IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 21ST DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.2802 OF 2022

BETWEEN:

SRI COMANDURU PARTHASARATHY

... PETITIONER

(BY SRI SANDESH CHOUTA, SR. ADVOCATE A/W
SRI.NIKHIL.K., ADVOCATE)

AND:

STATE OF KARNATAKA
BY SESHADRIPURAM POLICE STATION
BENGALURU CITY REPRESENTED BY
THE STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BENGALURU 560 001.

... RESPONDENT

(BY SRI.B.J.ROHITH, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO A. QUASH THE ORDER DATED 29.01.2022 PASSED BY THE HONBLE IV ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU IN C.C.NO.2423/2022 ARISING OUT OF CR.NO.82/2021 OF THE SESHADRIPURAM POLICE STATION CONTAINED IN ANNEXURE-A AND ETC.,

THIS CRIMINAL PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner, in the subject petition, seeks to quash the order dated 29-01-2022 passed by the IV Additional Chief Metropolitan Magistrate, Bengaluru in C.C.No.2423 of 2022 arising out of Crime No.82 of 2021 and has consequently sought enlargement on bail in connection with the aforesaid crime which has been registered under Sections 107, 424, 427, 34, 418, 421, 403, 406, 409, 411, 413, 414, 420, 468, 120, 120(A), 378, 405, 410, 415, 425, 463, 464 and 117 of the Indian Penal Code.

2. Heard Sri.Sandesh Chouta, learned counsel for petitioner and Sri.B.J.Rohith, learned High Court Government Pleader for respondent.

3. *Sans* unnecessary details, facts, in brief, germane for consideration of the issue in the *lis* are as follows:

A crime in Crime No.82 of 2021 is registered by the Seshadripuram Police Station against the petitioner and several others for afore-quoted offences. In furtherance of the crime a body warrant and escort memo was issued against the petitioner who was in custody of WCC team-12 of the Central Crime Station (CCS) in Crime No.142 of 2021 at Hyderabad, in a different crime. The said body warrant was issued for production of the petitioner on or before 22-09-2021 before the IV Additional Chief Metropolitan Magistrate at Bengaluru in connection with registration of the aforesaid crime. On 5-10-2021 the body warrant and escort memo was re-issued with a direction to produce the petitioner before the Court on or before 25-10-2021. The body warrant was executed in terms of the order of the Court on 20-10-2021 against the petitioner at Central Prison, Hyderabad and was produced before the Court at Bangalore in connection with Crime No.82 of 2021 on 21-10-2021 on the basis of the aforesaid body warrant so issued. On the very day, the petitioner was taken into custody

and remanded to police custody in terms of the order passed by the Court.

4. The petitioner remained in police custody in connection with the crime from 21-10-2021 to 2-11-2021. On 26-10-2021, the petitioner was enlarged on bail by the Court at Hyderabad in connection with Crime No.142 of 2021 registered with Central Crime Station (CCS) at Hyderabad. In the light of release therein, the petitioner filed an application for bail under Section 437 of the Cr.P.C. in Crime No.82 of 2021. On the day of the application, the petitioner was remanded to judicial custody in terms of an order passed by the learned Magistrate and was placed at the Central Jail. The body warrant of the petitioner was further extended till 15-11-2021 by the learned Magistrate.

5. Objections were filed to the bail application filed under Section 437 of the Cr.P.C by the petitioner on 2-11-2021. Pending consideration of enlargement of the petitioner on bail in connection with Crime No.82 of 2021 at Bangalore, the Court at Hyderabad enlarges the petitioner on default bail in connection

with another crime in Crime No.100 of 2021 owing to non-filing of charge sheet by the Police. At Bengaluru, the body warrant of the petitioner was further extended by the learned Magistrate till 28-12-2021. All these happened during the pendency of investigation by the Police at Bengaluru in Crime No.82 of 2021.

6. A preliminary charge sheet against accused Nos. 3 and 12 in connection with Crime No.82 of 2021 was filed by the Police on 18-12-2021 but no charge sheet was filed against the petitioner. On 20-01-2022 the period of 90 days from the date on which the petitioner was arrested expired. On the 95th day the petitioner files an application under Section 167 (2) of the Cr.P.C seeking statutory/default bail in connection with Crime No.82 of 2021 on the ground that no charge sheet was filed against him by the police in the aforesaid crime. The same was objected to by the State. Considering the application filed under Section 167(2) Cr.P.C. an order is passed by the learned Magistrate on 29-01-2022 rejecting the statutory bail. On 23-03-2022 another order is passed rejecting regular bail

application also filed under Section 437 of the Cr.P.C. in Crime No.82 of 2021. It is these orders that are called in question in the case at hand and a consequential relief of enlargement on bail is sought at the hands of this Court.

