

[2022 LiveLaw \(SC\) 138](#)

IN THE SUPREME COURT OF INDIA  
L. NAGESWARA RAO; B. R. GAVAI, JJ.  
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal Nos.185-186 of 2022 (Arising out of Special Leave Petition (Crl.)  
Nos. 5180-5181 of 2019); February 07, 2022

***Serious Fraud Investigation Office Versus Rahul Modi & Ors.***

***Code of Criminal Procedure, 1973- Section 167(2) Proviso - Default Bail - Filing of a charge-sheet is sufficient compliance with the provisions of Section 167 CrPC - An accused cannot demand release on default bail under Section 167(2) on the ground that cognizance has not been taken before the expiry of 60 days.***

(Para 10)

***Code of Criminal Procedure, 1973- Section 167(2) Proviso - Default Bail - There is no 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.***

(Para 15)

***Code of Criminal Procedure, 1973- Section 167(2) Proviso - 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.***

**J U D G M E N T**

**L. NAGESWARA RAO, J.**

Leave granted.

1. The order dated 31.05.2019 passed by the High Court of Punjab and Haryana granting bail to Respondent Nos. 1 and 2 is assailed in this Appeal by the Serious Fraud Investigation Office (“SFIO”).
2. An investigation was directed to be conducted into the affairs of Adarsh Group of Companies and LLPs by the Central Government in exercise of the powers conferred under Section 212(1)(c) of the Companies Act, 2013 and subsections (2) and (3)(c)(i) of Section 43 of the Limited Liability Partnership Act, 2008. Inspectors

were appointed by the Director, SFIO to carry out the investigation. Respondent Nos. 1 and 2 were arrested pursuant to the approval granted by the Director, SFIO on 10.12.2018. On 20.12.2018, the High Court of Delhi directed interim release of Respondent Nos. 1 and 2 in Writ Petition (Criminal) Nos. 3842 of 2018 and 3843 of 2018. The order of the High Court was set aside by this Court on 27.03.2019, following which Respondent Nos. 1 and 2 surrendered on 01.04.2019. Respondent Nos. 1 and 2 were remanded to 14 days' judicial custody on 05.04.2019. On account of continuation of the investigation, the Special Court, Gurugram extended the judicial custody of Respondent Nos. 1 and 2 to 16.05.2019. In the meanwhile, Respondent Nos. 1 and 2 filed regular bail applications for being released on bail before the High Court on 03.05.2019. The applications were directed to be listed on 21.05.2019 by the High Court. The High Court further directed the trial court to consider any application that may be filed by Respondent Nos.1 and 2 under Section 167 of the Code of Criminal Procedure, 1973 ("**CrPC**"), in the meanwhile. On 16.05.2019, the Special Court extended the judicial custody of Respondent Nos.1 and 2 till 30.05.2019.

**3.** Criminal complaint under Section 439(2) read with Section 212(15) of the Companies Act, 2013 was filed before the Special Court, Gurugram on 18.05.2019. The Special Court directed registration of the complaint and listed the matter on 24.05.2019 for considering summoning of the accused persons. Respondent Nos. 1 and 2 filed applications for statutory bail under Section 167(2) of the CrPC on 20.05.2019. The said applications were dismissed by the Sessions Judge, Gurugram on 22.05.2019 on the ground that the complaint under Section 439(2) of the Companies Act, 2013 was filed on 18.05.2019, i.e., before the expiry of the 60-day period prescribed in proviso (a) to Section 167(2) of the CrPC. The High Court considered the regular bail applications filed by Respondent Nos. 1 and 2 on 31.05.2019 and directed their release on bail on the ground that they were entitled to statutory bail. The sole reason given for grant of bail by the High Court is that the trial court has not taken cognizance of the complaint before the expiry of the 60-day period, which entitled Respondent Nos. 1 and 2 to statutory bail, as a matter of indefeasible right.

**4.** We have heard Mr. Aman Lekhi, learned Additional Solicitor General appearing on behalf of the Appellant, Mr. Vikram Choudhri, learned Senior Counsel appearing on behalf of Respondent Nos.1 and 2 and Mr. Mukul Rohatgi, learned Senior Counsel for the Intervenor. The learned ASG submitted that the High Court

committed a serious error in granting statutory bail to Respondent Nos. 1 and 2, in spite of the fact that the complaint was filed well before the expiry of 60 days from the date of the remand. An egregious error has been committed by the High Court in holding that cognizance also has to be taken before the expiry of the 60-day period, or else, the accused would be entitled to statutory bail under Section 167(2), CrPC. He stated that the mischief that is sought to be addressed under Section 167(2) is failure to complete the investigation. According to the scheme of the CrPC, on completion of investigation, the final report/complaint is filed under Section 173(2), CrPC. Statutory bail under Section 167(2), CrPC can be granted only in a case where investigation is not complete within the prescribed period and not otherwise. He submitted that the judgment of the High Court is contrary to the law laid down by this Court in **Suresh Kumar Bhikamchand Jain v. State of Maharashtra & Anr.**, (2013) 3 SCC 77.

