

**THE HON'BLE SRI JUSTICE K.LAKSHMAN**

**CRIMINAL PETITION NOs.3786, 4127 AND 4137 OF 2022**

**COMMON ORDER:**

The *lis* involved in these cases is connected to each other. Therefore, they were heard together and are being disposed of with the following common order.

2. Crl.P.No. 3786 of 2022 is filed seeking to quash the order dated 08.04.2022 passed in Crl.M.P. (Sr). No. 3550 of 2022 in File No. ECIR/HYZO/14/2021 by the Metropolitan Sessions Judge – cum – Special Court Under PMLA Act, 2002 at Hyderabad. Likewise, Crl.P.No. 4127 of 2022 and Crl.P.No. 4137 of 2022 are filed to quash the orders dated 13.04.2022 and 31.03.2022 in File No. ECIR/HYZO/14/2021 respectively. The petitioner is A.1 in the said crime.

3. Heard Mr. T. Niranjan Reddy learned Senior Counsel representing Mr. Avinash Desai learned counsel for the Petitioner and Mr. Anil Prasad Tiwari, learned Spl. Public Prosecutor for Directorate of Enforcement for the Respondent.

**FACTS OF THE CASE:-**

4. The Petitioner is the Chairman and Managing Director of M/s. Karvy Stock Broking Ltd. (hereinafter 'KSBL'). The Respondent authority had registered ECIR/HYZO/14/2021 for the offence of money laundering under the Prevention of Money Laundering Act, 2002 (hereinafter 'PMLA') against KSBL. The allegations against KSBL and the Petitioner include diversion of large-scale clients funds through shell companies which resulted in huge losses to the investors. It is further alleged that the clients' money was misused by the shell companies created by KSBL and the said money was transferred to the Petitioner and his family members.

5. Various FIRs were registered against the Petitioner and he was arrested on 19.08.2021 in relation to Crime No. 100 of 2021 which is pending on the file of P.S. Central Crime Station Hyderabad. The Petitioner in the said crime was remanded to judicial custody. Pursuant to a P.T. warrant dated 10.01.2021, the Petitioner was produced before the Metropolitan Sessions Judge – cum – Special Court (hereinafter 'Designated Court') on

20.01.2021. On the same day, the Petitioner was remanded to judicial custody.

6. The Petitioner has been in jail since 20.01.2022. According to the Petitioner, the offences alleged against him are not punishable for a term not less than ten years, death, life imprisonment. Therefore, he is entitled for statutory bail under Section 167(2) of the Cr.P.C. as the investigation is not completed within sixty (60) days of his remand.

7. According to the Petitioner, the period of sixty days expired on 21.03.2022. Therefore, on 21.03.2022, he filed an application seeking default bail under Section 167 (2) of the Cr.P.C. citing expiry of sixty days. The said application was returned as infructuous on the ground that a charge sheet/complaint was filed by the Respondent herein on 19.03.2022 which was before the expiry of sixty days.

8. However, subsequently on 31.03.2022 another application under Section 167 was filed by the Respondent herein seeking extension of remand. According to the Petitioner, the application was filed seeking further custody of the Petitioner to complete the

investigation. The said application was allowed and the custody of the Petitioner was extended till 13.04.2022.

9. The Petitioner relying on the application dated 31.03.2022 filed by the Respondent which stated that investigation is yet to be completed, filed another default bail application dated 01.04.2022 under Section 167(2) of the Cr.P.C. In the said bail application, the Petitioner contended that no complaint/charge sheet was filed in terms of Section 173(2) of the Cr.P.C. as investigation is yet to be completed. The said bail application was returned as infructuous on 08.04.2022. The said order also stated that the application dated 31.03.2022 seeking extension of remand was returned as charge sheet was already filed on 19.03.2022.

10. Subsequently, another application dated 13.04.2022 under Section 167 of the Cr.P.C. was filed by the Respondent herein seeking extension of remand. The said application was allowed and the remand was extended till 27.04.2022.