7. The learned senior counsel would vehemently argue and contend that the order impugned dated 29-01-2022 passed by the learned Magistrate is on the face of it erroneous as the learned Magistrate holds that on a body warrant the petitioner was in police custody for 13 days and that period will have to be excluded for consideration of expiry of 90 days for consideration of application for default bail. He would submit that even today, charge sheet is not filed against the petitioner and he is languishing in prison for close to 180 days. He would further submit that it is the right of the petitioner to be enlarged on default bail in terms of Section 167(2) of the Cr.P.C. He would place reliance on the following judgments of the Apex Court and that of this Court to buttress his submissions:

(i) *VIJAY KUMAR v. STATE {ILR 2009 KAR 327}*

(ii) *JAYABALU v. STATE OF KARNATAKA {2012 SCC OnLine Kar.4269}*

(iii) *CENTRAL BUREAU OF INVESTIGATION v. KENCHE MAHESH KUMAR {ILR 2015 KAR 4054}*

(iv) *BIKRAMJIT SINGH v. STATE OF PUNJAB {(2020) 10 SCC 616}*

(v) *M.RAVINDRAN v. DIRECTORATE OF REVENUE INTELLIGENCE {(2021) 2 SCC 485}.*

8. On the other hand, learned High Court Government Pleader would refute the submissions and contend that charge sheet is filed in the case at hand, though against the other accused. But, once charge sheet is filed, the petitioner would not be entitled for default bail. The case against the petitioner is still under investigation and, therefore, default bail clause would not be applicable, in the light of the charge sheet already filed in the case of others is his submission. He would further submit that permission is taken for further investigation against the petitioner and, therefore, he would not be entitled to be enlarged on bail. He would seek dismissal of the petition and continuation of the petitioner in prison. In support of his contentions, he relies upon the following judgments:

(i) NARENDRA KUMAR AMIN v. CBI {(2015) 3 SCC 417}

(ii) SERIOUS FRAUD INVESTIGATION v. RAHUL MODI {2022 SCC OnLine 153}.

9. I have given my anxious consideration to the submissions made by the learned senior counsel and the learned High Court Government Pleader and perused the material on record.

10. The afore-quoted facts or the link in the chain of events are not in dispute and, therefore, are not reiterated. Before embarking upon consideration of the order impugned, it is appropriate to notice Section 167(2) of the Cr.P.C. and its interpretation by the Apex Court and this Court from time to time. Section 167 of the Cr.P.C. reads as follows:-

> *"167. **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 57, and there are grounds for believing that the accusation or information is wellfounded, 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 Judicial Magistrate a copy of the entries in the diary hereinafter prescribed 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, whether he has or has no 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 sub-section 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.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

(2A) Notwithstanding anything contained in sub-section (1) or 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 no 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, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

> *(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify."*

Sub-section (2) of Section 167 gives a right to an accused who is in custody and in whose case investigation is not completed by way of filing a final report by the Police to be enlarged on bail which is known as statutory bail or default bail in criminal parlance.

11. A three Judge Bench of the Apex Court has considered Section 167(2) of the Cr.P.C. in extenso in the case of ***BIKRAMJIT SINGH V. STATE OF PUNJAB***[1] *(supra)* wherein the Apex Court holds as follows:

> **"27.** *The second vexed question which arises on the facts of this case is the question of grant of default bail. It has already been seen that once the maximum period for investigation of an offence is over, under the first proviso (a) to Section 167(2), the accused shall be released on bail, this being an indefeasible right granted by the Code. The extent of this indefeasible right has been the subject-matter*

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[1] ***(2020) 10 SCC 616***

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of a number of judgments. A beginning may be made with the judgment in Hitendra Vishnu Thakur v. State of Maharashtra [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] , which spoke of "default bail" under the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "TADA") read with Section 167 of the Code as follows: (SCC pp. 625-28, paras 19-21)

"19. Section 20(4) of TADA makes Section 167 CrPC applicable in relation to case involving an offence punishable under TADA, subject to the modifications specified therein. …while clause (b) provided that reference in sub-section (2) of Section 167 to "15 days", "90 days" and "60 days" wherever they occur shall be construed as reference to "60 days", "one year" and "one year" respectively. This section was amended in 1993 by Amendment Act 43 of 1993 with effect from 22-5-1993 and the period of "one year" and "one year" in clause (b) was reduced to "180 days" and "180 days" respectively, by modification of sub-section (2) of Section 167. After clause (b) of sub-section (4) of Section 20 of TADA, another clause (bb) was inserted which reads.

'**20. (4)(bb)** *in sub-section (2), after the proviso, the following proviso shall be inserted, namely:*

"Provided further that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Designated Court shall extend the said period up to one year, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days; and."'

