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

Date of decision: 27.10.2026

\# **CNR No. DLHC010482292026**

\+ W.P.(CRL) 3157/2026, CRL.M.A. 31406/2026

THOKCHOM GYANESHOR .....Petitioner

Through: Mr. Siddhartha Borgohain, Mr. Rahul Tainguria, Mr. Watitemjen Jamir, Mr. Satendra Yadav and Mr. Divyanshu Singh, Advs.

versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Vivek Gurnani, Panel Counsel, Mr. Kanishk Maurya and Mr. Chabhinandan Patra, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE ARUN BHARDWAJ

NAVIN CHAWLA, J. (ORAL)

1. This Writ Petition has been filed under Article 226 of the Constitution of India, praying for the following reliefs:-

> *"a. Issue a Writ in the Nature of Habeas Corpus or any other appropriate writ thereby setting aside the Remand Order dated 30.09.2026 under Section 187 of BNSS, 2023 which is in violation of Articles 14, 19, 20, 21 of the Constitution, 1950 and the statutory provisions contained in the Sanhita;*
>
> *b. Call for the Records of the ED Case No. ECIR/STF/15/2024 registered as Complaint Case No. 62/2026 before the Hon'ble Court of Ld. Special Exclusive*

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Court- 01 (NIA Act, 2008), RACC, New Delhi

c. Release the Petitioner on bail in view of the violations of the law laid down by Hon'ble Supreme Court as pleaded above;

d. pass such other/further order(s) as this Hon'ble Court may deem fit and proper in the interests of justice."

Facts in brief:

2. The background of the facts in which the present petition arises, is that on the basis of an information received, the Ministry of Home Affairs directed the National Investigation Agency (hereinafter referred to as '*NIA*') to take up the investigation, which resulted in an FIR RC/23/2023/NIA/DLI being registered on 19.07.2023 at Police Station NIA, Head Quarters, New Delhi under Sections 120B, 121A and 122 of the Indian Penal Code, 1860 and under Sections 18, 18B and 39 of the Unlawful Activities (Prevention) Act, 1967.

3. The petitioner herein, was arrested in the said FIR on 13.03.2024 and was remanded to police custody *vide* order dated 14.03.2024, which he challenged in a Writ Petition, being W.P. (Crl.) No. 1929/2024, before this Court. The said Writ Petition was allowed by this Court *vide* judgment and order dated 20.02.2025.

4. In the *interregnum*, the respondent herein recorded ECIR/STF/15/2024 on 06.09.2024 in relation to the United National Liberation Front (UNLF). An *addendum* thereto was also issued on 18.09.2024. The petitioner was formally arrested in this case, while being in judicial custody of Special Court NIA, on 16.10.2024, and was thereafter remanded to judicial custody by the orders passed by

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the learned Special Court PMLA, including by an order dated 18.12.2024, whereby the learned Special Court PMLA also took cognizance on the complaint filed by the respondent in the abovementioned ECIR.

5. The petitioner challenged the said order before this Court by way of CRL.M.C. 4134/2025, praying for the following reliefs:-

> *"a. Issue notice to the Respondents with respect to the present petition filed before this Hon'ble Court.*
>
> *b. Call for the scanned copy records of ED case no. ECIR/STF/15/2024 registered as Complaint case no. 147 of 2024 pending before the Hon'ble Court of Ld. Special Judge, Special Court PMLA, Patiala House Court, New Delhi.*
>
> *c. Declare the remand orders commencing from 17.10.2024 and culminating on 05.12.2024 exercised by the Ld. Court under Section 187 of BNSS, 2023 as illegal in view of the violation of Articles 14, 21 and 22(1) of Constitution of India, Section 44, 65 of the Act, 2002 read with Section 197 of BNSS, 2023.*
>
> *d. Declare Order dated 03.12.2024 passed by Ld. Court as non-est in law and direct the Respondents to file the present complaint pending before the Ld. Court, PHC, New Delhi in the Court of Special Judge PMLA, Imphal (Manipur).*
>
> *e. Declare order of cognizance of offence dated 18.12.2024 passed by Ld. Special Judge PMLA, Patiala House Court, New Delhi upon the Prosecution Complaint filed by the Respondents as non-est in law in view of the violation of Section 223 of BNSS, 2023.*
>
> *f. Declare remand orders passed by Ld. Special Judge PMLA, New Delhi post cognizance i.e. under Section 346 of BNSs, 2023 as illegal as in violation of Article 21 of Constitution of India and Section 346 of BNSS, 2023*
>
> *g. Release the petitioner on bail in view of the violation as*

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pleaded in this petition.

h. Pass any other / order(s) as this Hon'ble Court may deem fit in favour of the Petitioners to meet the ends of justice."