11. The Petitioner in the present criminal petitions has challenged the order dated 31.03.2022 in ECIR/HYZO/14/2021, in CrI.P.No. 4137 of 2022, order dated 13.04.2022 in ECIR/HYZO/14/2021, in CrI.P.No. 4127 of 2022 and order dated

08.04.2022 in CrI.M.P.(sr) No.3350 of 2022 in ECIR/HYZO/14/2021, in CrI.P.No. 3786 of 2022, *inter alia*, on the ground that he is entitled for statutory bail under Section 167(2) of the Cr.P.C.

**12. CONTENTIONS OF THE PETITIONER:-**

- i. A complaint in the nature of interim report was filed on 19.03.2022. No complaint/charge sheet in terms of Section 173(2) of the Cr.P.C. is filed as the investigation admittedly is not completed. Therefore, in the absence of completion of investigation, the Petitioner is entitled for statutory bail under Section 167(2) of the Cr.P.C. after a period of sixty days which accrued on 21.03.2022.
- ii. The complaint dated 19.03.2022 was filed only to deny statutory bail to the Petitioner.
- iii. The object of Section 167(2) of the Cr.P.C. is to complete the investigation within the prescribed time. Failure of the prosecution to complete investigation and file charge sheet within prescribed time will give the accused a right of statutory bail. Reliance was placed on **M. Ravindran**

**v. Intelligence Officer, Directorate of Revenue Intelligence<sup>1</sup>.**

- iv. The Designated Court has no power to return the bail application filed under Section 167(2) of the Cr.P.C. Reliance was placed on **Directorate of Enforcement v. Kamma Srinivasa Rao<sup>2</sup>**.
- v. The Petitioner was not produced before the Designated Court when the remand was extended.

**13. CONTENTIONS OF THE RESPOONDENT:-**

- i. A complaint/charge sheet was already filed on 19.03.2022. Therefore, statutory bail under Section 167(2) of the Cr.P.C cannot be claimed once the charge sheet is filed. Reliance was placed on **Serious Fraud Investigation Office v. Rahul Modi<sup>3</sup>**.
- ii. Remand was extended under Section 309 of the Cr.P.C. and the Respondent can seek custody of the Petitioner to complete further investigation under Section 44(2) of the PMLA.

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<sup>1</sup> (2021) 2 SCC 485.

<sup>2</sup> Order dated 15.02.2022 passed in Criminal Petition Nos. 9825, 9846 and 10021 of 2021.

<sup>3</sup> 2022 SCC OnLine SC 153.

- iii. The Petitioner is trying to claim statutory bail to overcome the requirement of bail under Section 45 of the PMLA.
- iv. The Petitioner did not oppose remand which was extended under Section 309 of the Cr.P.C. Reliance was placed **Sunil Kumar Sharma v. State**<sup>4</sup>.

**FINDINGS OF THE COURT:-**

14. In the present case, the issue before the Court is whether the Petitioner is entitled for statutory bail under Section 167(2) of the Cr.P.C. For the sake of convenience, the chronology of dates is provided in the table below:

Date	Event
20.01.2022	Petitioner was remanded to judicial custody and has been in jail since then.
19.03.2022	Alleged Complaint/charge sheet was filed by the Respondent
21.03.2022	The date on which statutory bail accrues after the expiry of sixty days under Section 167(2) Cr.P.C.
31.03.2022	The remand of the Petitioner was extended till 13.04.2022 on the ground that investigation is pending.

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<sup>4</sup>2005 (2) ILR (Delhi) 153.

01.04.2022	Application seeking statutory bail under Section 167(2) is filed.
08.04.2022	The bail application dated 01.04.2022 is returned as infructuous
13.04.2022	The remand of the Petitioner is further extended till 27.04.2022

Before deciding the issue at hand, it is apposite to discuss the object and scope of Section 167(2) of the Cr.P.C.

(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,-

(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 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.

15. Section 167(2) of the Cr.P.C. obligates the investigative agencies to complete the investigation in a time bound manner. The object behind incorporating a time limit to complete investigation was explained by a full bench of the Supreme Court in Ravindran (Supra). The relevant paragraphs are extracted below:

17. Before we proceed to expand upon the parameters of the right to default bail under Section 167(2) as interpreted by various decisions of this Court, we find it pertinent to note the observations made by this Court in *Uday Mohanlal Acharya* [*Uday Mohanlal Acharya v. State of Maharashtra*, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows: (SCC p. 472, para 13)

“13. ... Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution.”