20. … Sub-section (2) of Section 167 of the Code lays down that the Magistrate to whom the accused is forwarded may authorise his detention in such custody, as he may think fit, for a term specified in that section. The proviso to sub-section (2) fixes the outer limit within which the investigation must be completed and in case the same is not completed within the said prescribed period, the accused would acquire a right to seek to be released on

bail and if he is prepared to and does furnish bail, the Magistrate shall release him on bail and such release shall be deemed to be grant of bail under Chapter XXXIII of the Code of Criminal Procedure. …Section 167 read with Section 20(4) of TADA, thus, strictly speaking is not a provision for "grant of bail" but deals with the maximum period during which a person accused of an offence may be kept in custody and detention to enable the investigating agency to complete the investigation and file the charge-sheet, if necessary, in the court. The proviso to Section 167(2) of the Code read with Section 20(4)(b) of TADA, therefore, creates an indefeasible right in an accused person on account of the "default" by the investigating agency in the completion of the investigation within the maximum period prescribed or extended, as the case may be, to seek an order for his release on bail. It is for this reason that an order for release on bail under proviso (a) of Section 167(2) of the Code read with Section 20(4) of TADA is generally termed as an "order-on-default" as it is granted on account of the default of the prosecution to complete the investigation and file the challan within the prescribed period. ***As a consequence of the amendment, an accused after the expiry of 180 days from the date of his arrest becomes entitled to bail irrespective of the nature of the offence with which he is charged where the prosecution fails to put up challan against him on completion of the investigation. With the amendment of clause (b) of sub-section (4) of Section 20 read with the proviso to sub-section (2) of Section 167 CrPC an indefeasible right to be enlarged on bail accrues in favour of the accused if the police fails to complete the investigation and put up a challan against him in accordance with law under Section 173 CrPC.*** *An obligation, in such a case, is cast upon the court, when after the expiry of the maximum period during which an accused could be kept in custody, to decline the police request for further remand except in cases governed by clause (bb) of Section 20(4). There is yet another obligation also which is cast on the court and that is to inform the*

accused of his right of being released on bail and enable him to make an application in that behalf. (Hussainara Khatoon case [Hussainara Khatoon (4) v. State of Bihar, (1980) 1 SCC 98 : 1980 SCC (Cri) 40]). This legal position has been very ably stated in Aslam Babalal Desai v. State of Maharashtra [Aslam Babalal Desai v. State of Maharashtra, (1992) 4 SCC 272 : 1992 SCC (Cri) 870] where speaking for the majority, Ahmadi, J. referred with approval to the law laid down in Rajnikant Jivanlal v. Narcotics Control Bureau [Rajnikant Jivanlal v. Narcotics Control Bureau, (1989) 3 SCC 532 : 1989 SCC (Cri) 612] wherein it was held that: (SCC p. 288, para 9)

'9. …"13. … The right to bail under Section 167(2) proviso (a) thereto is absolute. It is a legislative command and not court's discretion. If the investigating agency fails to file charge-sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. But at that stage, merits of the case are not to be examined. Not at all. In fact, the Magistrate has no power to remand a person beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds." (SCC p. 536, para 13)'

21. Thus, we find that once the period for filing the charge-sheet has expired and either no extension under clause (bb) has been granted by the Designated Court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under sub-section (4) of Section 20 TADA read with Section 167 of the Code and the Designated Court shall release him on bail, if the accused seeks to be so released and furnishes the requisite bail. We are not impressed with the argument of the learned counsel for the appellant that on the expiry of the period during which investigation is required to be completed under Section 20(4) TADA read with Section 167 of the Code, the court must release the

accused on bail on its own motion even without any application from an accused person on his offering to furnish bail. In our opinion an accused is required to make an application if he wishes to be released on bail on account of the "default" of the investigating/prosecuting agency and once such an application is made, the court should issue a notice to the Public Prosecutor who may either show that the prosecution has obtained the order for extension for completion of investigation from the court under clause (bb) or that the challan has been filed in the Designated Court before the expiry of the prescribed period or even that the prescribed period has actually not expired and thus resist the grant of bail on the alleged ground of "default". The issuance of notice would avoid the possibility of an accused obtaining an order of bail under the "default" clause by either deliberately or inadvertently concealing certain facts and would avoid multiplicity of proceedings. It would, therefore, serve the ends of justice if both sides are heard on a petition for grant of bail on account of the prosecution's "default". … No other condition like the gravity of the case, seriousness of the offence or character of the offender, etc. can weigh with the court at that stage to refuse the grant of bail to an accused under sub-section (4) of Section 20 TADA on account of the "default" of the prosecution."

