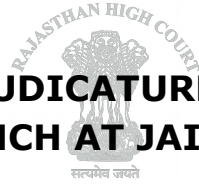




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Bail Cancellation Application No. 28/2023

State Of Rajasthan, Through Public Prosecutor, Rajasthan

----Petitioner

Versus

Rajeev Kumar Rana Son Of Mahendra Singh, Aged About 52
Years, Resident Of 197-B, Raipur Road, Dehradun, Uttarakhand.

----Respondent



For Petitioner(s) : Mr. Vijay Singh Yadav, PP
Mr. Ashok, ASP, IO, SOG

For Respondent(s) : Mr. Aditya Vikram Singh, through VC
Ms. Varuni Agarwal

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Reportable

Date of conclusion of arguments : **07/05/2026**
Date on which the judgment was reserved : **07/05/2026**
**Whether the full order or only the
operative part is pronounced** : **Full Judgment**
Date of pronouncement : **22/05/2026**

Judgment

1. The instant bail cancellation application under section 439(2) of CrPC is filed by State of Rajasthan aggrieved from order dated 23rd November 2022 in Case CIS No. 3697/2022, whereby the learned Additional Sessions Judge No.6, Jaipur Metropolitan - II has granted bail under Section 167(2) of CrPC read with Section 439 of CrPC to respondent accused Rajeev Kumar Rana in FIR No. 24/2018, PS SOG, Jaipur, for the offence under Sections 420, 409, 406, 467, 468, 471, 477-A, 120-B and 201 of IPC and Section 5 of the



Prize Chits and Money Circulation Scheme (Banning) Act, 1978 and Section 65 of IT Act, 2000.

2. Learned Public Prosecutor submitted that the respondent accused was arrested on 13th April 2022 and a charge sheet filed on 8th July 2022 and there was no reason to consider default bail under Section 167(2) of CrPC. He also submitted that learned Additional Sessions Judge has mentioned the fact in para six of the impugned order that charge sheet 11B/19 dated 08.07.2022 is filed. He also submitted that the application under Section 167(2) is filed only after filing of charge sheet but the learned Additional Sessions Judge considered the charge sheet as incomplete and on basis of incomplete charge sheet, has drawn a conclusion that it cannot be treated as a charge sheet under the law, therefore, granted bail to respondent accused by invoking a default bail clause under Section 167 (2) of CrPC. He submitted that the analogy of learned Additional Sessions Judge is not only contrary to law but also against the settled proposition of law.
3. Aforesaid contentions were opposed by learned counsel appearing on behalf of the respondent accused and submitted that the bail was granted on 23.11.2022 and since then the petitioner is availing liberty granted to him and cancellation application is considered after four years is nothing but an abuse of process of law. He further referred judgment in case of **Guria, Swayam Sevi Sansthan Vs. State of Uttar Pradesh and Others : (2009) 15SCC 75**, and submitted that a bail which has been granted in the





year 2022 cannot be cancelled in the year 2026 on any of the ground.

4. Learned counsel has further referred judgment in the cases of **Fakhrey Alam Vs. State of Uttar Pradesh : (2021) 20 SCC 636** and **Kamlesh Chaudhary Vs. The State of Haryana : Criminal Appeal No. 15/2021 (Arising out of SLP (Crl.) No.5715/2020)** and submitted that if a charge sheet is not complete in all respect and still the investigation is kept pending against the same accused, then neither the cognizance can be taken nor a trial be proceeded, and in such eventuality, a default bail under Section 167(2) of CrPC can be granted and a person cannot be re-arrested on the ground that a subsequent charge sheet is filed. He also submitted that the first charge sheet on 08.07.2022 was in fact no charge sheet and same was not considered as a charge sheet under Section 173 of CrPC by the Court and the petitioner has no role in analogy adopted by the Court, therefore, he is entitled for bail and learned Additional Sessions Judge has rightly granted bail to the accused.
5. Learned counsel for the respondent accused further submitted that in identical cases arising out of same facts relating to other Cooperative Societies which was investigated by SFIO, the respondent was granted bail by Hon'ble Supreme Court on 10.04.2026 in SLP (Crl.) No.2931/2026 observing that the period of incarceration is more than 3.5 years and properties of more than ₹93,000,000/- (Rupees Ninety Three Crore) are already





attached which is more than the allegation against him. He also placed reliance upon judgment in the case of **Arvind Kejriwal Vs. CBI : 2024 SCC OnLine SC 2550** and submitted that the condition fixed by Hon'ble Supreme Court in the case of SFIO may apply *mutatis mutandis* in present case of SOG as the matter is based upon same set of facts.