6. As recorded in the order dated 28.08.2025 passed in CRL.M.C. 4134/2025, the petitioner, however, confined his petition only to prayer 'e' and 'f', which have been quoted hereinabove.

7. The said petition was disposed of by the learned Single Judge of this Court *vide* judgment and order dated 29.05.2026, *inter alia*, holding as under:-

"80. The Order dated 18.12.2024 of taking cognizance on the Complaint, is hereby, set aside and the Special Judge (PMLA) is hereby, directed to give a pre-cognizance hearing to the petitioner.

IV. Challenge to Post-Cognizance Remand from the date of Cognizance on 18.12.2024 and thereafter:

81. The Petitioner has also challenged the Order dated 01.05.2025 whereby he was remanded to judicial custody for a period of two months.

82. It is contended that as per Section 346 BNSS which deals with post cognizance remand, the Petitioner could not have been remanded to Judicial Custody for more than 15 days at a time, while in this case each remand was more than two months. Such remand was bad in law, on this account.

83. The first proviso to Section 346(2) reads as under:

"346.----- ...

Provided that no Court shall remand an accused person to custody under this section for a term exceeding fifteen days at a time: ..."

84. However, it may be noted that once the Order taking

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cognizance has been set aside, the remand order dated 01.05.2025 is not governed by the provision relating to post-cognizance remand; rather it is going to be governed by the provision relating to pre-cognizance remand. The relevant provision is thus, S. 187 BNSS (previously 167 Cr.P.C), which is extracted, as under:

"187. 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 58, 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 Magistrate a copy of the entries in the diary hereinafter specified 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, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorize, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in subsection (3), 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. (3)The Magistrate may authorize 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 authorize 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,

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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.

(4)…."

85. However, a bare perusal of this provision reveals that the statutory mandate, is unambiguous. The power to remand is restricted to a maximum of fifteen days at one time. The Ld. Special Judge's Order remanding the Petitioner for a period of two months, is in patent violation of the express statutory provision contained in Section 187 of BNSS, 2023. Such an order is ex-facie illegal and cannot be sustained.

86. Now, once the remand Order is set aside, there are two consequences that necessarily follow.

87. First and foremost, after the cognizance is taken, the Petitioner was necessarily required to be remanded to judicial custody, under Section 346 BNSS. When the Order of Cognizance is set aside, the post- cognizance remand under Section 346, cannot be held to be bad in law.

88. This was explained by the Supreme Court in the case of Suresh Kumar Bhikamchand Jain vs. State of Maharashtra (2013) 3 SCC 77 in the context of default being under Section 167(2)(a)(ii), that the powers for remand pre-cognizance was under Section 167 Cr.P.C., while postcognizance it was under Section 309 Cr.P.C. It was held that if the cognizance is not taken and the person is remanded to custody beyond a period of 60 days, this power is deemed to have exercised under Section 167 Cr.P.C.

89. The Supreme Court in, Natabar Parida & ors. v. State of Orissa, (1975) 2 SCC 220 held that, once cognizance is taken or the trial commences, the power to remand the accused shifts from Section 167 [corresponding to section 187 B.N.S.S.], to Section 309(2) [corresponding to section 346(2) B.N.S.S.], of the Code. Under the first proviso to Section 309(2), no single remand may exceed fifteen days at a time. Further, the custody contemplated by Section

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309 is judicial custody alone and not police custody, the object being that after the commencement of inquiry or trial the accused ought not to remain under police influence.

90. The second aspect is what are the consequences of the remand being more than 15 days, at one instance. It may be noted that there was no objection taken to the long remand by the Petitioner, despite being presented on every date. Secondly, it may observed that under the old Cr.P.C., the post-cognizance remand was under Section 309 Cr.P.C, wherein there was no limitation on the period of remand provided. The Court of Sessions could give post-cognizance remand for any number of days. The Sessions Judge under the PMLA enjoys the status of Sessions Judge.

91. It is no doubt, true that the position of law has been changed by the Section 346 BNSS, which has put an embargo on post-cognizance remand by any Trial Court being more than 15 days and, therefore, on account of change of law apparently, there still remains some confusion with the Trial Courts. Be as it may, this can never be a ground to discount any specific provisions of law.