(emphasis in original)

37. *On the facts of the present case, the High Court was wholly incorrect in stating that once the challan was presented by the prosecution on 25-3-2019 as an application was filed by the appellant on 26-3-2019, the appellant is not entitled to default bail. First and foremost, the High Court has got the dates all wrong. The application that was made for default bail was made on or before 25-2-2019 and not 26-3-2019. The charge-sheet was filed on 26-3-2019 and not 25-3-2019. The fact that this application was wrongly dismissed on 25-2-2019 would make no difference and ought to have been corrected in*

revision. The sole ground for dismissing the application was that the time of 90 days had already been extended by the learned Sub-Divisional Judicial Magistrate, Ajnala by his order dated 13-2-2019. This order was correctly set aside by the Special Court by its judgment dated 25-3-2019, holding that under the UAPA read with the NIA Act, the Special Court alone had jurisdiction to extend time to 180 days under the first proviso in Section 43-D(2)(b). The fact that the appellant filed yet another application for default bail on 8-4-2019, would not mean that this application would wipe out the effect of the earlier application that had been wrongly decided. We must not forget that we are dealing with the personal liberty of an accused under a statute which imposes drastic punishments. ***The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled."***

(Emphasis supplied)

Again, a three Judge Bench of the Apex Court considers Section 167(2) in the case of ***M.RAVINDRAN v. DIRECTORATE OF REVENUE INTELLIGENCE***[2] *(supra)* and holds as follows:

"20.1. *The observations made in Hitendra Vishnu Thakur [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] and Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] to the effect that the application for default bail and any application for extension of time made by the*

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[2] ***(2021) 2 SCC 485***

Public Prosecutor must be considered together are, in our opinion, only applicable in situations where the Public Prosecutor files a report seeking extension of time prior to the filing of the application for default bail by the accused. In such a situation, notwithstanding the fact that the period for completion of investigation has expired, both applications would have to be considered together. However, where the accused has already applied for default bail, the Prosecutor cannot defeat the enforcement of his indefeasible right by subsequently filing a final report, additional complaint or report seeking extension of time.

20.2. It must also be added and it is well settled that issuance of notice to the State on the application for default bail filed under the proviso to Section 167(2) is only so that the Public Prosecutor can satisfy the court that the prosecution has already obtained an order of extension of time from the court; or that the challan has been filed in the designated court before the expiry of the prescribed period; or that the prescribed period has actually not expired. The prosecution can accordingly urge the court to refuse granting bail on the alleged ground of default. Such issuance of notice would avoid the possibility of the accused obtaining default bail by deliberate or inadvertent suppression of certain facts and also guard against multiplicity of proceedings.

20.3. However, Public Prosecutors cannot be permitted to misuse the limited notice issued to them by the court on bail applications filed under Section 167(2) by dragging on proceedings and filing subsequent applications/reports for the purpose of "buying extra time" and facilitating filling up of lacunae in the investigation by the investigating agency.

VI. Other relevant precedents pertaining to the right under Section 167(2)

21. *We are fortified in our aforementioned conclusions by the three-Judge Bench decision of this Court in Mohd. Iqbal Madar Sheikh v. State of Maharashtra [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] . In that case, though the charge-sheet was submitted after expiry of the statutory period under Section 20(4)(bb) of the TADA Act, it was admitted that no prior application for bail had been filed by the appellants. Hence the Court held, relying upon Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] , that the right to bail could not be exercised once the charge-sheet has been submitted and cognizance has been taken. However, at the same time, the three-Judge Bench also expressed with consternation that courts cannot engage in practices such as keeping the applications for bail pending till the time charge-sheets are submitted, so that the statutory right which has accrued to the accused is defeated. If the court deliberately does not decide the bail application but adjourns the case by granting time to the prosecution, it would be in violation of the legislative mandate. It may be pertinent to note that the three-Judge Bench in Mohd. Iqbal Madar Sheikh [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] had also been part of the Constitution Bench in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] .*

Conclusion

24. *In the present case, admittedly the appellant-accused had exercised his option to obtain bail by filing the application at 10.30 a.m. on the 181st day of his arrest i.e. immediately after the court opened, on 1-2-2019. It is not in dispute that the Public Prosecutor had not filed any application seeking extension of time to investigate into the crime prior to 31-1-2019 or prior to 10.30 a.m. on 1-2-2019. The Public Prosecutor participated in the arguments on the bail application till 4.25 p.m. on the day it was filed. It was*

only thereafter that the additional complaint came to be lodged against the appellant. Therefore, applying the aforementioned principles, the appellant-accused was deemed to have availed of his indefeasible right to bail, the moment he filed an application for being released on bail and offered to abide by the terms and conditions of the bail order i.e. at 10.30 a.m. on 1-2-2019. He was entitled to be released on bail notwithstanding the subsequent filing of an additional complaint.