17.1. Article 21 of the Constitution of India provides that “no person shall be deprived of his life or personal liberty except according to procedure established by law”. It has been settled by a Constitution Bench of this Court in *Maneka*

*Gandhi v. Union of India* [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248] , that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2) CrPC and the safeguard of “default bail” contained in the proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law.

17.2. Under Section 167 of the Code of Criminal Procedure, 1898 (“the 1898 Code”) which was in force prior to the enactment of the CrPC, the maximum period for which an accused could be remanded to custody, either police or judicial, was 15 days. However, since it was often unworkable to conclude complicated investigations within 15 days, a practice arose wherein investigating officers would file “preliminary charge-sheets” after the expiry of the remand period. The State would then request the Magistrate to postpone commencement of the trial and authorise further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final charge-sheet was filed. The Law Commission of India in Report No. 14 on *Reforms of the Judicial Administration* (Vol. II, 1948, pp. 758-760) pointed out that in many cases the accused were languishing for several months in custody without any final report being filed before the courts. It was also pointed out that there was conflict in judicial opinion as to whether the Magistrate was bound to release the accused if the police report was not filed within 15 days.

17.3. Hence the Law Commission in Report No. 14 recommended the need for an appropriate provision specifically providing for continued remand after the expiry of 15 days, in a manner that “*while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual*”. Further, that the legislature should prescribe a maximum time period beyond which no accused could be detained without filing of the police report before the Magistrate. It was pointed out that in England, even a person accused of grave offences such as treason could

not be indefinitely detained in prison till commencement of the trial.

17.4. The suggestion made in Report No. 14 was reiterated by the Law Commission in Report No. 41 on *The Code of Criminal Procedure, 1898* (Vol. I, 1969, pp. 76-77). The Law Commission re-emphasised the need to guard against the misuse of Section 344 of the 1898 Code by filing “preliminary reports” for remanding the accused beyond the statutory period prescribed under Section 167. It was pointed out that this could lead to serious abuse wherein “the arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner”. Hence the Commission recommended fixing of a maximum time-limit of 60 days for remand. The Commission considered the reservation expressed earlier in Report No. 37 that such an extension may result in the 60-day period becoming a matter of routine. However, faith was expressed that proper supervision by the superior courts would help circumvent the same.

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17.6. It was in this backdrop that Section 167(2) was enacted within the present day CrPC, providing for time-limits on the period of remand of the accused, proportionate to the seriousness of the offence committed, failing which the accused acquires the indefeasible right to bail. As is evident from the recommendations of the Law Commission mentioned supra, the intent of the legislature was to balance the need for sufficient time-limits to complete the investigation with the need to protect the civil liberties of the accused. Section 167(2) provides for a clear mandate that the investigative agency must collect the required evidence within the prescribed time period, failing which the accused can no longer be detained. This ensures that the investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This also ensures that the court takes cognizance of the case without any undue delay from the date of giving information of the offence, so that society at large does not lose faith and develop cynicism towards the criminal justice system.

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**17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.**

17.10. With respect to the CrPC particularly, the Statement of Objects and Reasons (supra) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature, namely, ensuring a fair trial, expeditious investigation and trial, and setting down a rationalised procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21.

16. From the above decision, it is clear that a time limit for completing investigation was incorporated in order to ensure that the accused does not languish in jail for the investigative authority's failure to complete investigation. It was held that the right to statutory bail accrues on a person if the charge sheet is not filed within the prescribed period of sixty days. The said right to bail is infeasible and is interlinked with personal liberty as envisaged under Article 21 of the Constitution of India.

17. This Court would like to clarify as to when a person is entitled for statutory bail under Section 167(2) of Cr.P.C. It was

contended on behalf of the Petitioner that Section 167(2) of Cr.P.C. comes into operation if no cognizance is taken within the prescribed period. The said contention cannot be accepted. The test to determine whether a person is entitled for bail under Section 167(2) of Cr.P.C. is not the date of taking cognizance but the date of filing charge sheet. In other words, the right of statutory bail ceases to exist the moment a charge sheet is filed within the prescribed period of sixty or ninety days.

18. The Supreme Court in **Rahul Modi (Supra)** clarifying the position of law held as follows:

11. 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).