92. In the given circumstances, the Accused may claim a right to Bail; but till then, his Judicial Custody has to be extended, in accordance with law.

93. In the present case, the Petitioner had not been granted Bail, and in such a situation there was no option, but to remand him to Judicial Custody. There may have been a violation of the number of days, but it cannot be held to be a patent illegality or a ground of release. It is a mere irregularity on which the Petitioner may seek Bail, but no such relief can be granted in exercise of the jurisdiction under Section 482 Cr.P.C.

94. The Petitioner is at liberty to move an Application for Bail on the ground of the over-extended post-cognizance remand, for a period beyond the period specified by the Legislature.

95. The Counsel for the Respondent has also argued that

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the delay and laches on the part of the Petitioner, while invoking the inherent jurisdiction of this Court, is also as aspect to be considered.

96. In the case of State of U.P. vs. Sudhir Kumar Singh (2021) 19 SCC 706, it was observed that no prejudice is caused to a person complaining of the breach of natural justice, which such person does not dispute the case against him. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts, that no real prejudice has been caused to the person complaining of breach of natural justice.

97. The petitioner, herein has been transferred to Guwahati, vide Order dated 23.07.2025, wherein he is in judicial custody of the Guwahati Court. The Petitioner may have been remanded for extended period between January, 29 till he was shifted to Guwahati, beyond 15 days, as is permitted, but neither the Petitioner had raised any objection nor any prejudice has consequently, been caused to the Petitioner. There exists no ground to quash the Complaint.

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Conclusion:
105. In view of the aforesaid, the Order dated 18.12.2024, taking cognizance on the Complaint, is hereby, set aside and the ld. Special Judge (PMLA) is directed to give a hearing to the Petitioner, before proceeding to take cognizance. The petitioner is at liberty to seek bail, in accordance with law. The pending Application(s) are disposed of, accordingly."

8. The petitioner, being aggrieved by the said judgment, approached the Hon'ble Supreme Court by way of SLP (Crl.) No. 12220-12221/2026, titled ***Thokchom Gyaneshor vs. Directorate of Enforcement***, which the learned counsel for the petitioner explains was limited to the non-grant of prayer 'f' of CRL.M.C 4134/2025.

9. The Supreme Court, *vide* its order dated 27.07.2026, dismissed

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the said Special Leave Petition, clarifying as under:-

> *"1. Having heard the learned counsel for the petitioner, we are not inclined to interfere with the impugned order. However, we make it clear that this order will not stand in the way of the petitioner while applying for regular bail before the High Court."*

10. The petitioner then filed an application seeking bail under Section 480 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as '*BNSS*') before the learned Special Court. However, at the time of the hearing of the same, and as recorded in the impugned order dated 30.09.2026, the learned counsel for the petitioner submitted that the same is not being pressed as the order of cognizance has been set aside and there is no provision for remanding the petitioner to custody, he, therefore, was praying for bail only on this limited ground.

11. The learned Special Judge dismissed the application filed by the petitioner, observing as under:-

> *"…On joint reading of the aforesaid orders of the Hon'ble Supreme Court of India and of the Hon'ble High Court of Delhi, it is clear that accused A-l is required to move a regular bail under Section 45 of the Prevention of Money Laundering Act, 2002 and no bail can be granted on technical ground of cognizance order being set aside. Further, this court is of the opinion that once the order of cognizance is set aside, remand proceedings shall be governed by Section 187 of BNSS, 2023. Accordingly, both accused are remanded to 14 days custody till 13.10.2026. In terms of proviso to order 223 of BNSS, 2023, accused are being provided an opportunity of being heard regarding prosecution complaint filed by ED."*

12. As far as cognizance on the complaint filed by the respondent is

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concerned, the learned Special Judge had adjourned the proceedings to 13.10.2026 for hearing the accused persons on the same, in compliance with Section 223 of the BNSS.

13. The learned counsel for the petitioner submits that the hearing on cognizance was adjourned by the learned Special Judge on the said date on the plea of the petitioner that the present petition has been filed. The same is now listed for hearing on 06.11.2026 for arguments on the bail application of Accused No.2, and for further proceedings on 18.11.2026, before the learned Special Judge.

