(b)(ii)(A), 21(B), 22(C), 23(C), 28 and 29 of NDPS Act, 1985, seeks bail. This is the successive bail application of the petitioner and this Court had dismissed the bail petitions of the petitioner thrice, vide orders dated 31.01.2024, 11.07.2024 and 28.10.2024 in Crl.O.P.Nos.27345 of 2023, 10705 of 2024 and 23331 of 2024, respectively.

2. The case of the prosecution is that on the basis of specific information, the officers of NCB Chennai Zonal Unit seized 10 grams of 2C-B, 3 grams of MDMA, 150 grams of THC, 156 grams of THC (viscous liquid), 168 grams of Ganja, 1 gram of Cocaine, 7 grams of LSD (double design), 20 grams of LSD (single design and no design) at K.R. Engineering Works/ K.R.Kwality Racks at Chinnavedampatti, Coimbatore on 22/23.06.2023. They had also arrested three accused including the petitioner herein; that further seizures were made including 57 grams of Ganja, 3 grams of Cocaine at Sub-Post Office, Rathinapuri, Coimbatore and 100 Bolts of LSD (1.08 grams) at Sub-Post Office, Thiruverkadu, Chennai and 900 grams of Ganja from parcels at Post Offices which had been received by A1 from US, Canada and France



and from one parcel sent by A1 to one Akash, resident of Chennai. Hence, this case.

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3. The petitioner herein have raised various points before this Court in the earlier three petitions filed by him seeking bail on merits and in all those petitions, this Court had considered the merits and declined to grant bail to the petitioner. While so, this petition has been filed by the petitioner by invoking Section 167(2) of Cr.P.C on the ground that, while the petitioner was in judicial custody and even after 180 days, the complaint or the final report was not filed by the respondent herein before the Trial Court in this case. It is further submitted that during the 180th day of the petitioner's judicial custody, the petitioner herein had filed a petition in Crl.O.P.No.27345 of 2023 seeking for bail before this Court but the same was not granted by invoking Section 167(2) of Cr.P.C. The complaint against the petitioner was filed only on 15.06.2024, recorded in the e-court status with a delay of nearly 5 months. In the copy of the complaint filed by the respondent served on the petitioner, the office endorsement in the complaint shows that the complaint was filed on 29.12.2023. If this date was taken into account as a date of filing of the complaint, still the same was also filed after 180th day of the petitioner's judicial custody, hence the petitioner is entitled for bail under Section 167(2) of Cr.P.C. It is further stated that on the 180th day of the petitioner's judicial custody, his bail application was pending before this Court, in which the petitioner has also



prayed for bail and agreed for furnishing sureties.

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4. The learned Senior Counsel appearing for the petitioner submitted that, the petitioner's right of claiming default bail is indefeasible right and the petitioner has earlier prayed this right by filing bail petition before this Court. He also submitted that during pendency of the petitioner's bail application, the respondent has chosen to file the complaint and right of seeking default bail, survive even after filing of the final report in the Trial Court against the petitioner herein. Hence in this petition, the petitioner seeks for default bail under Section 167(2) of Cr.P.C. To buttress his argument, the learned Senior Counsel also relied on the judgments of the Apex Court in ***Rakesh Kumar Paul vs. State of Assam [(2017) 15 SCC 67]*** and ***Achpal vs. State of Rajasthan [(2019) 14 SCC 599]***.

5. The learned Special Public Prosecutor appearing for the respondent while opposing the bail to the petitioner reiterated the prosecution case and submitted that, the complaint in this case was filed as early as on 19.12.2023 at about 23:07 hours through e-filing portal and acknowledgment was also generated and they have received the same, however the Trial Court has returned the same stating that the document filed through online by the respondent was in OCR format instead of PDF format and with a direction to file the same in relevant format; that subsequently on 23.12.2023, the complaint



was once again filed before the Trial Court. He also submitted that the 180th day of the petitioner's custody falls on 21.12.2023, however the e-filing of the complaint was done before the same, hence the petitioner's statutory right to seek default bail is extinguished and there is no merit in the claim of the petitioner, hence prays to dismiss this bail petition.

6. I have considered the submissions made on both sides and perused the materials available on record. Admittedly, the petitioner herein was arrested on 24.06.2023 and it is stated that the 180th day of his judicial custody falls on 21.12.2023; that further the online e-filing was done on 19.12.2023 itself and the same was returned for technical reasons and subsequently, the respondent has once again manually filed final report on 23.12.2023. Now the petitioner claims that since his bail petition was pending between the day on which his right of seeking default bail accrued on 21.12.2023 and in that day, there was no final report or complaint filed and only on 23.12.2023, hence the petitioner seeks 'default bail' in his fourth bail application, after exhausting various grounds on merits to satisfy the twin conditions under Section 37 of the NDPS Act. The legal position in this regard is well settled in umpteen number of judgments of the Apex Court.

