Supreme Court of India
M Ravindran vs The Intelligence Officer ... on 26 October, 2020
Author: Mohan M. Shantanagoudar
Bench: Uday Umesh Lalit, Mohan M. Shantanagoudar, Vineet Saran

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 699 OF 2020
(arising out of S.L.P. (Criminal) No. 2333 of 2020)

M. Ravindran ...Appellant

Versus

The Intelligence Officer,
Directorate of Revenue Intelligence …Respondent

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.

Leave granted.

2. The judgment dated 21.11.2019 passed in Crl. O.P. No. 9750 of 2019 by the High Court of Judicature at Madras is called into question in this appeal.

3. The brief facts leading to this appeal are as follows: Signature Not Verified Digitally signed by ASHWANI KUMAR Date: 2020.10.26 18:32:09 IST Reason:

3.1 The Appellant was arrested and remanded to judicial custody on 04.08.2018 for the alleged offence punishable under Section 8(c) read with Sections 22(c), 23(c), 25A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'). After completion of 180 days from the remand date, that is, 31.01.2019, the Appellant (Accused No.11) filed application for bail under Section 167(2) of the Code of Criminal Procedure, 1973 ('CrPC') on 01.02.2019 before the Special Court for Exclusive Trial of Cases under the NDPS Act, Chennai ('Trial Court') on the ground that the investigation was not complete and chargesheet had not yet been filed. Accordingly, on 05.02.2019, the Trial Court granted the order of bail in Crl. M.P. No. 131 of 2019 in R.R. No. 09/2017 pending before the said court.

3.2 The Respondent/complainant, i.e. the Intelligence Officer, Directorate of Revenue Intelligence filed Crl. O.P. No. 9750 of 2019 before the High Court of Judicature at Madras praying to cancel the bail of the Appellant. The High Court, by the impugned judgment, allowed the said appeal and consequently cancelled the order of bail granted by the Trial Court. Being aggrieved, the Appellant has approached this Court questioning the judgment of the High Court.

3.3 It is not in dispute that the Appellant was remanded to judicial custody on 04.08.2018 and hence the mandatory period of 180 days prescribed for filing of final report under Section 167(2), CrPC (excluding the date of remand) was completed on 31.01.2019. This is made amply clear by the calculation of days as per the Gregorian calendar as stated below:

> "August 2018 (from 05.08.2018 to 31.08.2018) □27 days September 2018 □30 days October 2018 □31 days November 2018 □30 days December 2018 □31 days January 2019 □31 days □□□□□□□□□□□□□□□□□□□□□Total □180 days □□□□□□□□□□□□□□□□□□□□□"
> 3.4 Accordingly, the Appellant filed his bail application on 01.02.2019 at 10:30 a.m. before the Trial Court. During the course of hearing of the bail application□after completion of the arguments of the counsel for the Appellant, to be precise□the Respondent/complainant filed an additional complaint against the Appellant at 4:25 p.m. on 01.02.2019 and sought for dismissal of the bail petition on the said basis. However, the Trial Court allowed the bail application on the ground that the Court has no power to intervene with the indefeasible right of the Appellant conferred on him by the legislative mandate of Section 167(2).

3.5 The said judgment of the Trial Court was set aside by the High Court on the ground that the additional complaint was filed on 01.02.2019 itself and since the application for bail under Section 167(2), CrPC was not disposed of by the time the additional complaint was filed, the Appellant could not take advantage of the fact that he had filed his bail petition prior in time. The High Court further reasoned that the Court of Session conducts work from the time it sits till the time it rises and hence the Appellant could not avail of any specific benefit for having filed the application at 10:30 a.m. inasmuch as the additional complaint was lodged during the course of hearing of the bail application, before the Court rose for the day.

4. Ms. Arunima Singh, learned counsel appearing for the Appellant, taking us through the material on record and relying heavily on the observations of this Court in the case of Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453, argued that the High Court has misconstrued the mandate of Section 167(2), CrPC and has gravely erred in entering into the merits of the matter; that the legislative mandate conferred by Section 167(2), CrPC was lightly brushed aside by the High Court though the Appellant had rightly invoked the provisions thereof after completion of the mandatory period of 180 days, that too prior to filing of the chargesheet/additional complaint by the Respondent; and that subsequent filing of chargesheet/ additional complaint by the investigating authority cannot defeat the indefeasible right of the Appellant.

5. Per contra, Mr. Aman Lekhi, learned Additional Solicitor General argued in support of the judgment of the High Court contending that the additional complaint was lodged while the Appellant was still in custody and prior to the disposal of the application for bail under Section 167(2), CrPC, hence there was no question of the Appellant□accused furnishing the bail and consequently he was liable to continued detention in custody. He contended that the time or date of disposal of the application of bail filed under Section 167(2) is the deciding factor to adjudge whether the accused is entitled to default bail or not.