Submissions of the learned counsel for the petitioner:

14. The learned counsel for the petitioner, placing reliance on ***Sanjay Dutt v. State (through CBI)***, (1994) 5 SCC 410; ***Ramdeo Mahto v. State of Bihar***, 1977 SCC OnLine Pat 175; ***Suresh Kumar Bhikamchand Jain v. State of Maharashtra and Anr.***, (2013) 3 SCC 77; ***SFIO v. Rahul Modi & Anr.***, (2023) 15 SCC 311; and ***Dhanrak Aswani v. Amar S. Mulchandani***, (2024) 9 SCR 257, submits that Section 167(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as '*CrPC'*), which now is Section 187(3) of the BNSS, empowers a Magistrate to remand an accused to the custody for a period not exceeding 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of 10 years or more, or for a period not exceeding 60 days, where the investigation relates to any other offence. He submits that in the present case, the said period has expired and cognizance on the complaint filed by the respondent has not been taken; the earlier cognizance order being set aside by the learned Single Judge of this

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Court. He submits that, therefore, in the present case, the power to remand the accused to custody vested in the Special Court under Section 187 of the BNSS, will no longer be available. Further, as cognizance on the complaint filed by the respondent has not been taken by the learned Special Judge, the power of remand vested with the learned Special Court under Section 346(2) of the BNSS will also not be available. He submits that therefore, the petitioner was not required to obtain bail, but was entitled to be released from custody, there being no power to extend the period of remand.

Submission of the learned counsel for the respondent:

15. On the other hand, the learned counsel for the respondent submits that the above issue is no longer *res integra* and in fact, stands covered by the judgment and order dated 29.05.2026 passed by the learned Single Judge of this Court in CRL.M.C. 4134/2025 and the dismissal of the Special Leave Petition by the Supreme Court *vide* its order dated 27.07.2026, which left it open to the petitioner to apply for regular bail while upholding his remand in custody.

16. Further, placing reliance on the judgments of the Supreme Court in ***Suresh Kumar Bhikamchand Jain vs. State of Maharashtra and Anr***. (*supra*) and ***Judgebir Singh alias Jasbir Singh Sharma Alias Jasbir and Ors. v. National Investigation Agency***, (2023) 17 SCC 48, he submits that as the complaint has been filed within the period prescribed under Section 187 of the BNSS, therefore, the remand of the petitioner by the learned Special Court is legal and the only remedy available to the petitioner would be to apply for bail on merits.

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Analysis & findings:

17. We have considered the submissions made by the learned counsels for the parties.

18. At the outset, we would note that the petitioner is trying to re-open an issue which already stands determined by a detailed judgment of a learned Single Judge of this Court, being the judgment dated 29.05.2026 passed in CRL.M.C. 4134/2025, against which a Special Leave Petition filed by the petitioner also stands dismissed by the Supreme Court by way of an order dated 27.07.2026, reserving liberty in the petitioner to apply for regular bail. The Supreme Court, therefore, did not find any illegality in the order remanding the petitioner to custody, though the order taking cognizance on the complaint filed by the respondent had been set aside. The petitioner, instead of availing of the remedy reserved by the Supreme Court, is trying to reopen an issue which already stands determined. In our view, the same is not permissible as we are not sitting in an appeal over the order passed by the learned Single Judge of this Court. Therefore, the present petition is liable to be dismissed on this short ground itself.

19. Be that as it may, we have also considered the submissions of the learned counsel for the petitioner on merits, and find that the issue raised by him is no longer *res integra* but is, in our opinion, fully covered by the judgment of the Supreme Court in ***Judgebir Singh*** (*supra*), wherein the Supreme Court, considering the *para materia* provisions under Section 167 and Section 309 of the CrPC, held as under:

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"58. This Court in Suresh Kumar Bhikamchand Jain [Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77 : (2013) 2 SCC (Cri) 229 : (2013) 1 SCC (L&S) 480] had the occasion to consider in detail the question whether cognizance of the charge-sheet was necessary to prevent the accused from seeking default bail or whether mere filing of the charge-sheet would suffice for the investigation to be deemed complete. The petitioner in the said case was arrested on 11-3-2012 on the allegation of misappropriation of amounts meant for development of slums in Jalgaon City. The petitioner therein was accused of committing offences punishable under Sections 120-B, 409, 411, 406, 408, 465, 466, 468, 471, 177 and 109 read with Section 34IPC and also under Sections 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The contention of the petitioner therein was that he could not have been remanded to custody in view of cognizance not being taken for want of sanction within the statutory period of 90 days. The scheme of the provisions relating to remand of an accused first during the stage of investigation and thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within the period prescribed therein. This Court held that in the event of investigation not being completed by the investigating authorities within the prescribed period, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. This Court was of the firm view that if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. However, once the charge-sheet was filed within the stipulated period, the right of the accused to statutory/default bail came to an end and the accused would be entitled to pray for regular bail on merits. It was held by this Court that the filing of charge-sheet is sufficient compliance with the provisions of proviso (a) to Section 167(2)CrPC and that taking of cognizance is not material to Section 167CrPC. The scheme of CrPC is such that once the stage of investigation is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced, with such Magistrate being vested with the power to remand the accused to police custody and/or judicial custody, up to a maximum period as prescribed under Section 167(2)CrPC. Acknowledging the fact that an accused has to remain in custody of some court, this Court concluded that on filing of the charge-sheet within the stipulated period, the accused