6. Learned counsel for the respondents further referred judgment in the case of **Dolat Ram and Ors. Vs. State of Haryana :(1995) 1 SCC 349** and submitted that there is no supervening circumstance, which may be considered as sufficient to consider bail cancellation application under Section 439(2) of CrPC. He further submitted that this Hon'ble Court has decided **S.B. Criminal Miscellaneous Bail Application No.7864/2024 titled as Rahul Modi and others Vs. State of Rajasthan**, on 12th August 2025, but the facts of present case are different and same is not applicable here, therefore, the bail cancellation application requires dismissal. He also placed reliance upon judgment in case of **Pradip N. Sharma Vs. State of Gujarat : 2025 SCC OnLine SC 457** and submitted that in the instant case, custody of respondent accused is not required, and the bail cancellation application preferred by the petitioner-State is liable to be dismissed.
7. Heard learned counsel for the parties and perused the material placed on record and also considered the judgments as referred by the learned counsel for the respondent.





8. The brief facts of the case are that the respondent accused Rajeev Kumar Rana was arrested on 13th April 2022 in FIR No.24/2018 PS SOG Jaipur, (popularly known as "Adarsh Credit Cooperative Society case"). The allegation in FIR is primarily upon Mukesh Modi and his associates who distributed a loan of ₹ 9238 Crores to 125 shell companies. The facts further indicate that SOG has filed a charge sheet against 15 persons including Rohit Modi, Rahul Modi and Kamlesh Choudhary on 22 July 2019. The bail application of Kamlesh Choudhary was allowed by this Court on 10 February 2020 on identical set of facts as claimed by the respondent accused while filing bail application under Section 167(2) of CrPC. Admittedly, the SOG has filed a charge sheet (third) on 8 July 2022, but also kept pending investigation under section 173(8) of CrPC.

9. Learned Additional Sessions Judge No.6, Jaipur Metropolitan-II, Jaipur, while considering bail application under Section 167(2) of CrPC, has allowed the same on 23.11.2022 for the reason that the filed charge sheet is incomplete in all respects. The observation of the trial court is reproduced as under:-

"6. न्यायालय के मत में हस्तगत प्रकरण में प्रार्थी/अभियुक्त राजीव कुमार राणा के विरुद्ध चार्जशीट 11बी/19 दिनांक 08.07.2022 को प्रस्तुत की गयी थी। उक्त चार्जशीट के अवलोकन से यह भी प्रकट होता है कि राजीव कुमार पुत्र महेन्द्र सिंह के विरुद्ध चार्जशीट 11बी/19 प्रस्तुत किये जाते समय धारा 173(8) के तहत 4 बिन्दुओं पर आगामी अनुसंधान जारी रखे जाने बाबत अंकित किया गया था। इससे यह प्रकट होता है कि हस्तगत प्रकरण में चार्जशीट पूर्ण नहीं है जबकि चार्जशीट में वर्णित चार बिन्दुओं पर आगामी अनुसंधान जारी है। इस संबंध में न्यायिक दृष्टांत 1. Khet Singh and Ors. V. State S.B. Criminal, Miscellaneous Bail Application no. 861 of 2021 2. Rakesh Kumar paul V. State of Assam, AIR 2017 SC 3948, 3. JAISINGH PUNIA V. State of Rajasthan, 2010(1) Cr. L.R. (Raj) 284, 4. Achpal alias Ramswaroop and another V. State of Rajasthan, 2019 CRL L.J. 401 5. Sardar S/o Kishan lal V. State of Rajasthan, S.B. Criminal Misc. Bail Application no 174 of 1983, 6. K.J.