5. It was argued on behalf of Respondent Nos. 1 and 2 that the High Court was justified in granting statutory bail to them as, admittedly, cognizance was not taken before the expiry of the 60-day period. Placing reliance on a judgment of this Court in **Sanjay Dutt v. State**, (1994) 5 SCC 410. Mr. Chaudhri argued that the maximum period of detention that the accused can be remanded to under Section 167, CrPC is 60 days, beyond which detention can be extended only if the accused is unable to furnish bail. He submitted that this Court in **Mohamed Iqbal Madar Sheikh & Ors. v. State of Maharashtra**, (1996) 1 SCC 722 explained the judgment in **Sanjay Dutt** (supra) and held that the right under Section 167(2), CrPC cannot be exercised after the charge-sheet has been submitted and cognizance has been taken. It was further argued that an accused has a right to seek statutory bail under the proviso to Section 167(2) even after the chargesheet is filed, till the court takes cognizance.

6. An application for intervention was filed by Rahul Kothari. The Intervenor filed an application for statutory bail which was rejected by the trial court and upheld by the High Court. Special Leave Petition (Criminal) Diary No. 12089 of 2021 filed by him is pending consideration of this Court. As the issue raised for consideration in the said special leave petition is the same that arises in the present Appeals, the Intervenor has sought permission to participate and make submissions. Mr. Mukul Rohatgi, learned Senior Counsel appearing for the Intervenor, submitted that there is a conflict of opinion regarding the interpretation of Section 167(2), CrPC. According to him, this Court in **Madar Sheikh** (supra) has taken a view that an

accused can invoke his right for statutory bail if the court has not taken cognizance of the complaint before the expiry of the statutory period from the date of remand. This Court in **Bhikamchand Jain** (supra) has taken a different view without referring to the judgment of this Court in **Madar Sheikh** (supra). Mr. Rohatgi submitted that this Court in **M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence**<sup>4</sup> took the same view as that of this Court in **Madar Sheikh** (supra), without reference to the judgment in **Bhikamchand Jain** (supra). He relied upon an order of this Court dated 23.02.2021 passed in Criminal Appeal Nos. 701-702 of 2020 by which another Division Bench of this Court referred a similar issue to a larger bench. He further placed reliance upon another order dated 12.03.2021 of this Court by which two other special leave petitions have been tagged on with Criminal Appeal Nos. 701-702 of 2020, which were referred 4 (2021) 2 SCC 485 to a larger bench. He submitted that Special Leave Petition (Criminal) Nos. 2111-2112 of 2021, which were subject-matter of the order dated 12.03.2021, raise the same issue that falls for consideration in these Appeals, i.e., the right of an accused to claim statutory bail in case cognizance is not taken before the expiry of the prescribed period of 60 or 90 days, as the case may be. To settle the conflicting opinions of this Court, it is imminently necessary to refer this matter to a larger bench, according to Mr. Rohatgi.

7. Respondent Nos. 1 and 2 are the directors of Adarsh Group of Companies and LLPs, who were accused of committing an offence under Section 447 of the Companies Act, 2013, Section 120-B read with Sections 417, 418, 420, 406, 463, 467, 468, 471, 474 of the Indian Penal Code, 1860 (“IPC”). The undisputed facts are that the complaint under Section 439(2) of the Companies Act, 2013 was filed on 18.05.2019, which was before the expiry of the 60-day period from the date of the remand. The applications filed for statutory bail were dismissed by the Special Court on 22.05.2019, on the ground that the charge-sheet was filed before the expiry of 60 days. Respondent Nos. 1 and 2 did not argue before the Special Court that they were entitled for statutory bail, even after filing of the charge-sheet before the expiry of the 60-day period, as cognizance had not been taken. The trial court disposed of the applications for statutory bail, on being so directed by an order dated 10.05.2019 passed by the High Court in regular bail applications filed by Respondent Nos. 1 and 2. The said regular bail applications were taken up for hearing by the High Court and by the impugned order, bail was granted to Respondent Nos. 1 and 2 on the ground that cognizance had not been taken by

the court before the expiry of 60 days. However, while doing so, the High Court failed to consider the order dated 22.05.2019 passed by the trial court dismissing the applications seeking statutory bail.

