

CRL OP(MD). No.18273 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Reserved on : 29.11.2021

Delivered on : 06.12.2021

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

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K.Muthuirul ... Petitioner/Accused

Vs.

The Inspector of Police,
Samayanallur Police Station,
Madurai District.
Cr.No. 156 of 2021. : Respondent/Complainant

For Petitioner : Mr.G.Karuppasamy Pandian
Advocate.

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

PRAYER : Criminal Original Petition filed under Section 482 r/w 439 of Cr.P.C, to call for the records pertaining to the impugned order passed in Cr.M.P.No.1935 of 2021, dated 21.10.2021 on the file of the learned Principal Sessions Judge for EC and NDPS Act cases, Madurai and set aside the same.



ORDER

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This Criminal Original Petition is directed against the order passed in Cr.M.P.No.1935 of 2021, dated 21.10.2021 on the file of the learned Principal Sessions Judge for EC and NDPS Act cases, Madurai, dismissing the petition filed under Section 167(2) of Code of Civil Procedure, seeking statutory bail.

2.The respondent police has registered a case in Crime No.156 of 2021 against the petitioner for allegedly possessing of 22 kgs of Ganga, under Sections 8(c) r/w 20(b) (ii) (c) of NDPS Act.

3.It is not in dispute that the petitioner was arrested on 19.04.2021 and was remanded to judicial custody on 20.04.2021. The petitioner has filed a petition under Section 167(2) Cr.P.C, seeking default bail alleging that the respondent police has failed to file the charge sheet within a period of 180 days envisaged under Section 36(A) of NDPS Act. The petitioner has filed the said petition for statutory bail on 18.10.2021. Admittedly the respondent has



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also filed the charge sheet on 18.10.2021. As evident from the order of the learned trial Judge, petition filed under Section 167(2) Cr.P.C, was returned, directing the counsel on record to produce the relevant decisions, in view of the judgment of this Court passed in Crl.OP(MD)Nos.5104, 5843, 10854 and 10902 of 2021.

4.It is further evident that the petition was re-presented and the same was taken on file on 20.10.2021. The learned trial Judge, after hearing both the learned counsel for the petitioner as well the learned Special Public Prosecutor appearing for the respondent, has passed the impugned order dated 21.10.2021, dismissing the said petition. Aggrieved by the order of dismissal, the accused has come forward with the present petition.

5.At the outset, as rightly contended by the learned counsel for the petitioner, the trial Court in its order has dealt with the merits of the case and came to the conclusion that the petitioner cannot be enlarged on statutory bail. It is necessary to



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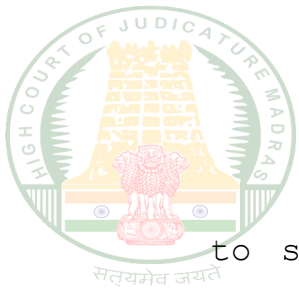
refer the relevant paragraph of the order passed by

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“Considering the seriousness, gravity of the offence, serious objections on prosecution side and huge quantity of the contraband, this Court is not inclined to grant statutory bail to the petitioner and therefore, this petition is liable to be dismissed.”

6.The Bail Court, while considering the application under Section 167(2) Cr.P.C, is duty bound to decide the application forthwith without any unnecessary delay, after getting necessary information from the concerned Public Prosecutor and to consider as to whether the ingredients necessary for releasing the accused on default bail are existing and that if the Court is satisfied with the existence of such ingredients, then the Court has to release the accused on bail forthwith.

7.Moreover, the Bail Court, while dealing with the petition for statutory bail, is having no power or jurisdiction to go into the merits of the case and



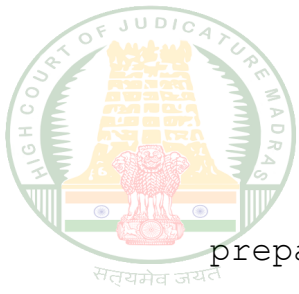
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to see as to whether the ingredients necessary for granting regular bail are available or not.

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8. In the case on hand, as already pointed out, the learned trial Judge after receiving the application on 18.10.2021, returned the petition twice and took the petition on file on 20.10.2021 and thereafter, had proceeded to discuss about the merits of the case and at last, concluded that the petitioner is not entitled to get statutory bail.