JOSEPH AND G. SIVRAJAN, JJ. S.M. Purtado and etx. V. Dy. S.P., CBI Cochin Etc 1996 CRL. L., J. 3042 न्यायालय के संज्ञान में है। इस संबंध में दण्ड प्रक्रिया संहिता की धारा 173 (2) के अनुसार जैसे ही अनुसंधान पूरा होता है वैसे ही पुलिस थाने का भार साधक पुलिस अधिकारी पुलिस रिपोर्ट पर उस अपराध का संज्ञान करने के लिए सशक्त मजिस्ट्रेट को राज्य सरकार द्वारा विहित प्रारूप में एक रिपोर्ट भेजेगा। इस प्रकार जहां चार बिन्दुओं पर अनुसंधान लंबित रखा हो, वहां यह नहीं माना जा सकता कि प्रार्थी/अभियुक्त चार्जशीट अनुसंधान पूर्ण होने के पश्चात ही प्रस्तुत की गयी हो। इस संबंध में यह तथ्य भी विचारणीय है कि पूर्व में इसी आधार पर अन्य मुलजिम कमलेश चौधरी की जामनत माननीय राजस्थान उच्च न्यायालय द्वारा स्वीकार की जा चुकी है। पूर्व में अधिनस्थ न्यायालय भी आदेश दिनांक 19.09.2019 में यह मत अभिव्यक्त किया है कि प्रकरण में अनुसंधान पूर्ण होकर नतीजा पेश नहीं हुआ है। अतः अनुसंधान पूर्ण होने के पश्चात चार्ज सुना जाना संभावित है।"



10. Section 167(2) of CrPC is reproduced as under:-

"167(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 the 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, - [Substituted by Act 45 of 1978, Section 13, for paragraph (a) (w.e.f. 18-12-1978).]

(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.] [Substituted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (a) (i), for Cl. (b). Prior to its substitution, Cl (b) read as under.-(b) no Magistrate shall authorise detention in any custody under this Section unless the accused is produced before him;].]

(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.] [Original Explanation numbered as Explanation II thereof and Explanation I inserted by Act 45 of 1978, Section 13 (w.e.f. 18-12-1978).]

[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:] [Substituted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (a) (ii), for Explanation II. Prior to its substitution, Explanation II read as under :- [Explanation II. - If any question arises whether an accused persons was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention].]

[Provided further that in case of woman under eighteen years of is, the detention shall be





authorised to be in the custody of a remand home or recognized social institution.] [Inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (b).]

[(2-A) Notwithstanding anything contained in sub-section or (1) sub-section (2), the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate, or Metropolitan Magistrate have been conferred, a copy of the entry in the diary, hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order, and where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2) :

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer-in-charge of the police station or the police officer making the [investigation] [Inserted by Act 45 of 1978, Section 13 (w.e.f. 18-12-1978).], as the case may be.]"

11. Current bail cancellation application is filed under section 439(2) CrPC. The State or the aggrieved person has a right to challenge the order before the High Court primarily on





ground of miscalculation of time by the trial court, non-compliance of procedure and failure to exercise the right of default bail. No doubt about it that in case any accused misused the liberty, then on basis of post-release misconduct, the bail granted to the accused can be cancelled.



12. In case of **Venkatesan Balasubramaniyan Vs. Intelligence Officer, DRI Bangalore : 2020 INSC 652** a three Judges' Bench of Hon'ble Supreme Court considering the provisions under Section 167(2) of CrPC and 439(2) of CrPC has held that if a default bail is granted illegally or erroneously under Section 167(2) of CrPC, then same can be cancelled under Section 439(2) of CrPC. The three Judges' Bench in said case has referred and relied upon judgment in case of **Pandit Dnyanu Khot Vs. State of Maharashtra and Ors. : (2008) 17 SCC 745** and observed as under:-

"10. It is true that the bail granted under Section 167(2) Cr.P.c. could have been cancelled under Section 439(2) Cr.P.C. This Court in **Pandit Dnyanu Khot Vs. State of Maharashtra and Ors, (2008) 17 SCC 745** while considering the case where bail granted under Section 167(2) Cr.P.C. was cancelled under Section 439(2) Cr.P.C. by learned Sessions Judge after noticing the facts upheld the order under Section 439 Cr.P.C. cancelling the bail. Paragraphs 7, 8 and 9 of the judgment are as follows:-