24.1. It is clear that in the case on hand, the State/the investigating agency has, in order to defeat the indefeasible right of the accused to be released on bail, filed an additional complaint before the court concerned subsequent to the conclusion of the arguments of the appellant on the bail application. If such a practice is allowed, the right under Section 167(2) would be rendered nugatory as the investigating officers could drag their heels till the time the accused exercises his right and conveniently file an additional complaint including the name of the accused as soon as the application for bail is taken up for disposal. Such complaint may be on flimsy grounds or motivated merely to keep the accused detained in custody, though we refrain from commenting on the merits of the additional complaint in the present case. Irrespective of the seriousness of the offence and the reliability of the evidence available, filing additional complaints merely to circumvent the application for default bail is, in our view, an improper strategy. Hence, in our considered opinion, the High Court was not justified in setting aside the judgment and order of the trial court releasing the accused on default bail.

25.1. Once the accused files an application for bail under the proviso to Section 167(2) he is deemed to have "availed of" or enforced his right to be released on default bail, accruing after expiry of the stipulated time-limit for investigation. Thus, if the

accused applies for bail under Section 167(2) CrPC read with Section 36-A(4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the court must release him on bail forthwith without any unnecessary delay after getting necessary information from the Public Prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigating agency.

25.2. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the charge-sheet or a report seeking extension of time by the prosecution before the court; or filing of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher court.

25.3. *However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a charge-sheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.*

26. *Hence the impugned judgment [Directorate of Revenue Intelligence v. M. Ravindran, 2019 SCC OnLine Mad 33543] of the High Court stands set aside and the trial court judgment stands confirmed. However, we additionally direct that apart from furnishing the sureties as directed by the trial court, the appellant-accused should also surrender his passport, undertake to report to the respondent Directorate when required for purposes of investigation, and also undertake not to leave Chennai city*

> *limits without the leave of the trial court. This should alleviate any concerns about the appellant absconding from the jurisdiction of the court."*
>
> *(Emphasis supplied)*

The Apex Court, in the aforesaid cases, while delineating the right of the accused under Section 167(2) holds that it is an indefeasible right of the accused to be enlarged on bail the moment the statutory period begins to operate, except in statutes where such provision for extension is available.

12. On the bedrock of the consideration of three Judge Benches decision of the Apex Court in the aforesaid cases, the case at hand is required to be considered. It is not in dispute that the petitioner was brought to Bangalore on 20-10-2021 when the body warrant against the petitioner was executed and was remanded to police custody on 21-10-2021 by the following order:

> *"Accused No.2 by name Comandur Parthasarathy S/o C.R.Rajagopalan, aged 66 years, R/o No.Hyderabad, accused No.5 by name Rajiv Ranjan Singh S/o Upendra Narayan Singh, 52 years, R/o Hyderabad and accused No.9 by name G.Krishnahari S/o G.Mallaiah, 63 years, R/o Hyderabad are produced before me in the open Court to-day at 4.40 p.m, by ACP – H.N.Dharmendra, OCW, CCB,*

Bengaluru under escort memo in execution of body warrant under transit warrant.

On enquiry accused No. 2, 3 and 9 have not complained any ill-treatment by the police.

Informed about the legal assistance and accused No.2, 5 and 9 submitted that they have engaged the Advocate.

Sri MD, Advocate filed vakalath for accused 2, 5 and 9 with permission to take their signature and taken on record.

IO filed police custody application for accused No. 2, 5 and 9 along with transit warrant, letter dated 20.10.2021, letter of Superintendent, Central Prison, Hyderabad dated 20-10-2021, copy of escort memo, request letter for medical and Covid-19 test cum medical report, Covid-19 test negative reports, CD No.18 to 20 and prays for police custody for 14 days.

Heard Sr.APP and Sri MD, Advocate for accused Nos. 2, 5 and 9.

IO sought for police custody of accused 2, 5 and 9 for 14 days. Hence, looking at facts and circumstances of case and contents of police custody requisition I satisfied that, the said accused 2, 5 and 9 are to be given to the police custody for the purpose of investigation and collection of evidence. Sri MD, Adv., submitted that IO be directed to provide all facilities including medical facility as accused are aged persons and submitted that 14 days custody of said accused are not required. In the present case IO, sought for 14 days police custody. Hence, looking at facts, circumstances and grounds stated in the police custody remand application I deem fit to give police custody of said accused 2, 5 and 9 for period of 13 days. Hence, I proceed to pass the following:

ORDER

> ***The ACP – H.N.Dharmendra, OCW, CCB, Bengaluru is permitted to take the accused No.2, 5 and 9 into police custody for a period of 13 days i.e., from 21-10-2021 to 2.11.2021 and ACP is directed to provide medical facility to accused No.2, 5 and 9 and produce OP slip without fail and IO shall directed to produce accused No.2, 5 and 9 on 2.11.2021 before 2.00 p.m.***
>
> *1. IO is directed to provide food and medical treatment and not to ill-treat accused. ''*
> *2. IO is hereby directed not to offer any inducement, promise to accused No.2, 5 and 9 as mentioned under Section 24 of Evidence Act.*
> *3. The IO is hereby directed to give opportunity to accused No.2, 5 and 9 if they want to consult their advocate during the enquiry.*
> *Issue intimation to the Hon'ble Chief Metropolitan Magistrate, Bangalore City.*
> *For production of accused 2, 5 and 9 call on 2.11.2021.*
> *Accused No.3 is not produced from JC. Office is directed to issue intimation to jail authority to produce A3 on 2-11-2021.*
> *For objections to bail application Sr.APP prays time. Call on 25-10-2021."*