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16. 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) of 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.

To decide whether the Petitioner is entitled to statutory bail, this Court has to decide whether a charge sheet/complaint dated 19.03.2022 was filed or not. It is relevant to note that, in the

present case the proceedings are initiated under the PMLA. Section 44 of the PMLA provides that the offences under PMLA are triable by Special Courts. The Special Court can take cognizance of an offence only based on a complaint which is filed by the authorised authority under Section 44(1)(b) of the PMLA.

19. The complaint filed under Section 44(1)(b) of the PMLA is similar to a charge sheet/ final report filed under Section 173(2) of Cr.P.C. In other words, similar to a charge sheet under Section 173(2) of Cr.P.C., a complaint under Section 44(1)(b) of the PMLA is filed after completion of investigation, so that the Special Court can take cognizance under Section 167 of the Cr.P.C. It is relevant to note that the filing of the complaint and subsequent cognizance under PMLA is governed by the provisions of the Cr.P.C. in view of Section 65 of the Cr.P.C.

20. In the present case, the Respondent contended that a complaint under Section 44(1)(b) of the PMLA was already filed on 19.03.2022. Therefore, the Petitioner is not entitled for statutory bail under Section 167(2) of the Cr.P.C. This Court cannot accept the contention of the Respondent as the investigation was not completed when the complaint dated 19.03.2022 was filed.

21. The Supreme Court in **Satya Narain Musadi v. State of Bihar**<sup>5</sup> discussing Section 173(2) of the Cr.P.C. has held that a charge sheet can be filed only after the completion of investigation. The relevant paragraph is extracted below:

**9. Section 173(2)(1) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report in the form prescribed by the State Government** and stating therein (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; and (g) whether he has been forwarded in custody under Section 170. Sub-section (5) of Section 173 makes it obligatory upon the police officer to forward along with the report all documents or relevant extracts thereof on which the prosecution proposes to rely and the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as witnesses at the trial.

Similarly, the Supreme Court in **Manu Sharma v. State (NCT of Delhi)**<sup>6</sup> has held that the object behind Section 173 of the Cr.P.C. is to complete the investigation and file the charge sheet. The idea is to ensure that cognizance is taken without any delay. The relevant paragraph is extracted below:

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<sup>5</sup> (1980) 3 SCC 152.

<sup>6</sup> (2010) 6 SCC 1.



**206. Section 173 commands the investigating agency to complete the investigation expeditiously without unnecessary delay and when such an investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of offence on a police report the details in the form as may be prescribed by the State Government and provide the information required under this section.**

22. From the above decisions, it is clear that a charge sheet can be filed only after the completion of investigation. Investigation is said to be completed if sufficient material is collected by the Investigating Officer based on which cognizance can be taken under Section 167 of the Cr.P.C. It was contended by the Respondent that the complaint dated 19.03.2022 is a charge sheet and only further investigation is being carried out which is permissible under Section 44(1)(d)(ii). The said contention cannot be accepted.

23. The Designated Court has extended the remand of the accused on 31.03.2022 and subsequently on 13.04.2022 under Section 167(2) of the Cr.P.C. on the ground that investigation is pending. This clearly indicates that the complaint dated 19.03.2022 was filed without completing the investigation. Therefore, the complaint dated 19.03.2022 is an incomplete complaint/charge

sheet. Further, if complaint dated 19.03.2022 was filed after completion of investigation, the Designated Court would have taken cognizance of the offence. Not taking cognizance of the offence when complaint dated 19.03.2022 was already filed indicates that investigation is incomplete. Therefore, complaint dated 19.03.2022 cannot be treated as a complaint/charge sheet under Section 173(2) of the Cr.P.C. The Supreme Court in **Ravindran** (Supra) discussed how the Investigating Officers used to file preliminary charge sheets to seek extension of remand beyond the statutory period. It was to discourage such abuse of process that a statutory limit of sixty days was incorporated in Section 167(2) to complete the investigation and file the charge sheet. In the present case, the Respondent cannot file a complaint without completing the investigation and seek extension of remand beyond the statutory period of sixty days. A complaint/charge sheet filed without completing the investigation cannot be used to circumvent the right of statutory bail under Section 167(2) of the Cr.P.C.