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continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309CrPC. This Court clarified that the two stages are different, with one following the other so as to maintain continuity of the custody of the accused with a court.

59. We refer to the relevant portions of Suresh Kumar Bhikamchand Jain [Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77 : (2013) 2 SCC (Cri) 229 : (2013) 1 SCC (L&S) 480] judgment as under : (SCC pp. 84-86, paras 16-18)

> *"16. At this juncture, we may refer to certain dates which are relevant to the facts of this case, namely: (a) 11-3-2012 — The petitioner arrested and remanded to police custody; (b) 25-4-2012 — First charge-sheet filed against the four accused; (c) 1-6-2012 — Supplementary charge-sheet filed in which the petitioner is named; (d) 30-7-2012 — The trial court rejected the petitioner's prayer for grant of bail; (e) 13-9-2012 [Suresh v. State of Maharashtra, 2012 SCC OnLine Bom 2358] — The High Court confirmed the order of the trial court; (f) 2-10-2012 — Application filed under Section 167(2)CrPC before the trial court; (g) 5-10-2012 — The trial court rejected the application under Section 167(2)CrPC. From the above dates, it would be evident that both the charge-sheet as also the supplementary charge-sheet were filed within 90 days from the date of the petitioner's arrest and remand to police custody. It is true that cognizance was not taken by the Special Court on account of failure of the prosecution to obtain sanction to prosecute the accused under the provisions of the PC Act, but does such failure amount to non-compliance with the provisions of Section 167(2)CrPC is the question with which we are confronted.*
>
> *17. In our view, grant of sanction is nowhere contemplated under Section 167CrPC. What the said section contemplates is the completion of investigation in respect of different types of cases within a stipulated period and the right of an accused to be released on bail on the failure of the investigating authorities to do so. The scheme of the provisions relating to remand of an accused, first during the stage of investigation and, thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be*

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completed within 60 days and offences punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, within 90 days. In the event, the investigation is not completed by the investigating authorities, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. Accordingly, if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. The said provision has been considered and interpreted in various cases, such as the ones referred to hereinbefore. Both the decisions in Natabar Parida case [Natabar Parida v. State of Orissa, (1975) 2 SCC 220 : 1975 SCC (Cri) 484] and in Sanjay Dutt case [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] were instances where the charge-sheet was not filed within the period stipulated in Section 167(2)CrPC and an application having been made for grant of bail prior to the filing of the charge-sheet, this Court held that the accused enjoyed an indefeasible right to grant of bail, if such an application was made before the filing of the charge-sheet, but once the charge-sheet was filed, such right came to an end and the accused would be entitled to pray for regular bail on merits.

18. None of the said cases detract from the position that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as Section 167CrPC is concerned. The right which may have accrued to the petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309CrPC, it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167CrPC. The scheme of CrPC is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2)CrPC, the Magistrate is vested with

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authority to remand the accused to custody, both police custody and/or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309CrPC. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court." (emphasis supplied)

60. It is clear from the decision of this Court in Suresh Kumar Bhikamchand Jain [Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77 : (2013) 2 SCC (Cri) 229 : (2013) 1 SCC (L&S) 480] that filing of a charge-sheet is sufficient compliance with the provisions of Section 167CrPC and that an accused cannot demand release on default bail under Section 167(2)CrPC on the ground that cognizance has not been taken before the expiry of the statutory time period. The accused continues to be in the custody of the Magistrate till such time cognizance is taken by the court trying the offence, which assumes custody of the accused for the purpose of remand after cognizance is taken.

61. The aforesaid decision of this Court makes the position of law very clear that once the charge-sheet has been filed within the stipulated time, the question of grant of statutory/default bail does not arise. Whether cognizance has been taken or not taken is not relevant for the purpose of compliance of Section 167CrPC. The mere filing of the charge-sheet is sufficient.