9. The learned counsel for the petitioner would submit that whether the accused is entitled for statutory bail, when the charge sheet is filed after filing of the bail application, has already been answered by the Hon'ble Supreme Court in the case in **M.Ravindran Vs. State of Tamil Nadu** reported in **2021 1 SCC (Cri) 876**, that though the respondent Police has filed the charge sheet on 18.10.2021 itself, the trial Court has failed to ascertain the time as to when the charge sheet was filed into the Court and that the trial Court without ascertaining the time, by simply observing that the final report was



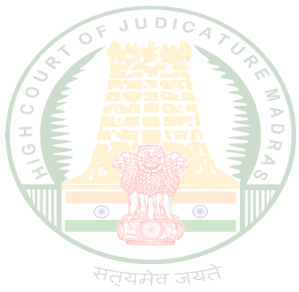
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prepared and kept ready on 31.08.2021 itself and the same was filed on 18.10.2021, has decided against the petitioner.

10.The learned Additional Public Prosecutor appearing for the respondent would submit that the respondent has filed the charge sheet at about 10.30 am on 18.10.2021 before the E-filing counter attached to the Madurai District Court, that due to Dassara Holidays from 14.10.2021 to 17.10.2021, the prosecution with no other option has laid the charge sheet on 18.10.2021 i.e., immediately on the next working day and that the learned trial Judge, after taking into all the aspects, has rightly dismissed the petition.

11.In the case on hand, two questions/issues arise for consideration :

(i) Whether the indefeasible right accrued to the petitioner/accused under Section 167(2) Cr.P.C can be defeated by filing charge sheet simultaneously or subsequently on the same day, by the prosecution?



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(ii) Whether the provisions of Section 10 of General Clauses Act can be invoked, while computing the period of 60 days or 90 days as envisaged by Section 167(2) Cr.P.C or 180 days as envisaged by Section 36(A) (4) of NDPS Act r/w Section 167(2) Cr.P.C ?

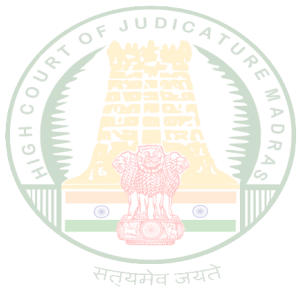
Point No.1:

12.Before entering into further discussion, it is necessary to refer Section 167(2) Cr.P.C and the corresponding Section 36(A) (4) of NDPS Act;

Section 167(2) Cr.P.C :

"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."

(a) the Magistrate may authorise the detention of the accused person,



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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 the 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;



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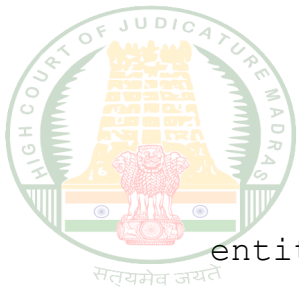
(c) no Magistrate of the Second class, not specifically empowered in this behalf by the High Court, shall authorise detention in the custody of the police"

Section 36(A) (4) of NDPS Act :

"(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27 A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may 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."

13. Section 167(2) Cr.P.C., contemplates that if the charge sheet is not laid within the period of 60 days or 90 days as the case may be, the accused is

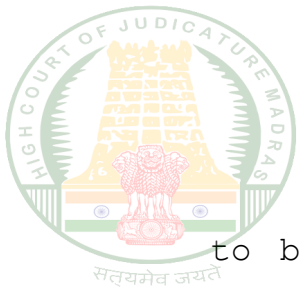


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entitled to get default bail. Section 36(A) (4) of NDPS Act prescribes a period of 180 days for investigating certain offences under the NDPS Act instead of 90 days as provided under Section 167(2) Cr.P.C.

14.The proviso to Section 36(A) (4) of NDPS Act permits the Special Court to extend the time from 180 days upto one year, if the Public Prosecutor submits a report indicating the progress of investigation and giving specific reasons for requiring the detention of the accused beyond the prescribed period of 180 days.

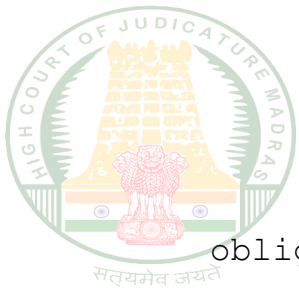
15.There is a misconception that in cases where the bail petition under Section 167(2) Cr.P.C and the charge sheet are being filed on the same day, then the time at which, bail petition or the charge sheet is filed, is the deciding factor and that if the charge sheet is filed earlier to the bail petition, then the accused is not entitled to get the statutory bail or in case, if the bail petition is filed before laying of charge sheet, then the bail application has



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to be allowed. The accused is entitled to file his application for default bail only after the expiry of 60 days or 90 days or 180 days as the case may be and that his right to avail the statutory bail accrues only on the next day i.e., on 61st, 91st or 181st day, as the case may be, but the investigating agency has to file the charge sheet before the expiry of 60 days, 90 days or 180 days as the case may be, if they require the detention of the accused beyond the prescribed period of 60 or 90 or 180 days.