24. The Bombay High Court in **Sharadchandra Vinayak Dongre v. State of Maharashtra**<sup>7</sup> had to deal with a similar situation. The State contended that charge sheet was already filed but the investigation is yet to be completed. The Court therein drew a distinction between completion of investigation and further investigation. It held that it is only after the completion of investigation and filing of charge sheet that further investigation can be resorted to. In other words, Section 173(8) of the Cr.P.C. comes into picture only after completion of investigation and filing of the charge sheet under Section 173(2) of the Cr.P.C. Further, the court held that by filing incomplete charge sheets, the State cannot circumvent Section 167(2) of the Cr.P.C. The relevant paragraphs therein are extracted below:

23. Reference here may usefully be made to a decision of the Supreme Court in *Abhinandan Jha v. Dinesh Mitra*, AIR 1968 SC 117, which points out that the investigation under the Code takes in several aspects and stages ending ultimately with the formation of an opinion by the police as to whether, as from the material covered and collected, a case is made out to place the accused before the Magistrate for trial and the submission of either a charge-sheet or a final report is dependent on the nature of the opinion so formed. The formation of the said opinion by

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<sup>7</sup> 1991 Mah LJ 656.

the police is the final step in the investigation evidenced by the “police report” contemplated under section 173(2) of the Code.

**24.** In my view, a plain reading of section 173 of the Code shows that every investigation must be completed without unnecessary delay and as soon as it is completed, the Officer-in-charge of the Police Station shall forward a report to the Magistrate in the form prescribed. Therefore, there is no question of sending up of a “police report” within the meaning of section 173, sub-section (2) of Criminal Procedure Code until the investigation is completed. Any report sent before the investigation is completed will not be a police report within the meaning of sub-section (2) of section 173 of the Criminal Procedure Code read with section 2(r) of the Code and there is no question of the Magistrate taking cognizance of the offence within the meaning of section 190(1)(b) of the Code on the basis of an incomplete charge-sheet. In the present case, admittedly an incomplete charge-sheet has been filed and it is specifically stated therein that the investigation is not yet completed. The application, Exhibit 2, clearly further recites that the investigation is not completed and this fact is even admitted before me as stated in the reply affidavit filed by the Investigating Officer opposing the present Application. Consequently, the incomplete charge-sheets cannot be treated as a “police report” at all as contemplated under section 173(2) of the Code to entitle the Magistrate to take cognizance of the offences. The learned Counsel for the applicants is right in contending that the definition of “police report” as given in the Code cannot be enlarged under the guise of interpretation and it is contended that when the meaning of a statutory provision is plain and clear, the Court should not be impelled by factors like practical difficulties and

inconvenience. The learned Counsel appears to be further right when he canvassed that the expression “incomplete charge-sheet” does not occur anywhere in the Code and that forwarding of a “police report” after the completion of the investigation is the requirement of sub-section (2) of section 173 of the Code. Any report or statement of facts in the form of an “incomplete charge-sheet” does not become “police report” by merely giving a particular nomenclature.

**25. The learned Counsel for the State contended that the new provision added in sub-section (8) of section 173 of the Code can be resorted to by the Investigating Officer for collecting further evidence. According to him, it tends to indicate that the investigation is not shut but remains in suspended animation till the police report is sent to the Magistrate. As has already been pointed out, a police report as defined in section 2(r) of the Code can only be filed “as soon as the investigation is completed”. If it is not complete; no such report can be filed. When no report is forwarded as required by the Code, the Magistrate cannot take cognizance. Thus, unless all these steps are crossed, sub-section (8) cannot be pressed in aid for collecting further evidence which really can be called in aid if further evidence is discovered after the filing of the charge-sheet or the police report on the completion of the investigation.**

**26. As stated earlier, sub-section (2) of section 173 of the Code also speaks of taking cognizance of the offence by a Magistrate on a police report. Thus, without the police report as defined in section 2(r) of the Code, the Magistrate is not empowered and is incapacitated to take cognizance and unless cognizance has been taken, sub-section (8) cannot be set in motion.**