6. Before we proceed further, it is relevant to note the provisions of Section 167(2), CrPC:

> "Section 167. Procedure when investigation cannot be completed in twenty-four hours.— (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:
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> Provided that-
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> (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,-
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> (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police. Explanation I.-For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail. Explanation II.-If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution." In common legal parlance, the right to bail under the Proviso to Section 167(2) is commonly referred to as 'default

bail' or 'compulsive bail' as it is granted on account of the default of the investigating agency in not completing the investigation within the prescribed time, irrespective of the merits of the case. 6.1 It is also relevant to note Section 36A (4) of the NDPS Act for the purpose of this matter:

> "Section 36A. Offences triable by Special Courts.— (4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A 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":
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> 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." (emphasis supplied) 6.2 Section 36A of the NDPS Act prescribes modified application of the CrPC as indicated therein. The effect of Sub-Clause (4) of Section 36A, NDPS Act is to require that investigation into certain offences under the NDPS Act be completed within a period of 180 days instead of 90 days as provided under Section 167(2), CrPC. Hence the benefit of additional time limit is given for investigating a more serious category of offences. This is augmented by a further Proviso that the Special Court may extend time prescribed for investigation up to one year if the Public Prosecutor submits a report indicating the progress of investigation and giving specific reasons for requiring the detention of accused beyond the prescribed period of 180 days. In the matter on hand, it is admitted that the Public Prosecutor had not filed any such report within the 180-day period for seeking extension of time up to one year for filing final report/additional complaint before the Trial Court.

From the aforementioned, it is clear that in the Appellant's case, the final report was required to be filed within 180 days from the first date of remand.

7. This Court in a catena of judgments including Ravi Prakash Singh @ Arvind Singh v. State of Bihar, (2015) 8 SCC 340, has ruled that while computing the period under Section 167(2), the day on which accused was remanded to judicial custody has to be excluded and the day on which challan/charge-sheet is filed in the court has to be included.

8. As mentioned supra, it is not disputed that in compliance of the aforementioned statutory provisions and judgments of this Court, the Appellant waited for 180 days from the date of remand (excluding the remand day) and thereafter filed application for bail under Section 167(2), CrPC at 10:30 a.m. on 01.02.2019 inasmuch as till 31.01.2019 or till 10:30 a.m. of 01.02.2019, the complainant had not yet filed final report/additional complaint against the Appellant. On the same day, as mentioned supra, during the course of hearing of the bail application, the Respondent/complainant lodged an additional complaint at 4:25 p.m., and thus sought dismissal of the bail petition.

9. Thus the points to be decided in this case are:

> (a) Whether the indefeasible right accruing to the appellant under Section 167(2), CrPC gets extinguished by subsequent filing of an additional complaint by the investigating agency;
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> (b) Whether the Court should take into consideration the time of filing of the application for bail, based on default of the investigating agency or the time of disposal of the application for bail while answering (a).

I. The Principles Laid Down in Uday Mohanlal Acharya

10. Upon perusal of the relevant jurisprudence, we are unable to agree with Mr. Lekhi's submissions. Rather, we find that both points (a) and (b) mentioned supra have been answered by the majority opinion of a three-Judge Bench of this Court in the case of Uday Mohanlal Acharya (supra) by observing thus: "13...It is also further clear that that indefeasible right does not survive or remain enforceable on the challan being filed, if already not availed of, as has been held by the Constitution Bench in Sanjay Dutt's case (supra). The crucial question that arises for consideration, therefore, is what is the true meaning of the expression 'if already not availed of'? Does it mean that an accused files an application for bail and offers his willingness for being released on bail or does it mean that a bail order must be passed, the accused must furnish the bail and get him released on bail? In our considered opinion it would be more in consonance with the legislative mandate to hold that an accused must be held to have availed of his indefeasible right, the moment he files an application for being released on bail and offers to abide by the terms and conditions of bail. To interpret the expression "availed of" to mean actually being released on bail after furnishing the necessary bail required would cause great injustice to the accused and would defeat the very purpose of the proviso to Section 167(2) of the Criminal Procedure Code and further would make an illegal custody to be legal, inasmuch as after the expiry of the stipulated period the Magistrate had no further jurisdiction to remand and such custody of the accused is without any valid order of remand. That apart, when an accused files an application for bail indicating his right to be released as no challan had been filed within the specified period, there is no discretion left in the Magistrate and the only thing he is required to find out is whether the specified period under the statute has elapsed or not, and whether a challan has been filed or not. If the expression "availed of" is interpreted to mean that the accused must factually be released on bail, then in a given case where the Magistrate illegally refuses to pass an order notwithstanding the maximum period stipulated in Section 167 had expired, and yet no challan had been filed then the accused could only move to the higher forum and while the matter remains pending in the higher forum for consideration, if the prosecution files a charge-sheet then also the so-called right accruing to the accused because of inaction on the part of the investigating agency would get frustrated. Since the legislature has given its mandate it would be the bounden duty of the court to enforce the same and it would not be in the interest of justice to negate the same by interpreting the expression "if not availed of" in a manner which is capable of being abused by the prosecution....

