

HRPS NO. 37/2020
Gokul Road PS Cr. No. 10/2020

ORDER ON APPLICATION FILED U/Sec.167 OF Cr.P.C.

Present application is filed by the accused N0:1 to 3 seeking default/statutory bail as the I.O failed to submit charge sheet within 90 days from the date of their first remand.

1. The accused stated that, present case is registered against them for the offenses punishable U/Sec.124-A, 153[A], 153-B, 505(2) R/w Sec.34 of IPC on 15.02.2020. The accused being arrested on 16.02.2020 and this court remanded them on 17.02.2020 to J/C and till today, no charge sheet is filed by the I.O. The accused are in judicial custody more than 100 days and as such, are entitled for release U/Sec. 167(2) of Cr.P.C. The accused are ready to furnish surety for satisfaction of this court and ready to abide by the conditions which may impose by this court. On these among other grounds prayed to release them on statutory bail by allowing the application.

2. Contrary, Ld. APP resisted the application contending that, the alleged offenses are non-bailable one and investigation is still under progress. The accused have committed the offense of sedition by making slogan in favour of Pakistan, which is rival nation of India despite getting student scholarship from central Govt of India. If the accused are released on bail, they may flee from the jurisdiction of this court and may indulge in committing similar type of offenses. The I.O is collecting the exact address and details of antecedents of the accused if any and whether the accused are having any contacts with terrorist nations. The accused may destroy the evidence. The accused may tamper the prosecution witnesses. If the bail is granted, there is every chance of losing the confidence over the judiciary and police department as well. Some intuitions have already made protest against the

acts done and if the accused are released, again, in future, a law and order problem may arise. The bail petition filed by the accused is still pending before the Hon'ble High Court of Karnataka. In view of COVID-19, the Hon'ble High Court of Karnataka issued Notification U/Sec.4 of Limitation Act, which is still in force till 06.07.2020. On these among other grounds, prayed to reject the application.

3. Points that arise for consideration are,

1. Does the accused are entitled for default/Statutory bail ?
2. What Order ?.

4. Heard Smt. M.K Adv for accused and Ld. APP on video conferencing. Perused the records. Based on the records available, I answer the above points as under,

POINT N0:1. In the ***Affirmative***.

POINT N0:2. As per final order for the following,

REASONS.

5. **POINT N0:1.** Smt. M.K Adv for accused argued that, since the I.O failed to submit final report before 90 days from the day of arrest i.e., 17.02.2020, which would end on 16.05.2020, the accused are entitled for default bail as per Sec.167(2) of Cr.P.C. Contrary, Ld. APP not disputed the factum of completing the 90 days on 16.05.2020 but tried to resist the application on merit by relying couple of decisions. They are,

1. **(2011) 10 SC 445** (*Pragyna Singh Thakur V/s. State of maharastra*). Wherein, Hon'ble Supreme Court held thus,

"The right to bail U/Sec.167(2) of Cr.P.C, proviso-A is default right, not absolute one, it can be exercised before the charge sheet is filed. Merely because, the charge sheet has been filed after the statutory period mentioned in proviso-A to sub-Section (2) of Section 167 of Cr.P.C, the accused does not

continue to enjoy such right of release on bail under the said proviso, if there is no order of releasing him on bail prior to the charge sheet being filed. In that light, if the facts are considered the accused/petitioner is not entitled to be released on bail either by inclusion or exclusion of the day of first remand",

In the above case, the accused was remanded to J/C on 14.05.2016 and 90 days will end on 11.08.2016. The accused filed default bail application 12.08.2016 and on the same day, the I.O filed charge sheet. In that case, the Hon'ble Supreme Court dealt with a core point that, whether the date of remand is to be considered for computing the period of 90 or excluded. In that case, Hon'ble Supreme Court observed that, if I O filed charge sheet before deciding the default bail application, the accused is not entitled for default bail. However, counsel for accused brought to the notice of this court that, the decision so relied by Ld. APP is over ruled decision and is no more a good law. Said decision was over ruled by Hon'ble Supreme Court in a decision reported in AIR 2014 SC 3036 (Union of India through C.B.I V/s. Nirala yadav). Wherein, Hon'ble Supreme Court expressed its view at para 40 that, the law laid down in Prgyna Singh Thakur's case cannot be treated to be a good law. Wherefore, the decision so relied upon by Ld.APP is not applicable to the present case on hand. For want of applicability of facts about computing the period of 90 days as well over ruling the said decision as discussed above.

6. The second decision relied upon by Ld. APP, which reported in **ILR 2017 Kar 558.** (Allabaksh V/s. State of Karnataka), wherein Hon'ble High Court of Karnataka held thus,

"Criminal Procedure Code, 1973 – Section 167(2) – Non-filling of charge sheet within the statutory period – Charge sheet and the application for bail under Section 167(2) were filed on the said day – Entitlement of the accused for bail – The right to bail under Section 167(2) of Cr.P.C., proviso-A is a default right, not absolute one, it can be exercised before the charge sheet is filed"

In the above case, the accused was arrested on 12.08.2016. 90 days will end on 11.08.2016. The accused filed statutory bail on 12.08.2016. On the same day, the I.O submitted charge sheet before the court. In that context, Hon'ble High court of Karnataka held that, inclusion and exclusion of the date of first remand of the accused by the Magistrate is immaterial as the accused had not maintained the application before filling the charge sheet and held that, the accused is not entitled for statutory bail and said bail application be considered on merits of the case.

The said case is somewhat similar in nature as that of Prgyna Singh Thakur's case.