**27. The question thus emerges naturally is, whether the Magistrate can take cognizance on the admittedly “incomplete charge-sheet” forwarded by the police. The answer stubbornly and admittedly must be in the negative, because the investigation is yet incomplete and the “police report” yet remains to be filed. Thus, the filing of the incomplete charge-sheet cannot circumvent the provisions of sub-section (2) of section 173 of the Code and incomplete report or an incomplete charge-sheet with whatsoever expression it may be called does not meet the obligatory requirements of law. If the view as contended by the State is accepted, the provisions of section 167(2) or to say section 468 of the Criminal Procedure Code can always be circumvented by the prosecution and the apparent legislative intents under those provisions would not only be not effectuated but undoubtedly stultified.**

25. The Andhra Pradesh High Court in **Akula Ravi Teja v. State of A.P.**<sup>8</sup> dealt with a situation where a ‘preliminary charge sheet’ was filed without completing the investigation. The Court therein held that an incomplete charge sheet filed without completing the investigation cannot be used to defeat the right of statutory bail under Section 167(2) of the Cr.P.C. The relevant paragraphs are extracted below:

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<sup>8</sup> (2021) 1 ALT (Cri) 291.

19. Now the crucial question that arises for determination is whether filing a preliminary charge-sheet without completing the investigation would defeat the right of the accused to claim default bail under proviso (a) to Section 167(2) Cr.P.C. In this context, it is relevant to note that the Parliament in its wisdom, considering the right of the accused to speedy investigation, stipulated period of time in proviso (a) to Section 167(2) Cr.P.C. stating that in all offences which are punishable with death or life imprisonment or with 10 years imprisonment, the investigation is to be completed within 90 days and in other offences, the investigation is to be completed within 60 days. The Code clearly envisaged that if the prosecuting agency fails to complete the investigation within the said stipulated period of time as contemplated under the Code, the accused is entitled to claim default bail. The said right conferred by the statute on the accused is an indefeasible right and he is entitled to bail as a matter of right on account of the default committed by the prosecuting agency in completing the investigation within the time stipulated by the statute.

20. It is significant to note that a plain reading of proviso (a) to Section 167(2) Cr.P.C. makes it manifest that what is required to claim for default bail under proviso (a) to Section 167(2) Cr.P.C. is failure on the part of the Investigating Agency to complete the investigation within the stipulated period of time. **In other words, it is the default committed by the Investigating Agency to complete the entire investigation within the stipulated time that confers right on the accused to claim for default bail. So, filing of charge-sheet is not the criteria or the actual test to be applied to decide whether the accused is entitled to default bail or not. It is relevant to note that the charge-sheet after completion of investigation will be filed to enable the Court to take cognizance of the offence. So, the Court cannot take**

**cognizance of the offence on the basis of a preliminary charge-sheet filed without completing the entire investigation. Therefore, the crucial aspect that needs to be ascertained to consider the claim of the accused for default bail is whether the investigation is completed within the stipulated time of 90 days or not. So, when the Investigating Agency files only preliminary charge-sheet within the said stipulated time keeping the investigation pending or without completing the investigation, it will not under any circumstances defeat the right conferred on the accused to claim for default bail. By mere filing a preliminary charge-sheet without completing the entire investigation and filing a final and full-fledged charge-sheet, the prosecuting agency cannot vanquish the indefeasible statutory right of the accused to claim for default bail.**

21. The 3-Judge Bench of the Supreme Court in the case of *Rakesh Kumar Paul v. State of Assam*<sup>2</sup> held that right to personal liberty under Article 21 of the Constitution of India includes right to speedy investigation and entitlement to “default bail” where statutory period of filing charge-sheet has expired and accused has applied and is willing to furnish bail.