16.The Hon'ble Supreme Court in **Rakesh Kumar Paul Vs. State of Assam** reported in (2017) 15 SCC 67, has held that, "as a cautionary measure, the counsel for the accused as well as the Magistrate ought to inform the accused of the availability of the indefeasible right under Section 167(2) once it accrues to him, without any delay. This is especially where the accused is from an underprivileged section of society and is unlikely to have access to information about his legal rights. Such knowledge-sharing by Magistrates will thwart any dilatory tactics by the prosecution and also ensure that the



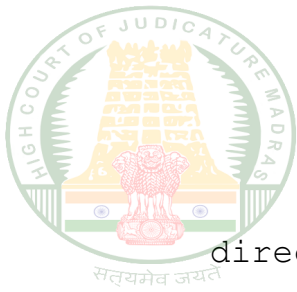
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obligations spelled out under Article 21 of the Constitution and the statement of objects and Reasons of the Cr.P.C are upheld.”

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17.If the charge sheet is filed on 61st or 91st or 181st day, as the case may be, even prior to the filing of the bail petition on the same day, the said filing of the charge sheet will not defeat the right already accrued to the accused and if such an interpretation is not given, then that will lead to a proposition that the investigating agency can file a charge sheet even on 61st or 91st or 181st day as the case may be, as of right and detain the accused in judicial custody.

18. Let us visualize a situation. If the prosecution files charge sheet in the morning session on 61st or 91st or 181st day, as the case may be, before the Registry or E-filing Section of that Court concerned, then the accused is produced before the concerned Court in the afternoon session for extension of remand and if the Magistrate informs about his right to apply for statutory bail as per



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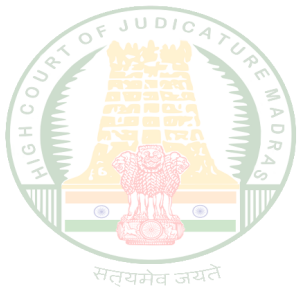
directions of the Hon'ble Supreme Court in **Rakesh**

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Kumar Paul's case and the accused files a petition for bail under Section 167(2) Cr.P.C, can it be said that since the prosecution has filed the charge sheet earlier to the filing of the bail petition, the indefeasible right to statutory bail gets extinguished?

19.A Full Bench of the Hon'ble Apex Court in **M.Ravindran Vs. The Intelligence Officer, Director of Revenue Intelligence** reported in **2021 2 SCC 485**, has observed,

"14.2 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



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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.”(emphasis supplied)

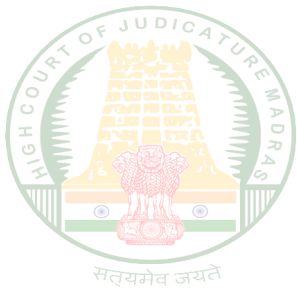
20.In the same judgement, the Hon'ble Supreme Court after referring its earlier judgements in

(i) **Dr. Bipin Shantilal Panchal vs State Of Gujrat (1996) 1 SCC 718 ;**

(ii) **Mohamed Iqbal Madar Sheikh Vs State Of Maharashtra (1996) 1 SCC 722; and**

(iii) **Sanjay Dutt vs State Through C.B.I. (1994) 5 SCC 410;** has held that the accused must apply for default bail the moment the right under Section 167(2) Cr.P.C accrues to him and the relevant passages are extracted hereunder:

15.1 Similarly, in Dr. Bipin Shantilal Panchal (supra), it was admitted that the accused had not filed an application for bail at the time the right under [Section 167\(2\), CrPC](#) had



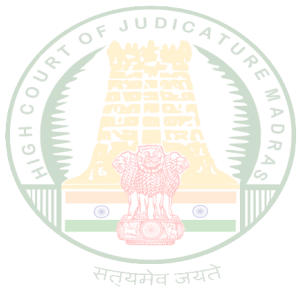
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accrued to him. The chargesheet had already been filed by the time the accused sought to avail of his right. Incidentally, the same three Judge Bench which had delivered the opinion in Mohamed Iqbal Madar Sheikh (supra), and which was part of the original Constitution Bench in Sanjay Dutt (supra), rendered judgment as follows:

"4...But it is an admitted position that the charge sheet has been filed on 23-5-1994 and now the appellant is in custody on the basis of orders of remand passed under the other provisions of the Code. Whether the accused who was entitled to be released on bail under proviso to sub section (2) of Section 167 of the Code, not having made an application when such right had accrued, can exercise that right at a later stage of the proceeding, has been examined by a Constitution Bench of this Court in the case of Sanjay Dutt v. State through CBI..

...Therefore, if an accused person fails to exercise his right to be



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released on bail for the failure of the prosecution to file the charge sheet within the maximum time allowed by law, he cannot contend that he had an indefeasible right to exercise it at any time notwithstanding the fact that in the meantime the charge sheet is filed. But on the other hand if he exercises the right within the time allowed by law and is released on bail under such circumstances, he cannot be rearrested on the mere filing of the charge sheet, as pointed out in [Aslam Babalal Desai v. State of Maharashtra.](#)" (emphasis supplied)

The above mentioned discussion clearly corroborates our view, and the view taken by the majority in Uday Mohanlal Acharya, that the decision in Sanjay Dutt only lays down as a precautionary principle that the accused must apply for default bail the moment the right under [Section 167\(2\)](#) accrues to him. If he fails to do so, he cannot



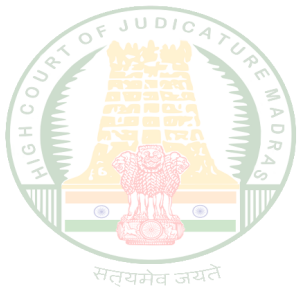
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claim the right at a subsequent stage of the proceedings after the prosecution has filed a charge sheet.

The words "not having made an application when such right had accrued, can exercise that right at a later stage" clearly indicate that the accused is deemed to have exercised his right to bail once he makes an application for the same."

21. In **Bikramjit Singh Vs. State of Punjab** reported in **2020 SCC Online SC 824**, the Hon'ble Apex Court has observed thus :

"A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed. So long as an application has been made



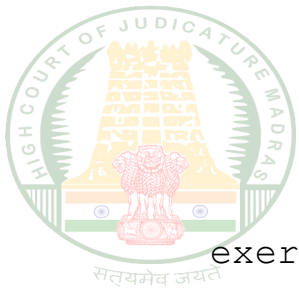
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for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to [Section 167\(2\)](#), kicks in and must be granted.”

22. In **M. Ravindran's** case, the Hon'ble Apex Court has held 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 and the same 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.

23. It is pertinent to mention that the Hon'ble Supreme Court in **M. Ravindran's** case, cited supra, has held that the Constitution Bench decision in **Sanjay Dutt's** case cannot be interpreted so as to mean that even where the accused has promptly



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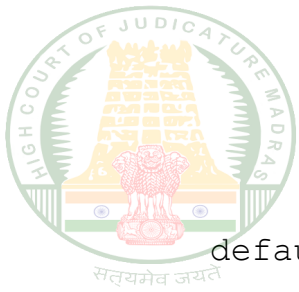
exercised his right under Section 167(2) and

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indicated his willingness to furnish bail, he can be denied bail on account of delay in deciding his application or erroneous rejection of the same. Nor can he be kept detained in custody on account of subterfuge of the prosecution in filing a police report or additional complaint on the same day that the bail application is filed.

24.Considering the above, the moot point that arises is as to what is the time available for the accused to apply statutory bail, after the expiry of the period prescribed for filing the final report by the investigating agency.

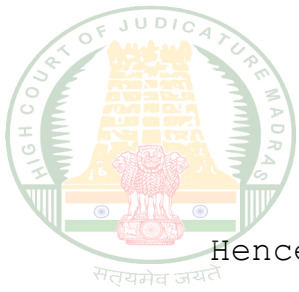
25.As already pointed out, the investigating agency is duty bound to file their final report before expiry of 60 or 90 or 180 days, as the case may be, and on the next day i.e, 61st or 91st or 181st day only, the right to apply for statutory bail gets accrued to the accused and there must be some reasonable time limit enabling him to apply for the



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default bail. In Tamil Nadu, all the Courts shall ordinarily sit at 10.30.am. If the investigating agency files the charge sheet by 10.30 am, on the next day, after the expiry of the period prescribed under Section 167(2) Cr.P.C, can we say that the accused has lost his right of filing the petition for default bail subsequently, on the same day. In my considered view, the accused can exercise his right to apply the default bail on the whole day, on which, the indefeasible right to apply the statutory bail accrues to him.