"7. In the present case, against the accused, FIR for the offences punishable under Sections 302, 307, 147, 148, 149, 324 and 323 IPC and Section 27 of the Arms Act was registered. The accused were arrested on 28-10-2000 and were produced before the Judicial Magistrate. They filed an application under Section 167(2) CrPC on 25-1-2001 for releasing them on bail on the ground that



charge-sheet was not submitted within the stipulated time and the court released them on bail on the same date by exercising jurisdiction under Section 167(2) CrPC. The State filed an application on 31-1-2001 under Section 437(5) and Section 439(2) CrPC before the Sessions Judge, Kolhapur for cancellation of bail. Before the said application could be finally disposed of, the accused preferred an application Ext. 8 submitting that an application under Sections 437(5) and 439(2) was not maintainable before the Sessions Court and the State ought to have approached the learned Magistrate for cancellation of the bail. That application was rejected by the learned Additional Sessions Judge by order dated 3-3-2001. Thereafter, the learned Additional Sessions Judge by judgment and order dated 2-5-2001 allowed the said application and set aside the order passed by the Judicial Magistrate on the ground that the accused were released on the 89th day, that is, before expiry of 90 days.

8. In our view, it appears that the High Court has committed basic error in not referring to the provisions of Section 439(2) CrPC which specifically empower the High Court or the Court of Session to cancel such bail. Section 439(2) reads as under:

"439. Special powers of High Court or Court of Session regarding bail.—(1)***(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

9. The proviso to Section 167 itself clarifies that every person released on bail under Section 167(2) shall be deemed to be so released under Chapter XXXIII. Therefore, if a person is illegally or erroneously released on bail under Section 167(2), his bail can be cancelled by passing appropriate order under Section 439(2) CrPC. This Court in *Puran v. Rambilas* [(2001) 6 SCC 338] has also clarified that the concept of setting aside an unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation."





13. Considering aforesaid, there is no doubt about the fact that a default bail granted to any accused under section 167(2) of CrPC if found that same is granted erroneously or illegally, can be cancelled by the High Court, under Section 439(2) of CrPC.

14. In case of **Satender Kumar Antil vs Central Bureau Of Investigation : (2021) 10 SCC 773**, Hon'ble Supreme Court has emphasized norms to grant bail, making rejection an exception. The focus of argument of learned counsel for the respondent was only on this analogy and we have gone through the principle applicable in favour of liberty of the accused, but it is an admitted proposition of law that a default bail is not a regular bail, and if it is proved that the default bail is granted on erroneous or illegal ground, then the option is to exercise authority under Section 439(2) of CrPC.

15. Here in this case, the charge sheet is already filed on 8th July 2022, but same was treated as incomplete, and only on this ground, learned Additional Sessions Judge has granted bail to the respondent. The issue regarding incomplete charge sheet was considered in detail by a two-judges Bench of Hon'ble Supreme Court in case of **Ritu Chhabria Vs. Union of India : 2023 SCC online SC 545**, but subsequent order dated 12th May 2023 by a three-judges Bench of Hon'ble Supreme Court has clarified that Courts could not grant bail on basis of judgment in case of **Ritu Chhabria Vs. Union of India** (supra) on the ground that charge sheet or prosecution complaint could not be filed by





an investigating agency without completing a probe only to deprive accused of his right to statutory bail.

16. This Court has considered identical legal issue in **S.B. Criminal Misc. Bail Application No.7864/2024** filed by Rahul Modi and others in same FIR No. 24/2018 registered at PS SOG, Jaipur, wherein learned Additional Sessions Judge has dismissed the bail application under Section 167(2) of CrPC on 10.05.2024. While considering the legal position, this Court has observed as under:-

"15. In the case of **Narendra Kumar Amin (supra)**, without compliance of Sub Sections (2) and (5) of Section 173 of Cr.P.C., a charge-sheet has been filed on 90th day. Hon'ble Supreme Court considering the entire circumstances, has held that accused are not entitled for default bail. In the case of **Sharif Ahmed & Anr. (supra)**, Hon'ble Supreme Court has discussed requirement and manner of providing details in charge-sheet. In the case of **Dablu Kujur (supra)**, after considering the judgment in the case of **CBI v. Kapil Wadhawan (supra)**, has laid down that report of police officer on completion of investigation, shall contain the following in terms of Section 173(2) of Cr.P.C.:-

"17. Ergo, having regard to the provisions contained in Section 173 it is hereby directed that the Report of police officer on the completion of investigation shall contain the following: -

- (i) A report in the form prescribed by the State Government stating-
- (a) the names of the parties;
 - (b) the nature of the information;
 - (c) the names of the persons who appear to be acquainted with the circumstances of the case;
 - (d) whether any offence appears to have been committed and, if so, by whom;
 - (e) whether the accused has been arrested;
 - (f) whether he has been released on his bond and, if so, whether with or without sureties;





(g) whether he has been forwarded in custody under section 170.