...There is no provision in the Criminal Procedure Code authorising detention of an accused in custody after the expiry of the period indicated in proviso to sub□section (2) of Section 167 excepting the contingency indicated in Explanation I, namely, if the accused does not furnish the bail. It is in this sense it can be stated that if after expiry of the period, an application for being released on bail is filed, and the accused offers to furnish the bail and thereby avail of his indefeasible right and then an order of bail is passed on certain terms and conditions but the accused fails to furnish the bail, and at that point of time a challan is filed, then possibly it can be said that the right of the accused stood extinguished. But so long as the accused files an application and indicates in the application to offer bail on being released by appropriate orders of the court then the right of the accused on being released on bail cannot be frustrated on the off chance of the Magistrate not being available and the matter not being moved, or that the Magistrate erroneously refuses to pass an order and the matter is moved to the higher forum and a challan is filed in interregnum. This is the only way how a balance can be struck between the so□called indefeasible right of the accused on failure on the part of the prosecution to file a challan within the specified period and the interest of the society, at large, in lawfully preventing an accused from being released on bail on account of inaction on the part of the prosecuting agency".

(emphasis supplied) While holding so, this Court considered and discussed in depth the catena of judgments on right of the accused to default bail including Sanjay Dutt v. State through C.B.I., (1994) 5 SCC 410; Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602; State through CBI v. Mohd. Ashraft Bhat, (1996) 1 SCC 432; Dr. Bipin Shantilal Panchal v. State of Gujarat, (1996) 1 SCC 718; and Mohamed Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722.

10.1 We also find it relevant for the present purpose to quote the following conclusions of the Court in the said judgment: □"13.3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

13.4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge□sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

13.5. If the accused is unable to furnish bail, as directed by the Magistrate, then the conjoint reading of Explanation I and proviso to sub□section 2 of Section 167, the continued custody of the accused even beyond the specified period in paragraph (a) will not be unauthorised, and therefore, if during

that period the investigation is complete and charge□sheet is filed then the so□called indefeasible right of the accused would stand extinguished.

13.6. The expression 'if not already availed of' used by this Court in Sanjay Dutt's case (supra) must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in paragraph (a) of proviso to sub□section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same." (emphasis supplied) 10.2 In Uday Mohanlal Acharya, the application for default bail filed by the accused was rejected by the Magistrate based on the wrongful assumption that Section 167(2), CrPC is not applicable to cases pertaining to the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999. The chargesheet was filed while the application challenging rejection of bail was pending before the High Court. Hence the High Court held that the right to default bail was no longer enforceable.

Based on the abovementioned principles, the majority opinion held that the accused is deemed to have exercised his right to default bail under Section 167(2), CrPC the moment he files the application for bail and offers to abide by the terms and conditions of bail. The prosecution cannot frustrate the object of Section 167(2), CrPC by subsequently filing a chargesheet or additional complaint while the bail application is pending consideration or final disposal before a Magistrate or a higher forum. Accordingly, this Court granted relief to the appellant□accused in that case.

However, it appears that in spite of the conclusions stated by the majority in Uday Mohanlal Acharya (supra), there continues to be confusion as to in what specific situations default bail ought to be granted, particularly with respect to paragraphs 13.5 and 13.6 of the decision. Hence, for the purpose of removing all doubts, we find it necessary to clarify the circumstances in which this entitlement may be claimed by the accused. II. Section 167(2) and the Fundamental Right to Life and Personal Liberty

11. 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 on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows:□"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." 11.1 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, (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.

11.2 Under Section 167 of the Code of Criminal Procedure, 1898 ('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 investigative officers would file 'preliminary chargesheets' after the expiry of the remand period. The State would then request the magistrate to postpone commencement of the trial and authorize further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final chargesheet was filed. The Law Commission of India in Report No. 14 on Reforms of the Judicial Administration (Vol. II, 1948, pages 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.

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.

11.3 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, pages 76□77). The Law Commission re□ emphasized 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.

11.4 The suggestions made in Report No. 41 were taken note of and incorporated by the Central Government while drafting the Code of Criminal Procedure Bill in 1970. Ultimately, the 1898 Code was replaced by the present CrPC. The Statement of Objects and Reasons of the CrPC provides that the Government took the following important considerations into account while evaluating the recommendations of the Law Commission:

> "3. The recommendations of the Commission were examined carefully by the Government, keeping in view among others, the following basic considerations:—
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> (i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;

(ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and

(iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community." 11.5 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.