62. The decision of Suresh Kumar Bhikamchand Jain [Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77 : (2013) 2 SCC (Cri) 229 : (2013) 1 SCC (L&S) 480] has been referred to and relied upon by this Court in Rahul Modi [Serious Fraud Investigation Office v. Rahul Modi, (2023) 15 SCC 311] . In the said decision, the very same point fell for the consideration of the Court, whether the accused is entitled for statutory/default bail under Section 167(2)CrPC on the ground that cognizance

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had not been taken before the expiry of 60 days or 90 days from the date of remand?

63. However, one another issue that fell for the consideration of this Court, in Rahul Modi [Serious Fraud Investigation Office v. Rahul Modi, (2023) 15 SCC 311] was whether Suresh Kumar Bhikamchand Jain [Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77 : (2013) 2 SCC (Cri) 229 : (2013) 1 SCC (L&S) 480] had taken a different view than in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] , Mohd. Iqbal Madar Sheikh v. State of Maharashtra [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] and M. Ravindran v. Directorate of Revenue Intelligence [M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485 : (2021) 1 SCC (Cri) 876] . This Court explained in details as to why nothing contrary to Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] , Iqbal Madar [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] and M. Ravindran [M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485 : (2021) 1 SCC (Cri) 876] had been decided in Suresh Kumar Bhikamchand Jain [Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77 : (2013) 2 SCC (Cri) 229 : (2013) 1 SCC (L&S) 480] . We quote the relevant observations : (Rahul Modi case [Serious Fraud Investigation Office v. Rahul Modi, (2023) 15 SCC 311] , SCC paras 20-27)

> *"20. The point that requires to be considered is whether this Court has taken a different view in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] , Madar Sheikh [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] and M. Ravindran [M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485 : (2021) 1 SCC (Cri) 876] . In Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] , this Court held that the indefeasible right accruing to the accused is enforceable only prior to the filing of challan and it does not survive or remain enforceable, on the challan being filed. It was made clear that once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. In light of the above findings, this Court held that the custody of the accused after the challan has been filed is not governed by Section 167(2)*

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but different provisions of CrPC.

21. In Madar Sheikh [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] , which was relied upon by the learned Senior Counsel appearing for Respondents 1 and 2 and the Intervener, the appellants therein were taken into custody on 16-1-1993. The charge-sheet was submitted on 30-8-1993. Though the appellants were entitled to be released in view of the charge-sheet not being filed within the statutory period prescribed under Section 20(4)(b) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 read with proviso (a) to Section 167(2)CrPC, they did not make an application for release on bail on the ground of default in completion of the investigation within the statutory period. After filing of the charge-sheet and cognizance having been taken, they continued to be in custody on the basis of orders of remand passed under other provisions of CrPC. Refusing to grant relief of statutory bail in the said fact situation, this Court held that the right conferred on an accused under Section 167(2) cannot be exercised after the charge-sheet has been submitted and cognizance has been taken.

22. A plain reading of the judgment in Madar Sheikh [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] would show that reference to the right of statutory bail becoming unenforceable after cognizance having been taken is in view of the facts of the said case, where this Court denied statutory bail to the appellants therein on the ground that charge-sheet was filed and cognizance had also been taken, with orders of remand passed under other provisions of CrPC. Thereafter, they were not entitled for bail under Section 167(2).

23. Application for bail under Section 167(2)CrPC fell for consideration of this Court in M. Ravindran [M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485 : (2021) 1 SCC (Cri) 876] . In the said case, the appellant was arrested and remanded to judicial custody on 4-8-2018 for offences punishable under the Narcotics Drugs and Psychotropic Substances Act, 1985. On 1-2-2019, the appellant therein filed an application for bail under Section 167(2) on the ground that investigation was not complete and charge-sheet had not been filed within the statutory period. The trial court granted bail under Section 167(2), which was set aside by the High

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Court of Madras by judgment dated 21-11-2019 [Directorate of Revenue Intelligence v. M. Ravindran, 2019 SCC OnLine Mad 33543] . Challenging the said judgment of the High Court, the appellant approached this Court.

24. The crucial fact in M. Ravindran case [M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485 : (2021) 1 SCC (Cri) 876] is that the appellant therein filed an application on 1-2-2019 at 10.30 a.m. before the trial court and on the same day at 4.25 p.m., an additional complaint was filed against the appellant, on the basis of which dismissal of the bail application was sought. This Court restored the order of the trial court while setting aside the judgment [Directorate of Revenue Intelligence v. M. Ravindran, 2019 SCC OnLine Mad 33543] of the High Court, by holding that the accused is deemed to have "availed of" or enforced his right to be released on default bail, once application for bail has been filed under Section 167(2) on expiry of the stipulated time period.