7. It is made it clear that, in this case, the fact in issue is not the inclusion or exclusion of first remand date for computation of statutory 90 days. Admittedly, the accused are remanded on 17.02.2020 and 90 days would end on 16.05.2020. Till today, the accused are in J/C. The accused filed bail application on 01.06.2020. Ld. APP filed objections on 04.06.2020 and I.O also filed charge sheet on 04.06.2020. So, it is clear that, as on 01.06.2020, on the date of filling bail application U/Sec. 167(2) of Cr.P.C by the accused, the I.O had not filed charge sheet. As per decisions of Hon'ble High Court and Apex Court, the indefeasible right accrued to the accused U/Sec.167(2) of Cr.P.C will start soon after completing the statutory period of 90 days till filling charge sheet by the I.O. In that intermediate time, the accused is having indefeasible right of availing default/statutory bail. In the present case, the accused exercised their right by submitting bail application U/Sec.167(2) of Cr.P.C on 01.06.2020, which is prior to submitting charge sheet before the court.

8. The second defence raised by the Ld.APP is, the bail application filed by the accused is still pending before the

Hon'ble High Court of Karnataka for consideration. The records show that, the accused moved bail application before the Hon'ble District Court for regular bail but not succeeded and thereafter moved to Hon'ble High Court of Karnataka for regular bail. It is made it clear that, regular bail applications are being dealt with on merits of the case, whereas, default/statutory bail U/Sec.167 of Cr.P.C being sought on the technical point of not filling charge sheet/challan within statutory period. For consideration of application U/Sec.167(2) of Cr.P.C, this court is not supposed to look into the merits of the case. The point to be considered is, whether the I.O filed charge sheet within the statutory period or not. Wherefore, the defence of pendency of regular bail application before the Hon'ble High Court of Karnataka for consideration needs no consideration for consideration of present application.

9. The last defence took by the Ld.APP is, passing of Notification U/Sec.4 of Limitation Act by Hon'ble High Court of Karnataka and Apex Court as well in view of COVID-19, which is still in force till 06-07-2020 and as such, the limitation prescribed is stopped for time being and as such, the accused is not entitled to take shelter of not filling charge sheet/challan within 90 days.

10. Sec.4 of Limitation Act, 1963 refers as follows, “Sec.4. Expiry of prescribed period when court is closed. - Where the prescribed period for any suit, appeal or application expires on the day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens.”

The plain reading of above provision makes it very clear that, the provision is referring only civil proceedings and not the criminal proceedings. The Hon'ble Supreme Court held in a decision reported in **(2019) 14 SCC 599 (Achpal V/s. State**

of Rajasthan). By placing above decision, Hon'ble Kerala High Court held in the case of *Mohammed Ali V/s. State of Kerala and Another* in **BA N0:2856/2020**, clearly held that, the Supreme Court order dated March 23, 2020, whereby the period of limitation for filling cases was extended in view of the COVID-19 lockdown, does not affect the right of an accused to default bail under Section 67(2) of Cr.P.C. Further, another decision reported in **AIR 2012 SC 331** (*Shyam Babu V/s. State U.P*) also negates the defence of the Ld. APP about closure of courts.

11. The last point which needs to consider is that, when the matter was posted for hearing and objection if any on 04.06.2020, the filed charge sheet before the court. The I.O submitted charge sheet with a note that, he will furnish the FSL report, sanction from the Govt, statements of the witnesses and records of the accused by obtaining from the KLE Engineering collage. It means, the charge sheet so submitted is incomplete one and seems that, the I.O filed charge sheet only defeat the statutory right of the accused provided U/Sec.167(2) of Cr.P.C. the act of submitting charge sheet before considering the application filed by accused is not liable to be considered on two grounds. Being incomplete charge sheet is the former and the accused already exercised their right by filling application U/Sec.167(2) of Cr.P.C on 01.06.2020 between the period after completion of 90 days and before filling charge sheet is the later.

12. Admittedly, the 90 days period from the date of first remand i.e., 17.02.2020 would end on 16.05.2020. The I.O submitted charge sheet on 04.06.2020. The accused filed bail application on 01.06.2020. Wherefore, filling incomplete charge sheet by I.O on 04.06.2020 would not defeat the statutory right of accused.

13. The remaining objections so raised by the Ld.APP are all on merits of the case and said objections need not be considered for consideration of statutory bail. Further, remaining apprehension of the prosecution like, absconding the accused from the jurisdiction of this court, tampering the witness and destroying the evidence, getting address proof and so on to be meted with by imposing conditions.

14. In view of above observations, this court is of the opinion that, the accused have clear case that, they exercised their statutory right after completing the statutory period of 90 days and before submitting charge sheet by the accused. Accordingly, the accused are entitled for statutory bail as sought, With this, Point N0:1 is answered in the *Affirmative*.

15. **POINT N0:2.** In view of above observations, I proceed to pass following,

ORDER

The application filed U/Sec.167(2) of Cr.P.C by accused N0:1 to 3 dt:01.06.2020 is hereby allowed with following,

CONDITIONS.

1. *The accused N0:1 to 3 shall execute Personal Bond for Rs.1,00,000/- each and furnish two sureties for like sum.*
2. *The accused N0:1 to 3 shall not intimidate attempt to influence the witnesses nor shall they tamper with the evidence in any manner.*
3. *The accused N0:1 to 3 shall not commit similar offenses.*
4. *The Accused shall submit their address proof documents and cell numbers.*
5. *The accused N0:1 to 3 shall appear before the court regularly without fail.*

6. *The accused shall not travel beyond the limits of Hubli City without permission of the court.*

Office is directed to intimate the order to Ld. APP as well as Counsel for accused through E-mails.

For compliance of the conditions.

Sd/-

II JMFC, HUBBALLI.