7. The Hon'ble Apex Court in *Rakesh Kumar Paul vs. State of Assam* cited supra has considered the previous judgments dealt under Section



167(2) of Cr.P.C and re-iterated the principle behind grant of default bail after interpreting the Sections 167(2) of Cr.P.C and it reads as follows:

“Default bail as an indefeasible right

33. *It was submitted by learned Counsel for the State that the charge sheet having been filed against the Petitioner on 24th January, 2017 the indefeasible right of the Petitioner to be now released on 'default bail' gets extinguished and the Petitioner must apply for regular bail.*

34. *What is forgotten is that the indefeasible right for 'default bail' accrued to the Petitioner when the period of 60 days for completing the investigation and filing a charge sheet came to an end on 3rd or 4th January, 2017 and that the indefeasible right continued till 24th January, 2017. The question is whether during this interregnum the Petitioner was entitled to 'default bail' or not? Ordinarily, the answer would be "yes" but in the present case, the Petitioner was not granted bail and a charge sheet was filed against him on 24th January, 2017. Was his indefeasible right completely taken away?*

35. *Our attention was drawn to the decision of the Constitution Bench in Sanjay Dutt v. State MANU/SC/0554/1994 : (1994) 5 SCC 410. In paragraph 46 of the Report it was conceded by learned Counsel appearing for the Accused that the indefeasible right is enforceable only up to the filing of a charge sheet or challan and does not survive after the charge sheet or challan is filed in the court against him. This submission was not refuted by but agreed to by the learned Additional Solicitor General appearing for the State. The submission made by both the learned Counsels was based on an interpretation of the decision of this Court in Hitendra Vishnu Thakur v. State of Maharashtra MANU/SC/0526/1994 : (1994) 4 SCC 602 which was a case under the Terrorist and Disruptive Activities (Prevention) Act, 1987.*

36. *While dealing with this common stance, the Constitution Bench in Sanjay Dutt made it clear in paragraph 48 of the Report that the indefeasible right accruing to the Accused is enforceable only prior to the filing of the charge sheet and it does not survive or remain enforceable thereafter, if already not availed of. In other words, the Constitution Bench took the view that the indefeasible*



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right of 'default bail' continues till the charge sheet or challan is filed and it gets extinguished thereafter. This is clear from the conclusion stated by the Constitution Bench in paragraph 53(2)(b) of the Report. This reads as follows: (2)(b) The "indefeasible right" of the Accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167 of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in *Hitendra Vishnu Thakur* is a right which enures to, and is enforceable by the Accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the Accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the Accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage.

37. This Court had occasion to review the entire case law on the subject in *Union of India v. Nirala Yadav* MANU/SC/0580/2014 : (2014) 9 SCC 457. In that decision, reference was made to *Uday Mohanlal Acharya v. State of Maharashtra* MANU/SC/0222/2001 : (2001) 5 SCC 453 and the conclusions arrived at in that decision. We are concerned with conclusion No. 3 which reads as follows: (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 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.

38. This Court also dealt with the decision rendered in *Sanjay Dutt* and noted that the principle laid down by the Constitution Bench is to the effect that if the charge sheet is not filed and the right for 'default bail' has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The Accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or



challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the Accused is prepared to furnish the bail bond.

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39. This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to *Mohamed Iqbal Madar Sheikh v. State of Maharashtra* MANU/SC/1045/1996 : (1996) 1 SCC 722 wherein it was observed that some courts keep the application for 'default bail' pending for some days so that in the meantime a charge sheet is submitted. While such a practice both on the part of prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the Accused for 'default bail' during the interregnum when the statutory period for filing the charge sheet or challan expires and the submission of the charge sheet or challan in court.