22. A plain reading of Section 167 Cr.P.C. makes it abundantly clear that it is not the intention of the legislation that charge-sheet is to be filed within the stipulated period. The intention of the legislation is that the investigation is to be completed within the stipulated time. Nowhere in Section 167 Cr.P.C. it is stated that the charge-sheet is to be filed within the prescribed period of time. All that it is stated in Section 167 Cr.P.C. is that the investigation is to be completed within the said stipulated period of 90 days or 60 days, as the case may be. **Therefore, the Court has to see whether the investigation is completed or not while considering the plea of the accused for grant of default bail. Generally, charge-sheet will be filed only after**



**completion of the investigation. So, when the charge-sheet is filed, it indicates that investigation is completed. Therefore, it is in practice that when the Investigating Agency files the charge-sheet that the Courts usually presume that the investigation is completed. However, it is to be noticed that at times, even when the investigation is not fully completed that the police are in the habit of filing preliminary charge-sheet or an incomplete charge-sheet keeping some part of the investigation pending as a clever contrivance and subterfuge to prevent the accused from claiming default bail by exercising his right conferred under the Code. So, Courts must be on guard and should not fall in the trap of such trickery and tactics of the investigating agency when they only file preliminary charge-sheet without fully completing the investigation. Therefore, the real test to be applied to ascertain whether the accused is entitled to default bail or not in a given case is not to see whether the charge-sheet is filed or not. It has to be ascertained whether the entire investigation is completed or not within the stipulated period of time and whether the said charge-sheet is filed after completion of the entire investigation or not. A preliminary charge-sheet filed without completing the entire investigation cannot be allowed to serve as an impediment to come in the way of exercising the statutory right of the accused for default bail.**

23. The very contents of the charge-sheet, which are extracted above, clinchingly establishes that the investigation is not completed and many crucial witnesses are yet to be examined to prove the overt acts of the accused in this crime and some other evidence as stated by the investigating officer is still to be secured. Therefore, on account of default committed by the prosecuting agency in completing the investigation within the stipulated period of

time, the petitioner acquired an indefeasible right to claim default bail under proviso (a) to Section 167(2) Cr.P.C.

24. In a petition filed under proviso (a) to Section 167(2) Cr.P.C. for grant of default bail, no discretion is vested with the Magistrate/Court to deny bail to him. In the judgment of the aforesaid 3-Judge Bench of the Apex Court, it is clearly held that no discretion is vested with the Court while granting default bail where accused satisfies the prerequisite for grant thereof. The Apex Court in another case *Rajnikant Jivanlal Patel v. Intelligence Officer, Narcotic Control Bureau, New Delhi*<sup>3</sup> held as follows:

“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.”

Therefore, the legal position is very clear that irrespective of the gravity of the offence and the nature and seriousness of the offence, the moment the accused claims bail under proviso (a) to Section 167(2) Cr.P.C. on account of the default committed by the Investigating Agency to complete the investigation within the stipulated time, and he is prepared to furnish bail, the Court has no other option except to grant bail to him. The very nature of right which is “indefeasible right” indicates that the said right cannot be defeated or frustrated once accrued to the accused. Even filing of preliminary charge-sheet cannot defeat the said right.

**25. Therefore, in the considered opinion of the Court, after analysing the law on the point, it would be more in consonance with the legislative mandate to hold that mere filing preliminary charge-sheet without**

**completing the investigation will not defeat the indefeasible statutory right of the accused to claim for default bail. In a way the right to claim bail by a remanded accused touches the personal liberty of an individual guaranteed under the Constitution of India. Personal liberty is a valuable right of an individual and it is one of the cherished objects of the Indian Constitution. It can be deprived only in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. Therefore, when the law mandates that the Magistrate could authorise detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167 Cr.P.C. any further detention beyond the period when, the investigation is not completed and the final charge-sheet is not filed on completion of the entire investigation by the Investigating Agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code. Therefore, it could be violative of Article 21 of the Constitution of India.**

At the cost of repetition, this Court holds that the complaint dated 19.03.2022 was not a final complaint based on which cognizance could have been taken. A complaint/report cannot be treated as final report unless the investigation is completed, In the present case, the investigation is admittedly not completed and the statutory period of sixty days expired on 21.03.2022. Therefore, in the absence of complete investigation and absence of filing a final

complaint, the Petitioner is entitled for statutory bail under Section 167(2) of the Cr.P.C.

26. It was sought to be contended on behalf of the Respondent that the Petitioner was remanded not under Section 167 of the Cr.P.C. but under Section 309 of the Cr.P.C. The said contention is *ex facie* misconceived. The Supreme Court in **Dinesh Dalmia v. CBI**<sup>9</sup> has held that Section 309 of the Cr.P.C. comes into operation only after cognizance of the offence is taken. In the present case, no cognizance is taken till date.