26.In the case on hand, admittedly both the bail petition as well as the charge sheet were filed on 18.10.2021. As rightly contended by the learned counsel for the petitioner, the period of 180 days got expired before 18.10.2021 and as such, the respondent police has failed to file the charge sheet within the prescribed period of 180 days. But on the other hand, the petitioner only after expiry of prescribed period of 180 days has filed the petition by invoking his indefeasible right under Section 36(A) (4) of NDPS Act r/w Section 167(2) of Cr.P.C.



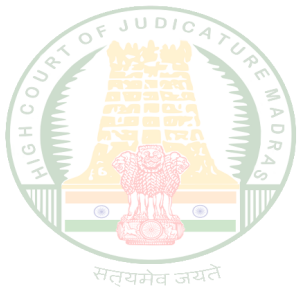
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Hence, the observation of the learned trial Judge that she had verified with the concerned staffs of E-filing Section as to the time, at which the charge sheet was filed and that since the concerned staffs had informed that there was no practice to enter the time at which, the petitions or cases are being filed, pales into insignificance. Since the prosecution has laid the charge sheet, after expiry of period prescribed, the time of filing the charge sheet cannot be considered as a relevant criteria for deciding the statutory bail.

27.The Hon'ble Supreme Court in **M.Ravindran's** case, cited supra, while considering the points as to whether the indefeasible right accruing to the accused under Section 167(2) Cr.P.C gets extinguished by subsequent filing of an additional complaint by the investigating agency, after referring to the various decisions on the subject, has concluded as follows:

“18. Therefore, in conclusion:

18.1 Once the accused files an application for bail under the Proviso to

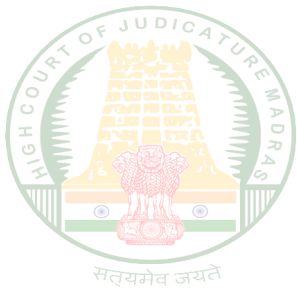


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Section 167(2) he is deemed to have 'availed of' or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2)Cr.P.C read with Section 36 A, 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 investigative agency.

18.2 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



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rejection of the bail application is pending before a higher Court.

18.3 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 Cr.P.C.

18.4 Notwithstanding the order of default bail passed by the Court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent Court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid."



WEB COPY 28.Considering the above, this Court has no hesitation to hold that since the petitioner has availed of his indefeasible right to bail on 18.10.2021 and offered to abide by the terms and conditions to be imposed, the subsequent or even simultaneous filing of the charge sheet does not disentitle the petitioner from claiming the default bail.

Point No.2:

29.As already pointed out, the next contention of the prosecution is that since the Courts were closed for Dassara Holidays for the period between 14.10.2021 and 17.10.2021, the charge sheet has been laid on the very next working day i.e., on 18.10.2021 and as per Section 10 of the General Clauses Act, the prosecution is certainly entitled to file the charge sheet on the next working day, since the date on which, the period prescribed for filing the charge sheet expires on a holiday. Hence, it is necessary to refer Section 10 of the General Clauses Act.

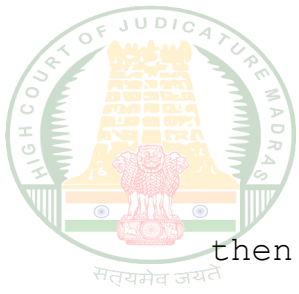


WEB COPY Section 10 the General Clauses Act of 1897:

Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (XVI of 1877) applies."

30. Section 10 of the General Clauses Act contemplates that a person for whom a period is prescribed for the performance of an act in a Court or Office, and that the period expires on a holiday,



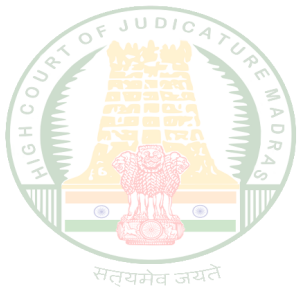
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then the person is entitled to do the said act on the next working day.

31. An interesting question arises as to whether Section 10 of General Clauses Act is applicable to the investigating agency for filing the charge sheet, if the period contemplated under Section 167(2) Cr.P.C expires on a holiday.