Procedure for obtaining default bail

40. In the present case, it was also argued by learned Counsel for the State that the Petitioner did not apply for 'default bail' on or after 4th January, 2017 till 24th January, 2017 on which date his indefeasible right got extinguished on the filing of the charge sheet. Strictly speaking this is correct since the Petitioner applied for regular bail on 11th January, 2017 in the Gauhati High Court-he made no specific application for grant of 'default bail'. However, the application for regular bail filed by the Accused on 11th January, 2017 did advert to the statutory period for filing a charge sheet having expired and that perhaps no charge sheet had in fact being filed. In any event, this issue was argued by learned Counsel for the Petitioner in the High Court and it was considered but not accepted by the High Court. The High Court did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the Petitioner did not make any application for default bail-such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the Accused makes a written application for 'default bail' or an oral application for 'default bail' is of no consequence. The



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concerned court must deal with such an application by considering the statutory requirements namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge sheet or challan has been filed and whether the Accused is prepared to and does furnish bail.

Application of the law to the Petitioner

45. On 11th January, 2017 when the High Court dismissed the application for bail filed by the Petitioner, he had an indefeasible right to the grant of 'default bail' since the statutory period of 60 days for filing a charge sheet had expired, no charge sheet or challan had been filed against him (it was filed only on 24th January, 2017) and the Petitioner had orally applied for 'default bail'. Under these circumstances, the only course open to the High Court on 11th January, 2017 was to enquire from the Petitioner whether he was prepared to furnish bail and if so then to grant him 'default bail' on reasonable conditions. Unfortunately, this was completely overlooked by the High Court.

46. It was submitted that as of today, a charge sheet having been filed against the Petitioner, he is not entitled to 'default bail' but must apply for regular bail-the 'default bail' chapter being now closed. We cannot agree for the simple reason that we are concerned with the interregnum between 4th January, 2017 and 24th January, 2017 when no charge sheet had been filed, during which period he had availed of his indefeasible right of 'default bail'. It would have been another matter altogether if the Petitioner had not applied for 'default bail' for whatever reason during this interregnum. There could be a situation (however rare) where an Accused is not prepared to be bailed out perhaps for his personal security since he or she might be facing some threat outside the correction home or for any other reason. But then in such an event, the Accused voluntarily gives up the indefeasible right for default bail and having forfeited that right the Accused cannot, after the charge sheet or challan has been filed, claim a resuscitation of the indefeasible right. But that is not the case insofar as the Petitioner is concerned, since he did not give up his indefeasible right for 'default bail' during the interregnum between 4th January, 2017 and 24th January, 2017 as is evident from the decision of the High Court rendered on 11th January, 2017. On the contrary, he had availed of his right to 'default bail' which could not have been defeated on 11th January, 2017 and which we are today compelled



to acknowledge and enforce.

47. Consequently, we are of opinion that the Petitioner had satisfied all the requirements of obtaining 'default bail' which is that on 11th January, 2017 he had put in more than 60 days in custody pending investigations into an alleged offence not punishable with imprisonment for a minimum period of 10 years, no charge sheet had been filed against him and he was prepared to furnish bail for his release, as such, he ought to have been released by the High Court on reasonable terms and conditions of bail."

8. Similarly, in **Achpal vs. State of Rajasthan** cited supra, the Apex Court has held in paragraph Nos.11, 17 and 18 as follows:

"11. The law on the point as to the rights of an Accused who is in custody pending investigation and where the investigation is not completed within the period prescribed Under Section 167(2) of the Code, is crystallized in the judgment of this Court in *Uday Mohanlal Acharya v. State of Maharashtra* MANU/SC/0222/2001 : (2001) 5 SCC 453. This case took into account the decision of this Court in *Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors.* MANU/SC/0526/1994 : (1994) 4 SCC 602, *Sanjay Dutt v. State through C.B.I., Bombay (II)* MANU/SC/0554/1994 : (1994) 5 SCC 410 and *Bipin Shantilal Panchal v. State of Gujarat* MANU/SC/0749/1996 : (1996) 1 SCC 718. Justice Pattanaik (as the learned Chief Justice then was) speaking for the majority recorded conclusions in para 13 of his judgment. For the present purposes, we may extract conclusions 3 and 4 as under:

...

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 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.

...

17. The letter of and spirit behind enactment of Section 167 of the Code as it stands thus mandates that the investigation ought to be completed within the period prescribed. Ideally, the investigation, going by the provisions of the Code, ought to be completed within first 24 hours itself. Further in terms of Sub-section (1) of Section 167, if "it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57" the concerned officer ought to transmit the entries in the diary relating to the case and at the same time forward the Accused to such Magistrate. Thereafter, it is for the Magistrate to consider whether the Accused be remanded to custody or not. Sub-section (2) then prescribes certain limitations on the exercise of the power of the Magistrate and the proviso stipulates period exceeding 90 or 60 days, as the case may be. It is further stipulated that on the expiry of such period of 90 and 60 days, as the case may be, the Accused person shall be released on bail, if he is prepared to and does furnish bail.