(h) Whether the report of medical examination of the woman has been attached where investigation relates to an offence under [sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860)“

(ii) If upon the completion of investigation, there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, the Police officer in charge shall clearly state in the Report about the compliance of Section 169 Cr.PC.

(iii) When the report in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report, all the documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; and the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(iv) In case of further investigation, the Police officer in charge shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and shall also comply with the details mentioned in the above sub para (i) to (iii).“

16. In the case of **M. Ravindran v. DRI : (2021) 2 SCC 485**, it was held by Hon'ble Supreme Court that right to default bail survives only until charge sheet is filed in time.

17. In the case of **Central Bureau of Investigation v. Kapil Wadhawan and Anr.: 2024 INSC 58**, it was held by Hon'ble Supreme Court that the right of default bail under section 167(2) Cr.P.C. is not just a statutory right but a right that flows from Article 21 of the Constitution. It is an indefeasible right i.e. enforceable only prior to the filing of challan or charge-sheet and does not survive on the challan being filed if not already availed of. Hon'ble Supreme Court observed as under:-

“The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a charge-sheet is not filed and the investigation





is kept pending against him. Once however, a charge-sheet is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a charge-sheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the chargesheet, nonetheless for some reasons, if all the documents are not filed along with the chargesheet, that reason by itself would not invalidate or vitiate the chargesheet. It is also well settled that the court takes cognizance of the offence and not the offender. Once from the material produced along with the charge-sheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of charge-sheet would neither vitiate the charge-sheet, nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was an incomplete charge-sheet or that the chargesheet was not filed in terms of Section 173(2) of Cr.P.C."



18. In the case of **Sanjay Dutt v. State : (1994) 5 SCC 410**, it was held by Hon'ble Supreme Court that once the accused avails of default bail, the right cannot be defeated by subsequently filing a charge-sheet and observed as under:-

"The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filling of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. 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 filing of the challan. The custody of the accused after the challan is filed is not governed by Section 167 but different provisions of the Code of



Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because section 167 ceases to apply."

19. Hon'ble Supreme Court in the case of **Uday Mohanlal Acharya v. State of Maharashtra : (2001) 5 SCC 453** held that the indefeasible right to default bail accrues once the statutory period expires, and filing of an incomplete charge-sheet will not defeat that right. Hon'ble Supreme Court further laid down what will happen in case of application for bail and challan are filed on the same day and observed as under:-

"What will happen if on the 61st day an application for bail is filed for being released on bail on the ground of default by not filing the challan by the 60th day and on the 61st day the challan is also filed by the time the Magistrate is called upon to apply his mind to the challan as well as the petition for grant of bail? ... such an application for bail has to be dismissed because the stage of proviso to Section 167(2) is over, as such right is extinguished the moment the challan is filed."

20. Hon'ble Supreme Court in the case of **Y.S. Jaganmohan Reddy v. CBI : (2013) 7 SCC 439** held that economic offences constitute a class apart, having deep rooted conspiracies and huge loss of public funds. These must be viewed with greater seriousness.

21. In the case of **Sanjay Dutt v. State through CBI, Bombay : (1994) 5 SCC 410; Hitendra Vishnu Thakur v. State of Maharashtra : (1994) 4 SCC 602; Dr. Bipin Shantilal Panchal v. State of Gujarat : (1996) 1 SCC 718; Dinesh Dalmia v. CBI : AIR 2008 SC 78; Uday Mohanlal Acharya vs. State of Maharashtra : (2001) 5 SCC 453 and Pragyna Singh Thakur v. State of Maharashtra : (2011) 10 SCC 445**, Hon'ble Supreme Court has held that right of the accused for grant of bail under Section 167(2) of Cr.P.C. is accrued if the Investigating Agency failed