32. A single Judge of Bombay High Court in **State Of Maharashtra vs Sharad B. Sarada** reported in **1983 (1) BomCR 578**, has discussed the above point elaborately and came to the conclusion that Section 10 of General Clauses Act has no application in such cases and the relevant passages are extracted hereunder :

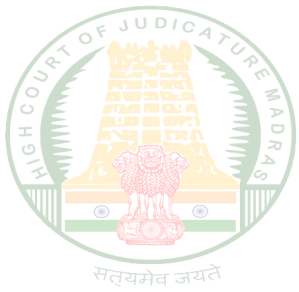
"13. The point to be decided, is as to whether the provisions of section 10 of the General Clauses Act, 1897 are attracted by the facts of this case. Mr. Hudlikar contended that 90 the day of detention of the accused falls on Sunday i.e. on September 12, 1982, so on the next opening of the courts a



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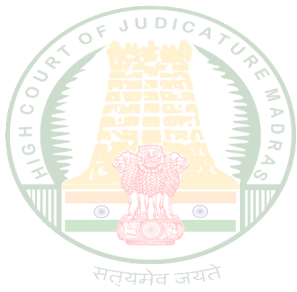
charged sheet is filed on September 13, 1982 and therefore, the proceeding shall be considered as done or taken in due time, on the next day after wards on which the Court is opened. Section 10 of General Clauses Act lays down that whereby any Central Act or regulation made after the commencement of this act, any act or proceedings is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribe period then if the Court or office is closed on that day or the last day of the prescribed period the Act or the proceeding shall be considered as done or taken in due time. According to Mr. Hudlikar, filing of the charge sheet on September 13, 1982 on opening of the Court on that day was saved by section 10 of the General Clauses Act. It is true that the Court was closed on September 1982. The question is as to whether under the Code any time has been prescribed for filing of a charge-sheet. Mr. Hudlikar fairly conceded that there is no prescribed period mentioned in the Code to file a charge sheet. What is



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required under section 10 of the General Clauses Act is that any act or proceeding directed or allowed to be done or taken in any Court on a certain day or within prescribed period then the Act or the proceedings shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court is opened. As stated above no certain day was fixed by the order of the Court or any period prescribed for filing of the charge-sheet. The prosecution could have filed the charge sheet earlier than September 12, 1982. Except filing of the charge-sheet on September 13, 1982 nothing has been done as directed or allowed to be done and it is, therefore, that the provisions of section 10 of the General Clauses Act will not apply. An absolute right accrued to the accused on the expiry of 90 days and it cannot be defeated by merely filing of the charge-sheet on September 13, 1982. The right is State Of Maharashtra vs Sharad B. Sarda on 29 November, 1982 accrued the moment 90 days are over, whether that 90th day

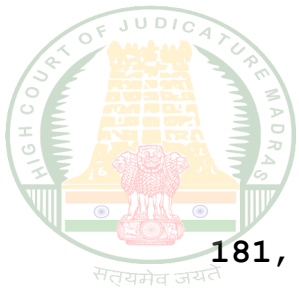


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falls on a holiday or not. The accused continued to be in custody and therefore, the provisions of section 167(2) lays down that he can be in the custody only for a period of 90 days or 60 days, as the case may be. As stated above the right is accrued to the accused and it is the duty of the Magistrate to inform the accused that he is entitled to be released on bail and this absolute right of the accused cannot be allowed to be defeated by resorting to the provisions of section 10 of the General Clauses Act. Thus, in this view of the matter it must be held that section 10 of the General Clauses Act does not apply to this case."

33. But subsequently, a Division Bench of Orissa High Court in **N.Sureya Reddy and another Vs. State of Orissa** reported in **1985 (1) OLR 105**, has held that section 10 of the General Clauses Act can be invoked by investigating agency for the purpose of laying the final reports. Subsequently, a Division Bench of Delhi high Court in **Powell Nwawa Ogechi vs. The State (Delhi Administration)** reported in **ILR 1986 Delhi**

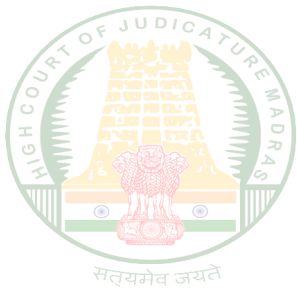


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181, after referring the decisions of the Bombay and Orissa High Courts, has agreed with the view taken by the Bombay High Court and the relevant passages are as follows:

“(11) A bare reading of the aforesaid provision of the Code would go to show that this provision merely confers power on the Magistrate to commit to custody an accused person and there is limitation of 90 days and 60 days, as the case may be. This provision of the Code falls under Chap. XII of the Code relating to information to the police and their powers to investigate. It is thus clear that this is a power which is only exercisable during the course of investigation of a case. The power to commit an accused person to custody after investigation is over and after the charge-sheet is presented before the Court, is derived from Section 309, Cr. P.C. Any further remand to judicial custody beyond 90 days and 60 days without the charge-sheet being presented before the Court will be without the authority of law.