18. The provision has a definite purpose in that; on the basis of the material relating to investigation, the Magistrate ought to be in a position to proceed with the matter. It is thus clearly indicated that the stage of investigation ought to be confined to 90 or 60 days, as the case may be, and thereafter the issue relating to the custody of the Accused ought to be dealt with by the Magistrate on the basis of the investigation. Matters and issues relating to liberty and whether the person Accused of a charge ought to be confined or not, must be decided by the Magistrate and not by the Police. The further custody of such person ought not to be guided by mere suspicion that he may have committed an offence or for that matter, to facilitate pending



investigation.”

9. As observed by the Apex Court, if the accused had exercised his right of seeking default bail before filing of final report/ complaint, same shall not be extinguished on filing of the final report/ complaint during pendency of the bail petition. This right of seeking default bail may also be made by orally during the pendency of regular bail application. If the accused does not exercise his indefeasible right during interregnum and having forfeited that right, the accused cannot, after the charge sheet or final report has been filed, claim a resuscitation of the indefeasible right. When the application for bail is filed for the enforcement of the indefeasible right on the ground of default, on part of the Investigating Agency in completion of the investigation, the Magistrate/ Court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period, as specified and no charge sheet has been filed. The Magistrate/ Court shall ensure that the prosecution shall not frustrate the object of the act of the accused being released on bail on part of the Investigating Agency.

10. In this case, since the default bail is prayed in the fourth bail application after the substantial delay, the following question would be appropriate, for consideration. Whether the right of default bail for the petitioner has entered into the status of indefeasible in this case and petitioner is



entitled for default bail or not?

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11. Admittedly, the petitioner has filed the first bail petition in Crl.O.P.No.27345 of 2023 before this Court on 27.11.2023 (i.e.,) prior to expiry of 180 days of his judicial custody on merits and it was argued before this Court on 23.01.2024 and the orders were reserved and subsequently, pronounced on 31.01.2024, rejecting the bail. The order of this Court reveals that the petitioner has not pleaded for any default bail, though during pendency of the regular bail application, the 180th day of the petitioner's judicial custody falls on 21.12.2023.

12. It is the contention of the respondent that on 19.12.2023 itself, they had filed the complaint through e-filing portal and received acknowledgment, subsequently they have filed manual complaint on 23.12.2023 before the Trial Court. It shows that before the bail petition was taken up for hearing, the petitioner has not sought or filed separate application before the Trial Court seeking bail under Section 167(2) of Cr.P.C. The time gap available between filing of manual final report and the 180th day of the petitioner's judicial custody is only two days and no where it is established that, either the petitioner has made any oral prayer before the Trial Court or this Court seeking default bail. Apart from that, this Court on 31.01.2024, dismissed the bail application of the petitioner and against the said order, the petitioner has not made any attempt to



challenge the same or to assert his indefeasible right of seeking 'default bail' before the higher forum.

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13. After dismissal of the first bail application, the petitioner filed another bail application in Crl.O.P.No.10705 of 2024 seeking bail on merits, which was also dismissed by this Court, vide order dated 11.07.2024 and in that petition also, no grounds were raised by the petitioner before this Court for seeking default bail. Even thereafter, the petitioner has chosen to file the third bail application before this Court in Crl.O.P.No.23331 of 2024 and the same was also dismissed, vide order dated 28.10.2024 on merits. In all the above bail petitions, the petitioner had not sought bail on the ground that he was entitled for default bail.

14. The facts discussed above, shows that the petitioner herein altogether had not availed his indefeasible right of default bail during hearing of all the earlier bail applications and it shall be termed that the petitioner had voluntarily given up the indefeasible right of default bail. And after filing of the final report, the petitioner cannot claim the resuscitation of the indefeasible right. Though it is stated that the petitioner's bail application was pending on

K. RAJASEKAR, J.



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the expiry of 180th day of his judicial custody, he has not come forward to file additional grounds or not even made an oral request for granting for default bail. In view of the discussions made above, this Court is of the view that the petitioner has altogether voluntarily given up the indefeasible right for default bail and now he is not entitled to claim resuscitation of the right, hence the petitioner is not entitled for the relief of default bail.

15. Accordingly, this criminal original petition stands dismissed.

29.01.2026

stn

To

1. The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit, Ambattur
Chennai – 600 077. (NCB No.48/01/08/2023)
2. The Public Prosecutor, High Court of Madras.

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