25. Taking into account the fact that before the expiry of 180 days, no charge-sheet had been submitted nor any application filed seeking extension of time to investigate, this Court in M. Ravindran case [M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485 : (2021) 1 SCC (Cri) 876] held that the appellant was entitled to be released on statutory bail notwithstanding the subsequent filing of an additional complaint. The point that was decided in the said case was that the filing of an additional complaint after the accused has availed his right to be released on default bail, should not deter the courts from enforcing this indefeasible right, if the charge-sheet was not filed before the expiry of the statutory period. Reference was made by this Court to Madar Sheikh [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] in M. Ravindran [M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485 : (2021) 1 SCC (Cri) 876] . This Court observed that no prior application for bail was filed in Madar Sheikh [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] though the charge-sheet was submitted after the expiry of the statutory period. This Court repeated the findings recorded in Madar Sheikh [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] that the right to bail cannot be exercised

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once the charge-sheet has been submitted and cognizance has been taken. As stated above, the said conclusion in Madar Sheikh [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] was arrived at with reference to the facts of the case.

26. The issue that arose for consideration before this Court in Criminal Appeals Nos. 701-702 of 2020 relates to whether the date of remand is to be included in computation of the period of 60 days or 90 days, as contemplated under proviso (a) to Section 167(2), for considering the claim for default bail. Taking note of the divergence of opinions on the said point, this Court felt the need for consideration of the issue by a larger Bench. The later order dated 12-3-2021 [Kapil Wadhawan v. CBI, 2021 SCC OnLine SC 3468] passed in SLPs (Crl.) Nos. 2105-06 and 2111-12 of 2021 is for tagging all those matters along with Criminal Appeals Nos. 701-702 of 2020. The submission made on behalf of the petitioners therein and recorded in the said order relates to the filing of a charge-sheet on the last day without a list of witnesses and documents not amounting to a proper filing of charge-sheet. Mr Rohatgi referred to the SLPs (Crl.) Nos. 2111-12 of 2021 and submitted that one of the points raised relates to cognizance being taken before the expiry of the statutory period under Section 167CrPC. It is clear that a reference to a larger Bench pertains to the issue of exclusion or inclusion of the date of remand for computation of the period prescribed under Section 167. Therefore, there is no requirement for referring this case to a larger Bench.

27. A close scrutiny of the judgments inSanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] , Madar Sheikh [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] andM. Ravindran [M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485 : (2021) 1 SCC (Cri) 876] would show that there is nothing contrary to what has been decided inBhikamchand Jain [Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77 : (2013) 2 SCC (Cri) 229 : (2013) 1 SCC (L&S) 480] . In all the above judgments which are relied upon by either side, this Court had categorically laid down that the indefeasible right of an accused to seek statutory bail under Section 167(2)CrPC arises only if the charge-sheet has not been filed before the expiry of the statutory period.

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Reference to cognizance inMadar Sheikh [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] is in view of the fact situation where the application was filed after the charge-sheet was submitted and cognizance had been taken by the trial court. Such reference cannot be construed as this Court introducing an additional requirement of cognizance having to be taken within the period prescribed under proviso (a) to Section 167(2)CrPC, failing which the accused would be entitled to default bail, even after filing of the charge-sheet within the statutory period. It is not necessary to repeat that in bothMadar Sheikh [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] andM. Ravindran [M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485 : (2021) 1 SCC (Cri) 876] , this Court expressed its view that non-filing of the charge-sheet within the statutory period is the ground for availing the indefeasible right to claim bail under Section 167(2)CrPC. The conundrum relating to the custody of the accused after the expiry of 60 days has also been dealt with by this Court inBhikamchand Jain [Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77 : (2013) 2 SCC (Cri) 229 : (2013) 1 SCC (L&S) 480] . It was made clear that the accused remains in custody of the Magistrate till cognizance is taken by the relevant court. As the issue that arises for consideration in this case is squarely covered by the judgment inBhikamchand Jain [Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77 : (2013) 2 SCC (Cri) 229 : (2013) 1 SCC (L&S) 480] , the order passed by the High Court on 31-5-2019 [Mukesh Modi v. SFIO, 2019 SCC OnLine P&H 6252] is hereby set aside." (emphasis supplied)

