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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No.2734 of 2025 (O&M)
Reserved on: 21.05.2026
Pronounced on: 27.05.2026
Uploaded on: 29.05.2026**

Amardes Singh @ Garry

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sanjeev Kumar Bawa, Advocate
for the petitioner.

Mr. Ekompal Sagoo, AAG, Punjab.

RAJESH BHARDWAJ, J.

1. Present revision petition has been filed by the petitioner praying for setting aside the impugned order dated 24.09.2025 passed by the learned Additional Sessions Judge, Ludhiana in FIR No.106, dated 16.06.2025, under Sections 103(2), 109, 126(2), 351(2), 191(3) of BNS, 2023 and Section 25 of the Arms Act, registered at Police Station City-2, Khanna, District Ludhiana, vide which the application under Section 187(3) BNSS filed by the petitioner for the grant of default bail was dismissed.

2. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in case bearing FIR No.106, dated 16.06.2025, under Sections 103(2), 109, 126(2), 351(2), 191(3) of BNS, 2023 and Section 25 of the Arms Act, registered at Police Station City-2,

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Khanna, District Ludhiana and was arrested on 18.06.2025. He has submitted that after registration of the FIR, the statutory period for filing the challan expired on 16.09.2025. He has submitted that since then, he is in custody for a period of more than 90 days, but the challan was not presented within this period, which gave him indefeasible right to be released on default bail under Section 187(3) of BNSS (earlier Section 167(2) Cr.P.C.). He has further submitted that after the completion of 90 days, the petitioner moved an application on the 91st day i.e. 17.09.2025 praying for the grant of default bail under Section 187(3) BNSS (earlier Section 167(2) Cr.P.C.) before the learned trial Court, however, challan was also filed on 91st day. He has submitted that the learned trial Court vide order dated 24.09.2025 had dismissed the application filed by the petitioner for default bail on the ground that the challan has already been presented on 17.09.2025 i.e. prior to filing of the application for default bail by the petitioner. He has thus submitted that the impugned order dated 24.09.2025 whereby the application of the petitioner for default bail was dismissed by the Court below without appreciating the real facts and as such the same is liable to be set aside.

3. Learned counsel for the State, however, has opposed the submissions made by counsel for the petitioner. He has submitted that the challan in the present case has already been presented on 17.09.2026 and the petitioner's application for grant of default bail came up for hearing on 18.09.2026 when challan was already filed, hence, it does not give any indefeasible right to the petitioner on bail. He has further submitted that the investigation in the present case is of a serious nature. He has further

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submitted that custody period of the petitioner of 90 days was expired on 16.09.2025 and the investigating agency filed the challan on 91st day i.e on 17.09.2025, however, no application for grant of default bail was filed by the petitioner till then. He has submitted that the learned trial Court has rightly dismissed the application for default bail moved by the petitioner vide order dated 24.09.2025 as the challan was already filed. He has further submitted that the order passed by the learned Additional Sessions Judge, Ludhiana suffers from no illegality or irregularity and thus, the present revision petition is liable to be dismissed.

4. Heard.

5. Admittedly, the present FIR was registered on 16.06.2025 and the petitioner was arrested on 18.06.2025. The period of 90 days of custody of the petitioner was expired on 16.09.2025, however, the challan was filed on 17.09.2025 i.e. on 91st day and the petitioner has also moved an application for default bail on the same day i.e. 17.09.2025, which came up for hearing on 18.09.2025. However, the same was dismissed on 24.09.2025 on the ground that the challan was presented on 17.09.2025.

5. **For resolving the controversy involved in the present case, appreciation of Section 187(3) of BNSS, is essential, which reads as under:-**

“Section 187(3)- The Magistrate may authorise the detention of the accused person, 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 sub-section 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 ten years or more;

(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 XXXV for the purposes of that Chapter.”

6. From the bare reading of the Section, it is clear that after completion of mandatory period required for completion of investigation and presentation of challan before the competent Court i.e. within 90 days, indefeasible right accrues to the accused to be released on default bail. However, in the present case, the statutory period of 90 days for filing the challan expired on 16.09.2025. Thereafter, the petitioner filed an application for grant of default bail on the very next day, i.e. on 17.09.2025 and challan was also filed on the same day. However, the application filed by the petitioner was dismissed on 24.09.2025.

7. Hon’ble Supreme Court in ‘*Uday Mohanlal Acharya vs. State of Maharashtra*’, 2001(2) RCR (Criminal) 452 while discussing the scope of default bail concluded as under:

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“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 in the whole.

2. Under the proviso to aforesaid sub-section (2) of Section

167, the Magistrate may authorise detention of the accused otherwise than 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 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 furnish 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 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 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 bail, as directed by the Magistrate, then the conjoint reading of Explanation I and proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in paragraph (a) will not be unauthorised, and, therefore, if during that period the investigation is complete and charge-

sheet is filed then the so-called infeasible right of the accused would stand extinguished.