in submitting the charge-sheet within the statutory period of 60/90 days and same is enforceable by the accused only from the time of default in the submission of charge sheet till the filing of the challan and it does not survive or remain enforceable on the challan being filed as after submission of charge-sheet, a right of bail under Section 167(2) of Cr.P.C. ceased to apply. If after expiry of 60 or 90 days, a charge-sheet is not filed and accused is in custody on basis of order of remand, even then the accused cannot be released on bail on the ground that charge sheet is not submitted within the statutory period of 60 or 90 days. It is necessary for accused to file application for default bail before submission of charge-sheet. It is also settled proposition that period of 90 days, shall be counted from the date of remand and a day either date of remand or date of filing charge-sheet has to be excluded for purpose of counting 60/90 days.

22. In case of **Pragyna Singh Thakur (supra)** and **Uday Mohanlal Acharya (supra)**, it was laid down that Magistrate is obliged to grant bail to accused under Section 167(2) of Cr.P.C. even if after filing of application for default bail under Section 167(2) of Cr.P.C., a charge-sheet is filed by the Investigating Agency. In the case of **Uday Mohanlal Acharya (supra)**, it was further held that if accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of explanation-I and proviso to Sub Section (2) of Section 167 of Cr.P.C., the continued custody of the accused even beyond the specified period will not be unauthorized and if during that the said period of remand, if the investigation is complete and the charge-sheet is filed, then the so called indefeasible right of the accused would stand extinguished.

23. In the case of **Narendra Kumar Amin (supra)**, the bail was refused even the charge-sheet is filed without compliance of provision under Sub Section (2) and (5) of Section 173 of Cr.P.C."

17. No doubt about that respondent accused Rajeev Kumar Rana was granted bail by Hon'ble Supreme Court in





complaint bearing CIS No. COMA/05/2019 dated 18.05.2019 filed by the Serious Fraud Investigation Office (SFIO) on 10.04.2026 but the bail order was passed by Hon'ble Supreme Court under Section 479 of BNSS (Provides release on bail, if detention is for maximum period provided therein and trial has not concluded).

18. Herein, we are dealing with a case for default bail. The law with regard to grant of regular bail, is different than the provision of default bail, therefore, the respondent is not entitled for benefit of the order passed in his favor in case of SFIO. The Section 479 of BNSS is mandatory in nature and provides for bail in certain circumstances.

19. In case of **Fakhrey Alam Vs. State of Uttar Pradesh** (supra), Hon'ble Supreme Court has held that default bail under Section 167(2) of CRPC is a fundamental right and not merely statutory right. In case of **Kamlesh Chaudhary Vs. The State of Rajasthan** (supra), after placing reliance upon judgment in case of **Bashir Vs. State of Haryana : (1977) 4 SCC 410**, Hon'ble Supreme Court observed that filing of charge sheet by itself cannot be a ground for cancellation of bail. The bail granted under Section 167(2) of CrPC can be cancelled on other grounds available under the law to the prosecution.

20. In case of **Dolat Ram and Others Vs. State of Haryana** (supra), the bail granted under Section 438 of CrPC was under challenge and it was held that supervening circumstances are necessary for cancellation of bail. In case of **Guria, Swayam Sevi Sansthan Vs. State of Uttar**



Pradesh and Others (supra), grant of regular bail was under challenge and it was held that a bail cannot be cancelled as trial in some of the cases pending against accused has already been concluded.

21. Similar cases decided by the Gujarat High Court in case of **State of Gujarat Vs. Rajkumar and Others : MANU/GJ/ 2125/2022** and **Yashwantkumar Hiralal Patel Vs. Patel Pritesh Kanubhai and Ors. : MANU/GJ/2461/2022** were also referred. None of them are helpful to help the arguments of learned counsel for respondent.
22. In case of **Pradip N. Sharma Vs. State of Gujarat and another** (supra), Hon'ble Supreme Court has granted anticipatory bail to a person who has also challenged the very basis of FIR and it was observed that the custody is not required. One more judgment in case of **Mariam Fasihuddin and Another Vs. State by Adugodi Police Station and Another : (2024) 11 SCC 733** was referred, wherein also the issue was of quashing of FIR and after investigation in case of **Arvind Kejriwal versus CBI** (supra), the impact of bail in arising out of same state of facts were considered while grant of bail, but again it was a case of regular bail.
23. Thus, judgments as referred by learned counsel for the respondents pertain to the regular or anticipatory bail, but herein we are considering the matter relating to grant of default bail under Section 167(2) of CrPC as the trial court has treated the charge sheet as incomplete. The bail is





granted only on ground of filing of incomplete charge sheet. The judgments as referred by learned counsel for the respondents are not applicable on the facts and circumstances of the case.