64. Our attention was drawn by the learned counsel appearing for the accused to a very recent pronouncement of this Court, in Ritu Chhabaria v. Union of India [Ritu Chhabaria v. Union of India, (2024) 12 SCC 116 : 2023 SCC OnLine SC 502] . This decision has been relied upon to fortify the submission that right of an accused to seek default bail cannot be defeated by filing incomplete charge-sheet. Ritu Chhabaria filed a writ petition under Article 32 of the Constitution, seeking release of her husband on default bail. In the facts of the said case, three issues fell for the consideration of this Court:

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(i) Can a charge-sheet or a prosecution complaint be filed in piecemeal without first completing the investigation of the case?
(ii) Whether the filing of such a charge-sheet without completing the investigation will extinguish the right of an accused for grant of default bail?
(iii) Whether the remand of an accused can be continued by the trial court during the pendency of investigation beyond the stipulated time as prescribed by CrPC?

65. This Court, while allowing the petition observed in paras 25 and 26, respectively, as under : (Ritu Chhabaria case [Ritu Chhabaria v. Union of India, (2024) 12 SCC 116 : 2023 SCC OnLine SC 502])

"25. This right of statutory bail, however, is extinguished, if the charge-sheet is filed within the stipulated period. The question of resorting to a supplementary charge-sheet under Section 173(8)CrPC only arises after the main charge-sheet has been filed, and as such, a supplementary charge-sheet, wherein it is explicitly stated that the investigation is still pending, cannot under any circumstance, be used to scuttle the right of default bail, for then, the entire purpose of default bail is defeated, and the filing of a charge-sheet or a supplementary charge-sheet becomes a mere formality, and a tool, to ensue that the right of default bail is scuttled.
26. It is thus axiomatic that first investigation is to be completed, and only then can a charge-sheet or a complaint be filed within the stipulated period, and failure to do so would trigger the statutory right of default bail under Section 167(2)CrPC. In Union of India v. Thamisharasi [Union of India v. Thamisharasi, (1995) 4 SCC 190 : 1995 SCC (Cri) 665] , which was a case under the Narcotic Drugs and Psychotropic Substances Act, 1985, on finding that the investigation was not complete and a charge-sheet was not filed within the prescribed period, denial of default bail was held to be in violation of Article 21 of the Constitution of India, and it was further held that even the twin limitation on grant of bail would not apply."

66. Thus, in Ritu Chhabaria [Ritu Chhabaria v. Union of India, (2024) 12 SCC 116 : 2023 SCC OnLine SC 502] , the facts were altogether different. In the said case, indisputably, the investigation was in progress, but as the statutory time period to

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file the charge-sheet was coming to an end, the charge-sheet was filed clarifying that the investigation was still pending. In such circumstances, this Court took the view that there is no question of filing any supplementary charge-sheet, taking the aid of sub-section (8) of Section 173CrPC, as sub-section (8) of Section 173CrPC comes into play only after the investigation is completed and the charge-sheet is laid. We are of the view that the aforesaid decision of this Court is of no avail to the accused in the present case. In the case on hand, the charge-sheet was filed after the entire investigation was completed. This fact is not in dispute.

67. Thus, we answer Issue 1 holding that filing of a charge-sheet is sufficient compliance with the provisions of Section 167CrPC and that an accused cannot claim any indefeasible right of being released on statutory/default bail under Section 167(2)CrPC on the ground that cognizance has not been taken before the expiry of the statutory time period to file the charge-sheet. We once again, reiterate what this Court said in Suresh Kumar Bhikamchand Jain [Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77 : (2013) 2 SCC (Cri) 229 : (2013) 1 SCC (L&S) 480] that grant of sanction is nowhere contemplated under Section 167CrPC."

[emphasis supplied]

20. In the present case, the complaint was filed by the respondent within the period as prescribed under Section 187 of the BNSS. Though, the order dated 18.12.2024, taking cognizance thereon, has been set aside by the learned Single Judge of this Court for want of compliance with section 223 of the BNSS, that is, grant of prior hearing to the accused before taking cognizance on such complaint, in our view, the above judgment in ***Judgebir Singh*** (*supra*) would squarely apply to the facts of the present case and therefore, the order of further remand cannot be said to be illegal. The remedy of the petitioner was to apply for bail on merits.

21. Accordingly, we find no merit in the present petition and the

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same, along with pending application(s), if any, is dismissed.

22. There shall be no orders as to costs.

NAVIN CHAWLA, J

ARUN BHARDWAJ, J

OCTOBER 27, 2026/*mj/AD/hn*

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