Therefore, liberty of the petitioner was curtailed by the Court when the body warrant was executed and he was remanded to police custody. Later, on 2-11-2021, the petitioner was remanded to judicial custody. In terms of Section 167(2) of the Cr.P.C. investigation is to be completed within 60/90 days. An application is filed by the petitioner on the 95th day on

25-01-2022 seeking enlargement on bail or statutory bail in terms of Section 167(2) of the Cr.P.C. This is rejected by an order dated 29-01-2022 on the ground that the petitioner was remanded to judicial custody only on 2.11.2021 and the right of the petitioner had not yet ripened in terms of Section 167(2) for grant of bail, as body warrant period under Sections 267 and 270 of the Cr.P.C. cannot be counted as period spent by the petitioner being in judicial custody. The reason rendered by the Court reads as follows:

> *"5. **Point No.1**: Sri VB, Advocate for accused No.2, 5 and 9 contended and argued that, accused No.2, 5 and 9 were produced before this Court on 21-10-2021. Investigating Officer had taken them in his custody from 21-10-2021 to 2-11-2021. Hence, the said accused arrested on 21-10-2021 and continued in the custody of the court till this day. Hence, accused are in custody for 94 days. Hence, the Investigating Officer failed to complete the investigation and file final report within the statutory period of 90 days from the date of their arrest/detention as contemplated under Section 167(2) of Cr.P.C. Hence, the accused No.2, 5 and 9 are ready and willing to abide any of the conditions of the court on grant of bail. In support of arguments relied on Chaganti Satyanarayana and others v. State of Andhra Pradesh, (1986) 3 SCC 141 and Central Bureau of Investigation, New Delhi v. Anupama J.Kulkarni, (1992) 3 SCC 141 and sought to release them on bail.*
>
> ***6. Sr.APP filed objections to the said application contending that if accused 2, 5 and 9 are released on bail they may not appear in the***

Court. Still investigation is not completed. Hence, at this stage if they are released on bail they may not cooperate in the investigation. The said offences are non-bailable in nature. Hence, the Investigating Officer produced accused No.2, 5 and 9 in the present case under body warrant. Hence, accused are not entitled for statutory bail and sought to reject the application.

7. The present case is registered for the offences punishable under Sections 107, 424, 427, 418, 421, 403, 406, 409, 411, 413, 414, 420, 468, 120(A), 378, 405, 410, 415, 425, 463, 464, 117 read with Section 34 of the Indian Penal Code (hereinafter4 referred as IPC).

8. The investigating Officer filed requisition through Sr.APP for issuance of body warrant against accused No.2, 5 and 9 who are in custody in WCO Team 12, Central Crime Station, DD Hyderabad PS Crime No.142/2021 to produce in the present case. Accordingly after hearing the prosecution this Court issued body warrant against accused No.2, 5 and 9 to produce in this case.

9. The Investigating Officer in execution of body warrant produced the accused No.2, 5 and 9 in this case from Chanchalaguda Central Prison, Hyderabad on 21.10.2021. The Investigating Officer had taken accused No.2, 5 and 9 in his custody i.e., police custody for a period of 13 days i.e., 21-10-2021 to 2-11-2021. After completion of interrogation Investigating Officer produced accused No.2, 5 and 9 on 2-11-2021 and now accused No.2, 5 and 9 are under body warrant in the present case.

10. Here, in the present case the accused No.2, 5 and 9 are not produced under Section 167 of Cr.P.C. but Investigating Officer produced the said accused in this case in execution of body warrant under Section 267 of Cr.P.C. Hence, the accused No.2, 5 and 9 are not in "custody" or "detention" as used under Section 167 of Cr.P.C. in the present case. Hence, under such

circumstance the application filed under Section 167(2) of Cr.P.C. is not maintainable. Hence, the accused No.2, 5 and 9 are under body warrant in the present case under Sections 267 and 270 of Cr.P.C. I went through Chaganti Satyanarayana and others v. State of Andhra Pradesh, (1986) 3 SCC 141 and Central Bureau of Investigation, New Delhi v. Anupama J.Kulkarni, (1992) 3 SCC 141 and ***ratio laid down in the said cases is not applicable to the present facts of the case because the accused No.2, 5 and 9 are not in the custody or detention as stated under Section 167 of Cr.P.C. But they are under body warrant under Sections 267 and 270 of Cr.P.C. It is also important to note that right to claim statutory bail arises after completion of 60/90 days from the date of remand. Hence, in the present case the accused No.2, 5 and 9 are under body warrant in this case from2-11-2021. Hence, even otherwise the period of 90 days is not completed. Hence, in view of above stated facts, circumstances and reasons I answer point No.1 in negative.***

11. Point No.2: For the foregoing reasons, I pass the following:

ORDER

The statutory bail application filed by the accused No.2, 5 and 9 under Section 167(2) of Code of Criminal Procedure is hereby rejected."