8. The only point that arises for our consideration in this case is whether an accused is entitled for statutory bail under Section 167(2), CrPC on the ground that cognizance has not been taken before the expiry of 60 days or 90 days, as the case may be, from the date of remand. Section 167(2), CrPC reads as below:

**167. Procedure when investigation cannot be completed in twenty-four hours.**

xxx xxx xxx xxx xxx

(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; 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:

Provided that —

(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, 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 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 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 subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(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.

Explanation I.—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.

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.

9. The issue is squarely covered by a judgment of this Court in **Bhikamchand Jain** (supra), as contended by the Appellant. It is necessary to closely examine the judgment passed in **Bhikamchand Jain** (supra). The petitioner in the said case was arrested on 11.03.2012 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 34, IPC 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, according to this Court in **Bhikamchand Jain** (supra). 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 opinion 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 chargesheet was filed within the stipulated period, the right of the accused to statutory 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 167. 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. 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 power to remand the accused to police custody and/or judicial custody, up to a maximum period as prescribed under Section 167(2). 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 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 309, CrPC. 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.

**10.** It is clear from the judgment of this Court in **Bhikamchand Jain** (supra) that filing of a charge-sheet is sufficient compliance with the provisions of Section 167, CrPC and that an accused cannot demand release on default bail under Section 167(2) on the ground that cognizance has not been taken before the expiry of 60 days. 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. The conclusion of the High Court that the accused cannot be remanded beyond the period of 60 days under Section 167 and that further remand could only be at the post-cognizance stage, is not correct in view of the judgment of this Court in **Bhikamchand Jain** (supra).

**11.** The point that requires to be considered is whether this Court has taken a different view in **Sanjay Dutt** (supra), **Madar Sheikh** (supra) and **M. Ravindran** (supra). In **Sanjay Dutt** (supra), 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) but different provisions of the CrPC.

**12.** In **Madar Sheikh** (supra), which was relied upon by the learned Senior Counsel appearing for Respondent Nos. 1 and 2 and the Intervenor, the appellants therein were taken into custody on 16.01.1993. The charge-sheet was submitted on 30.08.1993. 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 the 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. A plain reading of the judgment in **Madar Sheikh** (supra) 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 the CrPC. Thereafter, they were not entitled for bail under Section 167(2).

**13.** Application for bail under Section 167(2), CrPC fell for consideration of this Court in **M. Ravindran** (supra). In the said case, the appellant was arrested and remanded to judicial custody on 04.08.2018 for offences punishable under the Narcotics Drugs and Psychotropic Substances Act, 1985. On 01.02.2019, 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 Court of Madras by judgment dated 21.11.2019. Challenging the said judgment of the High Court, the appellant approached this Court. The crucial fact in the said case is that the appellant therein filed an application on 01.02.2019 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 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. 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 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** (supra) in **M. Ravindran** (supra). This Court observed that no prior application for bail was filed in **Madar Sheikh** (supra) though the charge-sheet was submitted after the expiry of the statutory period. This Court repeated the findings recorded in **Madar Sheikh** (supra) that the right to bail cannot be exercised once the charge-sheet has been submitted and cognizance has been taken. As stated above, the said conclusion in **Madar Sheikh** (supra) was arrived at with reference to the facts of the case.

**14.** The issue that arose for consideration before this Court in Criminal Appeal 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 12.03.2021 passed in SLP (Crl.) Nos. 2105-2106 of 2021 and SLP (Crl.) Nos. 2111-2112 of 2021 is for tagging

all those matters along with Criminal Appeal 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 SLP (CrI.) No. 2111-2112 of 2021 and submitted that one of the points raised relates to cognizance being taken before the expiry of the statutory period under Section 167, CrPC. 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.

**15.** A close scrutiny of the judgments in **Sanjay Dutt** (supra), **Madar Sheikh** (supra) and **M. Ravindran** (supra) would show that there is nothing contrary to what has been decided in **Bhikamchand Jain** (supra). 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. Reference to cognizance in **Madar Sheikh** (supra) 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 both **Madar Sheikh** (supra) and **M. Ravindran** (supra), 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 in **Bhikamchand Jain** (supra). 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 in **Bhikamchand Jain** (supra), the order passed by the High Court on 31.05.2019 is hereby set aside.

**16.** For the aforementioned reasons, the Appeals are allowed.

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