(12) Sub-section (2) of Section 167 of the Code nowhere prescribes a period within which the police is required to present

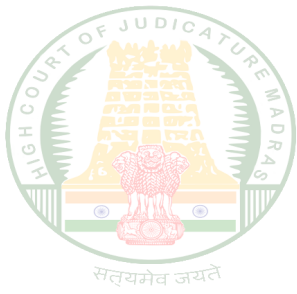


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charge-sheet before the court nor does it envisage the performance of an act by an accused person within a particular period before a Court or office. In fact, nowhere in the Code a period is prescribed for investigation to produce the charge-sheet before a Court of law. Since the Legislature in its wisdom has not prescribed a period within which the investigation has to present charge-sheet against an accused person before a Court, it would be wrong to say that the provision of Section 167(2) of Code had prescribed the limit by implication. If the Legislature had aimed it to be so, there was nothing to prevent it from saying so explicitly. By invoking the doctrine of implication we will be importing something in the provision which the Legislature has deliberately refrained to do. It will not only have the effect of distorting the provision but will also defeat the legislative intent.

(13) In N. Sureya Reddy's case (1985 Cri LJ 939) (supra) a Division Bench of Orissa High Court has ruled that Section 10 of the General Clauses Act is attracted if the charge-sheet against the accused person could not be presented on the 60th or 90th

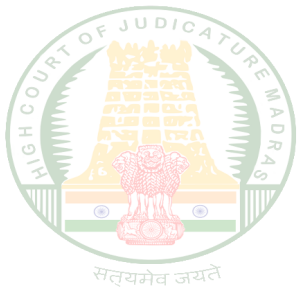


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day for the reason of being a public holiday and this is so ruled on the ground that by implication Section 167(2) does prescribe a period for presentation of charge-sheet before a Court. We have carefully considered this proposition but we respectfully do not agree with the aforesaid view for the reasons stated above.

(14)A contrary view to the aforesaid authority, with which we agree, has been taken by the High Court of Bombay in State of Maharashtra v. Sharad B. Sarada (1983 (2) Cri LC 18) wherein it was held that in a case such as this, Section 10 of the General Clauses Act has no application as the Code does not prescribe any time limit for presentation of charge-sheet by the investigation. The learned Judge further ruled that after the expiry of time of 90 or 60 days, the right accruing to the accused is absolute. One of our own Judges in Criminal Misc. (Main) 504 of 1985, Bhagwat Singh v. State, has had an occasion to consider the proposition regarding application of Section 10 of General Clauses Act and has opined that it has no application and the accused person after the expiry of 90 days or 60 days as the case may be, is entitled to be released on



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bail. We are in respectful agreement with the view taken in the aforesaid cases i.e. by the learned Judge of Bombay High Court and by the learned Judge of our own High Court.

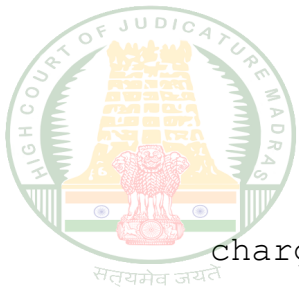
34.As rightly observed by the Delhi High Court, Section 10 of General Clauses Act presupposes that there must be a positive act to be performed, in existence and for the performance of which, there is in existence a period prescribed by law.

35. It is pertinent to mention that the Code of Criminal Procedure does not prescribe any particular period for laying the charge sheet and the Section 167(2) of Cr.P.C does not prescribe any period of limitation even by implication. The investigating agency is certainly entitled to file the charge sheet, even after expiry of 60 or 90 or 180 days, as the case may be, but they will not have any right to seek extension of remand beyond the period prescribed under Section 167(2) Cr.P.C.