(Emphasis added)

By rendering the aforesaid reasons, the learned Magistrate rejects the default bail application filed by accused No.2, 5 and 9. Paragraph 6 of the said order notices objections filed by the prosecution. The Court notices that investigation is not

completed. Hence, at that stage if the petitioner is released on bail, he would not cooperate with the proceedings. In effect, the learned Magistrate holds that 13 days in police custody on a body warrant will not come to the aid for calculation of 90 days period and the petitioner and others were under judicial custody only from 2-11-2021.

13. Therefore, the issue that is required to be considered now is, when the clock would begin to tick in terms of Section 167(2) of the Cr.P.C. notwithstanding the accused being on body-warrant. This issue also need not detain this Court for long or delve deep into the matter as Co-ordinate Benches of this Court have clearly held that even when the accused is secured on body warrant, the liberty of the said accused is lost and that period would come to the aid of the accused for seeking default or statutory bail under Section 167(2) of the Cr.P.C. A Co-ordinate Bench of this Court in the case of ***VIJAY KUMAR*** *(supra)* has held as follows:

> ***"10.*** *As is evident from the impugned order itself, the filing of application for bail under Section 167(2) of the*

Code of Criminal Procedure is prior to the filing of the charge sheet. It is also not in dispute that the body warrant came to be issued, as the petitioners have been in judicial custody in connection with some other case, viz. Crime No. 163 of 2008. The Magistrate dismissed the bail application for two reasons— (a) the petitioners are not arrested in this case (CC No. 991 of 2008 arising from Crime No. 71 of 2008); (b) the offences alleged are of heinous nature.

12. In the instant case, the period prescribed for filing of charge sheet commences on the date of receipt of the body warrant order by the jail authorities (19th May, 2008 in the instant case). The catena of decisions, to which I have made a reference hereinabove, clearly lay down the position that an order for release on bail under proviso (a) to Section 167(2) of the Code of Criminal Procedure is virtually an order passed on the default committed by the prosecution. Notwithstanding the accused facing the allegation of the commission of heinous or grave offence, he is entitled to be released on bail."

(Emphasis supplied)

In a later judgment, another Co-ordinate Bench in ***JAYABALU v. STATE OF KARNATAKA***[3] *(supra)* has held as follows:

"The petitioners are accused in Crime No. 354/2010. These accused were arrested in another case and they were in custody, However, the police took the body warrant on 11.8.2011. Petitioners filed an application for enlarging on bail on 15.10.2011 under Section 167(2) of Cr.P.C. The charge sheet

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[3] **2012 SCC OnLine Kar.4269**

> ***should have been filed within sixty days but, even till the disposal of the bail petition, no charge sheet has been filed. As such, learned counsel for the petitioners submits that, on the default clause, the petitioners are entitled for bail. He also relied on the judgment of this Court reported in 2009 (1) KCCR 257 in the case of 'VIJAY KUMAR @ KAVLA v. STATE BY ANEKAL POLICE' and in similar circumstance, this Court has granted bail in Crl.P. No. 48/2012.***
>
> *2. Having regard to the same, I find that the petitioners could be enlarged on bail*
>
> *(Emphasis supplied)*

Later, a Division Bench of this Court in the case of ***CENTRAL BUREAU OF INVESTIGATION v. KENCHE MAHESH KUMAR***[4] *(supra)* was answering the very issue. The issue before the Court reads as follows:

> ***"Whether the computation of 90 days, as contemplated under Section 167 of the Cr.P.C., would commence from the date the body warrant is served on the Jail authorities or whether it should be taken as commencing from the date on which the accused is produced before the Court?***

The Division Bench answers the said issue after considering plethora of judgments of the Apex Court and Section 167(2) of the Cr.P.C. as follows:

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[4] ***ILR 2015 KAR 4054***

> ***"12.*** *In the matter on hand, undisputedly the Presiding Officer of the Court below authorized detention of the respondent for the first time on 2.9.2013 in R.C. No. 13(A)/2012 and not earlier thereto. On the very date, the custody of the respondent was handed over to the petitioner — CBI for investigation. Consequently, the respondent was in custody of the petitioner from 2.9.2013 in RC No. 13(A)/2012 and not earlier thereto. It is not in dispute that the petitioner has filed the charge sheet in RC No. 13(A)/2012 on 30.11.2013.* ***It is also not disputed by Sri Hashmath Pasha that in case if the starting point of 90 days (in the matter on hand) is reckoned from 2.9.2013, then the charge sheet is filed within 90 days. The legal position as mentioned supra as well as our aforementioned discussion leads us to the only conclusion that the period of 90 days contemplated under Section 167(2) of Cr. PC will commence running only from 2.9.2013 i.e., the date on which the respondent was produced before the Special Judge and was handed over to the custody of the petitioner for investigation and not from any anterior date.***
>
> ***"Accordingly, the point raised in this Criminal Petition is answered as under:***
>
> ***"The computation of 90 days as contemplated under Section 167 of Cr.P.C., would commence from the date on which the detention of the accused is authorized in such custody as the Magistrate/Sessions Judge deems fit and not from the date, on which the body warrant was served on the Jail authorities."***
>
> *(Emphasis supplied)*

The Division Bench rejects the contention that the moment requisition for body warrant was served by the Jail Authorities

the clock begins to tick, but holds that under Section 167 of the Cr.P.C., the period would commence, the date on which the detention of the accused is authorized to be in the custody, as the Magistrate would deem fit.

14. In the light of the aforesaid findings in the judgments of this Court concerning body warrant, the body warrant against the petitioner was executed on 20-10-2021 and the petitioner was produced before the learned Magistrate on 21-10-2021. Therefore, the clock begins to tick from 21-10-2021 as he was taken into custody and remanded to police custody in terms of the said order. Judicial custody though comes about on 2.11.2021, the petitioner was by then in police custody and his liberty had been curtailed as he was in the custody of the police on body warrant.

15. The learned High Court Government Pleader contends that the charge sheet is filed against the petitioner. This is plainly contrary to the facts, as the police filed the charge sheet only against accused Nos.3 and 12 as could be seen from the

order sheet appended to the petition. This fact is undisputed. The contention of the learned High Court Government Pleader is that once the charge sheet is filed against any of the accused the other accused also would not be entitled to claim a right under Section 167(2) of the Cr.P.C. This, on the face of it, is unacceptable, as it is fundamentally flawed. It is the case of the prosecution itself that the matter was pending investigation by the police against the petitioner/accused No.2. Even this day, it is the case of the High Court Government Pleader, that the case against the petitioner is still under investigation and on a plain mathematical calculation the petitioner is now in custody for close to 180 days, twice the period of a right under Section 167(2) of the Cr.P.C.

16. The judgments relied on by the learned High Court Government Pleader in the case of ***NARENDRA KUMAR AMIN*** *(supra)* and ***RAHUL MODI*** *(supra)* would render no assistance to the contention advanced, as there can be no qualm about the principles laid down therein, as one charge sheet is filed even

with some curable defects it would not enure to the benefit of the accused to seek bail under Section 167(2) of the Cr.P.C. Those judgments rendered by the Apex Court are inapplicable to the facts of the case at hand, as it is not in dispute that even as on date Crime No.82 of 2021 is pending investigation.

17. In the teeth of the provision under Section 167(2) of the Cr.P.C.; the interpretation of the Apex Court on Section 167(2) of the Cr.P.C. holding it to be an indefeasible right of the accused; orders passed by the Co-ordinate Benches of this Court concerning body warrant; the question being answered by the Division Bench as to when the clock begins to tick in favour of the accused in terms of Section 167 of the Cr.P.C., the trajectory of all these would lead to an unmistakable conclusion that the petitioner, in the case at hand, would become entitled to enlargement on statutory bail in terms of Section 167(2) of the Cr.P.C., as admittedly, even after close to 180 days the case against the petitioner is pending investigation.

18. For the aforesaid reasons, I pass the following:

O R D E R

(i) Criminal Petition is allowed and the order dated 29.01.2022 passed by the IV Additional Chief Metropolitan Magistrate, Bengaluru is quashed.

(ii) The petitioner is ordered to be released on statutory bail under Section 167(2) of the Cr.P.C. in connection with Crime No.82 of 2021 on executing personal bond for a sum of rupees one lakh with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that the petitioner:

(a) shall not take undue advantage of the liberty or misuse the liberty;

(b) shall not act in a manner injurious to the interest of the prosecution;

(c) shall surrender passport, if any, before the trial Court within a week;

(d) shall not leave State of Karnataka without prior permission of the learned Magistrate concerned;

(e) shall mark his presence before the jurisdictional Police Station once in a week on every Sunday of the English calendar month between 11 a.m. and 2 p.m.

(f) shall furnish present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the address without prior permission of the Court;

(g) shall not tamper with the evidence or attempt to influence or contact complainant's witnesses or any other person connected with the case in any manner.

Sd/-
JUDGE

bkp

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