27. The Respondent relying on **Y.S. Jagan Mohan Reddy v. CBI**<sup>10</sup> and **Ajay Kumar v. Directorate of Enforcement**<sup>11</sup> contended that economic offences are serious offences. It was contended that the Petitioner is claiming bail under Section 167(2) of the PMLA only to circumvent the strict rigors of bail under Section 45 of the PMLA. The said contention cannot be accepted. The investigative authority cannot rely on Section 45 of the PMLA to deny statutory bail under Section 167(2) of the Cr.P.C. The Supreme Court in **Ashok Munilal Jain v. Directorate of**

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<sup>9</sup> (2007) 8 SCC 770.

<sup>10</sup> (2017) 7 SCC 439.

<sup>11</sup> 2022 SCC OnLine Bom. 196.

**Enforcement**<sup>12</sup> held that an accused is entitled to statutory bail under Section 167(2) of the Cr.P.C. even in PMLA proceedings.

The relevant paragraphs are extracted below:

**5. We, thus, do not agree with the opinion of the High Court that the provisions of Section 167(2) CrPC would not be applicable to the proceedings under the PMLA Act. In the present case, as no complaint was filed even after the expiry of 60 days from the date when the appellant was taken into custody, he was entitled to statutory bail in view of the provisions contained in Section 167(2) CrPC.**

6. This appeal is, accordingly, allowed and as a result thereof, the appellant shall be given the benefit of statutory bail and be released forthwith subject to the conditions that may be imposed by the trial court.

A perusal of the impugned order dated 08.04.2022 indicates that the Designated Court has returned the application dated 31.03.2022 seeking extension of remand and the bail application dated 01.04.2022. According to this Court, the Designated Court has no power to return the said applications. This Court in **Kamma Srinivas Rao** (Supra) has held that it is incumbent on the Designated Court to pass a reasoned order and not merely return the applications. Neither the Cr.P.C. nor the PMLA contemplates

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<sup>12</sup> (2018) 16 SCC 158.

any provision which empowers the Designated Court to return applications seeking remand or applications seeking bail. The relevant paragraphs are extracted below:

47. A perusal of above orders clearly indicates that the remand applications were returned. According to this Court, the Designated Court cannot return a remand application filed under Section 167(2) of Cr.P.C. It is relevant to note that a Court performs a judicial function while deciding an application for remand under Section 167(2) of the Cr.P.C. The Court while exercising the judicial function under Section 167(2) of the Cr.P.C. is bound to pass a judicial order by applying its mind. The Court under Section 167 of the Cr.P.C. by passing a judicial order has to, where there are adequate grounds for proceeding with the investigation, remand the accused to judicial custody or where no such further investigation is required release him on bail on satisfying conditions as prescribed.

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**49. It is also relevant to note that neither the Cr.P.C. nor the Criminal Rules of Practice have any provisions conferring the power on the Court to return an application seeking remand under Section 167(2) of the Cr.P.C. While the Code of Civil Procedure under Order VII Rules 10 & 10A provides for return of plaint, no such provision/procedure is provided under the Cr.P.C.**

28. In light of the aforesaid discussion and in view of the law laid down by the Apex Court discussed supra, according to this

Court, the Petitioner herein is entitled for statutory bail under Section 167(2) of the Cr.P.C.

29. In result:

- i) The three Criminal Petitions are allowed.
- ii) The orders dated 31.03.2022 and 13.04.2022 passed in File No. ECIR/HYZO/14/2021 by the Metropolitan Sessions Judge – cum – Special Court under PMLA Act, 2002 at Hyderabad extending the remand of the accused are hereby quashed.
- iii) As the bail application dated 01.04.2022 was returned on 08.04.2022, the petitioner is at liberty to file a fresh bail application under Section 167(2) of Cr.P.C. before the Metropolitan Sessions Judge – cum – Special Court under PMLA Act, 2002 at Hyderabad. The said Court is directed to consider the said application if it is otherwise in order and pass orders in accordance with law, within a period of one week from the date of filing of such application.
- iv) Consequently, miscellaneous petitions pending shall stand closed.

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**K. LAKSHMAN, J**

**Date:17.05.2022**

**Note; L.R.Copy to be marked.**

b/o. vvr