WEB COPY 36.Considering the judgements of Delhi, Orissa and Bombay High Courts and the reasonings given therein, this Court is in entire agreement with the view expressed by the Bombay High Court, which was accepted by the Delhi High Court. Hence, this Court has no hesitation to hold that Section 10 of the General Clauses Act has no application at all and the same cannot be invoked by the investigating agency for laying the final report, after the expiry of the prescribed period.

37.The Hon'ble Supreme Court, after taking *suo motu* cognizance of the situation arising out of the challenge faced by the County on account of Covid-19 virus, has passed an order in *suo motu* in W.P.(C). No.3 of 2020, dated 23.03.2020, extending the period of limitation with effect from 15.03.2020 for filing the petitions/applications/suits/appeals and other proceedings, which were indicated in that order itself. After passing of the above order, a question arose as to whether the investigating agency can take advantage of the said order extending time for filing



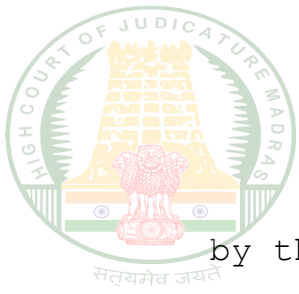
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charge sheet, after the period prescribed under

WEB COPY Section 167(2) Cr.P.C.

38.A Full Bench of the Hon'ble Supreme Court in **S.Kasi Vs. State through the Inspector of Police, Samayanallur Police Station, Madurai District** reported in **2020 SCC Online SC 529** has observed that " the infeasible right to default bail under [Section 167\(2\)](#) is an integral part of the right to personal liberty under [Article 21](#), and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasized that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a chargesheet."

39.The Hon'ble Apex Court has further concluded that neither their order, dated 23.03.2020 can be held to have eclipses the time prescribed under Section 167(2) Cr.P.C nor the restrictions, which have been imposed during the lockdown announced



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by the Government shall operate as any restriction on the rights of an accused, as protected by Section 167(2) Cr.P.C regarding his indefeasible right to get a default bail on non submission of charge sheet within the time prescribed.

40.The Hon'ble Apex Court has referred, its earlier judgments, for highlighting the purpose and object of Section 167 Cr.P.C in

(i) Uday Mohanlal Acharya Vs. State of Maharashtra (2001) 5 SCC 453 :

(ii) Rakesh Kumar Paul Vs. State of Assam (2017) 15 SCC 67

(iii) Achpal @ Ramswaroop and another Vs. State of Rajasthan 2019 14 SCC 599, and held as follows;

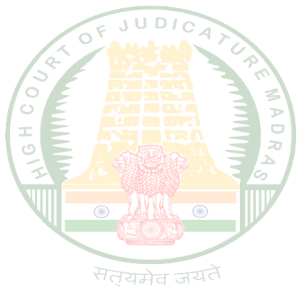
"14.The Scheme of Code of Criminal Procedure as noticed above clearly delineates that provisions of Section 167 of Code of Criminal Procedure gives due regard to the personal liberty of a person. Without submission of charge sheet within 60 days or 90 days as may be applicable, an accused cannot be detained by the Police. The provision gives due recognition to the personal liberty."



WEB COPY 41.Considering the above, this Court has no hesitation to hold that the learned trial Judge has not dealt with the application filed under Section 167(2) Cr.P.C in proper legal perspective, but by considering the merits of the case dismissed the petition and as such, the impugned order is not good in law and the same is liable to be set aside.

42.In the result, this Criminal Original Petition is allowed and the order passed in Cr.M.P.No.1935 of 2021, dated 21.10.2021 on the file of the learned Principal Sessions Judge for EC and NDPS Act cases, Madurai, is set aside. The petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Principal Sessions Judge for EC and NDPS Act cases, Madurai.

i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;



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ii) the petitioner shall report before the concerned Court on every Monday at 10.30 a.m until further orders.

iii) the petitioner shall not tamper with evidence or witness.

iv) the petitioner shall not abscond during trial.

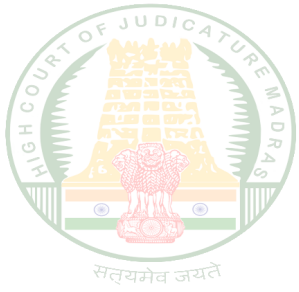
v) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

(K M S J)
06.12.2021

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



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TO

- 1.The Principal Sessions Judge
For EC and NDPS Act cases, Madurai.
- 2.The Inspector of Police,
Samayanallur Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR, J

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Date : 06.12.2021