24. Section 167(2) of CrPC, (equivalent provision under Section 187(3) of BNSS), an accused is entitled for statutory statutory (default bail), if the investigation is not concluded within a statutory period of 60 or 90 days as the case may be, on basis of offence for which concerned person is charged.
25. In case of **CBI vs. Kapil Wadhawan & Anr. : (2024) 3 SCC 734**, Hon'ble Supreme Court, after considering several judgments and provision of Section 173(2) of CrPC, has held that mere pendency of investigation would not impugn the charge sheet filed or be a ground for granting a default bail, as long as the condition of Section 173(2) of CrPC were met and the charge sheet was filed in time. The intent behind default bail under Section 167(2) of CrPC is to give impetus to speedy investigation and protection of the rights of the accused. Even in case of **Narendra Kumar Amin Vs. CBI and Ors. : JT 2015(2) SC 233**, the bail was refused even the charge sheet is filed without complying of the provision under sub-section (2) and (5) of Section 173 of CrPC. The issue was earlier considered by a Constitution Bench in case of **Sanjay Dutt Vs. State : (1994) 5 SCC 410**.
26. After considering the legal position as discussed therein above, when we look at para 6 of the impugned order dated





23.11.2022, then it is apparent that the investigation was kept pending as the charge sheet is not complete. The investigation was kept pending only on four points. The trial Court has not mentioned said four points on which the investigation was kept pending, which has prevented the trial Court from proceeding and taking cognizance. It appears that the trial Court has not applied its own mind while considering grant of bail to the respondent accused. The material clearly indicate that a charge sheet has been filed, though it was incomplete, but on what count, it was incomplete, is not mentioned in the impugned order. The charge sheet, filed in the instant case, is not sufficient to proceed further, is not considered by the trial Court. The trial Court has not applied its own mind on the issue, but the fact is the charge sheet is filed on 08.07.2022, and default bail application is filed thereafter.

27. In today's world, where there is surge in white-collar crime and normally the persons involved in financial frauds or irregularities used to siphon off money to shell companies or at remote locations, which are normally untraceable and unreachable. The investigation in such circumstances not only challenging but requires time and also requires cooperation from all other agencies. A holistic approach is required from the court while protecting right of the accused under Article 21 of the Constitution of India as the money of a common man is involved in such financial fraud.
28. Without going into the merits of the case, I am of the view that once a charge sheet is filed on 08.07.2022, the Court





granting a default bail considering the charge sheet papers filed as incomplete, is required to adjudicate the issue whether the documents submitted by police are sufficient to proceed or just an attempt to frustrate right of accused to seek bail under Section 167(2) of CrPC. In the instant case, there is no such observation by the trial court, rather considering the report of police to keep pending investigation on four count, as incomplete charge sheet, the trial Court has judged the charge sheet without examination. Therefore, the trial Court is committed serious error while invoking the provision under Section 167(2) of CrPC. This Court is empowered under Section 439(2) of CrPC to cancel the bail granted to the petitioner on erroneous ground. Therefore, this bail cancellation application is liable to be allowed.

29. In view of the decision made hereinabove, the bail cancellation application preferred by the State of Rajasthan under Section 439(2) of CRPC is hereby allowed and the bail order dated 23rd November 2022 passed by learned Additional Sessions Judge No. 6, Jaipur Metropolitan-II, is hereby set aside and revoked. The default bail under Section 167(2) of CrPC granted to respondent-accused Rajeev Kumar Rana was impermissible and he is not entitled to get default bail, thus, his application under Section 167(2) of CRPC is hereby dismissed.
30. Four weeks' time is granted to respondent-accused to surrender before the trial Court.





31. The trial court is directed to take the respondent-accused in custody. However, the respondent-accused is at liberty to file a regular bail under Section 483 of BNSS.
32. Office is directed to send a copy of this order to the trial Court through the District Judge.



(ASHOK KUMAR JAIN),J

1/MR