6. The expression 'if not already availed of' used by this Court in Sanjay Dutt's case (supra) 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 paragraph (a) of proviso 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 infeasible 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."

8. Similarly in '*Enforcement Directorate Government of India vs. Kapil Wadhawan and another etc.*', 2023(2) RCR (Criminal) 474, Hon;ble Supreme Court held as under:-

"50. Since there exists vacuum in the application and details of section 167 CrPC, 1973 we have opted for an interpretation which advances the cause of personal liberty. The accused herein were remanded on 14.05.2020 and as such, the chargesheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on 13.07.2020 which was the 61st day of their custody. Therefore, the right to default bail accrued to the accused persons on 13.07.2020 at 12:00 AM, midnight, onwards. On that very day, the accused filed their default bail applications at 8:53 AM. The ED filed the chargesheet, later in the day, at 11:15 AM. Thus, the default bail Applications were filed well before the chargesheet. In Ravindran(supra) and Bikramjit (supra), which followed the Constitution Bench in Sanjay Dutt(supra) it was rightly held that if the accused persons avail their infeasible right to default bail before the

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chargesheet/final report is filed, then such right would not stand frustrated or extinguished by any such subsequent filing. We therefore declare that the stipulated 60/90 day remand period under section 167 CrPC, 1973 ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period, as we notice will extend beyond the permitted 60/90 days' period resulting in unauthorized detention beyond the period envisaged under section 167 CrPC, 1973. In cases where the chargesheet/final report is filed on or after the 61st/91st day, the accused in our considered opinion would be entitled to default bail. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused.”

9. The undisputed facts of the present case are detailed herein below:

S. No.	Date	Annexure	
1.	18.06.2025	Annexure P-1	The petitioner was arrested in FIR No.0106, dated 16.06.2025, under Sections 103(2), 109, 126(2), 351(2), 191(3) of BNS, 2023 and Section 25 of the Arms Act, registered at Police Station City-2, Khanna, District Ludhiana
2.	16.09.2025		Expiry of statutory period of 90 days
3.	17.09.2025	Annexure P-2	Application under Section 187(3) BNSS (erstwhile Section 167(2) Cr.P.C.) for the grant of default bail was filed by the petitioner.
4.	17.09.2025		Final report/challan was filed.
5.	24.09.2025	Impugned order	Application filed by the petitioner under Section 187(3) of BNSS (erstwhile Section 167(2) Cr.P.C.) for the grant of default bail was dismissed.

10. A perusal of the case file would show that it is an admitted

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case of the prosecution, final report was filed on 17.09.2025 i.e. on the 91st day after the expiry of statutory period of 90 days. It is evident from the record that the petitioner filed application for grant of default bail on the same day i.e. on 17.09.2025. As submitted by the learned State counsel and also mentioned in the impugned order, when the case came up for hearing, challan was already filed. However, it cannot be ascertained as to whether the application for grant of default bail was filed earlier in time or whether the challan was filed prior to application for grant of default bail. This Court and Hon'ble the Supreme Court in catena of judgments has held that if accused person files an application for default bail on the 91st day i.e. after expiry of statutory period of 90 days, an indefeasible right to be released on bail accrues the moment the application is filed and if challan is filed later on the same day, it will not extinguish his right of default bail. Both, the challan and application for grant of default bail were filed on same day i.e. 17.09.2025 however, nothing has come on record with regard to time of filing the challan and time of filing of application for grant of default bail. One of the fundamental principal of criminal justice rests on presumption of innocence of accused and proof beyond the reasonable doubt to be proved by the prosecution. If there is any reasonable doubt, the benefit of the doubt always goes to the accused.

11. Keeping in view the anvil of the law settled in the above mentioned judgments rendered by Hon'ble the Supreme Court as well as by this Court, the application for grant of default bail and challan were filed after the expiry of statutory period of 90 days i.e. on 17.09.2025 (91st day). The right of the accused to be released on default bail will not

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extinguish if challan has been filed by filing of application for grant of default bail by the accused.

12. In view of the overall facts and circumstances of the present case, the impugned order dated 24.09.2025 is liable to be set aside. Accordingly, the application of the petitioner filed under Section 187(3) BNS (which creates an indefeasible right in an accused person on account of the default by the investigating agency, deserves to be allowed.

13. Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the impugned order dated 24.09.2025 passed by the learned Additional Sessions Judge, Ludhiana, is hereby set aside. The petitioner is held to be entitled for default bail subject to his furnishing bail/surety bonds the satisfaction of learned trial Court/Duty Magistrate, if not required in any other case.

14. Nothing said herein shall be treated as an expression of opinion of the merits of the case.

27.05.2026
m.sharma

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No