11.6 Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three-Judge Bench of this Court in Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67, which laid down certain seminal principles as to the interpretation of Section 167(2), CrPC though the questions of law involved were somewhat different from the present case. The questions before the three-Judge Bench in Rakesh Kumar Paul were whether, firstly, the 90 day remand extension under Section 167(2)(a)(i) would be applicable in respect of offences where the maximum period of imprisonment was 10 years, though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under Section 167(2) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90 day limit is only available in respect of offences where a minimum ten year imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in lieu of a written application. This was based on the reasoning that the Court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows:

"29. Notwithstanding this, the basic legislative intent of completing investigations within twenty-four hours and also within an otherwise time-bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate

time to complete investigations, the legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a prolonged or indefinite period. It is for this reason and also to hold the investigating agency accountable that time□limits have been laid down by the legislature... xxx 32...Such views and opinions over a prolonged period have prompted the legislature for more than a century to ensure expeditious conclusion of investigations so that an accused person is not unnecessarily deprived of his or her personal liberty by remaining in prolonged custody for an offence that he or she might not even have committed. In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned counsel for the State.

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41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court." (emphasis supplied) Therefore, the Courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21.

11.7 We may also refer with benefit to the recent judgement of this Court in S. Kasi v. State Through The Inspector of Police Samaynallur Police Station Madurai District (Criminal Appeal No. 452 of 2020 dated 19 th June, 2020), 2020 SCC OnLine SC 529, wherein it was observed that the indefeasible 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. 11.8 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.

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 three□fold objectives expressed by the legislature namely ensuring a fair trial, expeditious investigation and trial, and setting down a rationalized 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. 11.9 Hence, it is from the perspective of upholding the fundamental right to life and personal liberty under Article 21 that we shall clarify and reconcile the various judicial interpretations of Section 167(2) for the purpose of resolving the dilemma that has arisen in the present case.

III. The meaning of "if not already availed of" in Sanjay Dutt

12. One of the relevant decisions dealing with the question of accrual and extinguishment of the right under Section 167(2) is that of the two-Judge Bench in Hitendra Vishnu Thakur (supra). In that case, the Court was called upon to construe the scope of Section 20(4)(bb) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA') which is in pari materia with the Proviso to Section 36A (4) of the NDPS Act. The Court held that an accused person seeking bail under Section 20(4) of the TADA read with Section 167(2) has to make an application for such default bail and the Court shall release the accused on bail if the period for filing a chargesheet has expired, after notice to the public prosecutor, uninfluenced by the merits of the case. That unless the Court grants extension in time based on the report of the Public Prosecutor, the Designated Court under TADA would have no jurisdiction to deny to the accused his indefeasible right to default bail if the accused seeks and is prepared to furnish the bail bonds as directed by the Court. Further that in such a scenario, the Court is obligated to decline any request for further remand. However, it was also expressly stated that the Court cannot release the accused on its own motion if the accused does not file any such application. 12.1 Subsequently the question of the proper construction of Section 20(4)(bb) was referred to a Constitution Bench of this Court in Sanjay Dutt (supra). Reservation was expressed before this Court that the decision in Hitendra Vishnu Thakur (supra) should not be held as conferring an indefeasible right on the accused to be released on default bail even after the final report or challan has been filed. To settle this point, the Constitution Bench held that:

> "48...The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 CrPC ceases to apply...It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order.

xxx 53...(2)(b) The 'indefeasible right' of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the CrPC in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the CrPC. The right of

the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage." (emphasis supplied) It appears that the term "if not already availed of" mentioned supra has become a bone of contention as Courts have differed in their opinions as to whether the right to default bail is availed of and enforced as soon as the application for bail is filed; or when the bail petition is finally disposed of by the Court; or only when the accused actually furnishes bail as directed by the Court and is released from custody. 12.2 The majority opinion in Uday Mohanlal Acharya (supra) clarified this ambiguity by holding that the expression "if not already availed of" used by this Court in Sanjay Dutt (supra) must be understood to mean "when the accused files an application and is prepared to offer bail on being directed". In that case, it has to be held that the accused has enforced his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused is yet to furnish the same. 12.3 However, B.N. Agrawal, J. in his minority opinion partly dissented with the majority, particularly with respect to the conclusions expressed in paragraph 13.6 of Uday Mohanlal Acharya (supra). He opined that the phrase "the accused person shall be released on bail if he is prepared to and does furnish bail" in Section 167(2)(a)(ii) (emphasis supplied) and "the accused shall be detained in custody so long as he does not furnish bail" in Explanation I to Section 167(2) indicated that the right to be released on default bail could be exercised only on actual furnishing of bail. Further, that the decision of the Constitution Bench in Sanjay Dutt (supra) should be interpreted to have held that if the challan is filed before any order directing release on bail is passed and before the bail bonds are furnished, the right under Section 167(2) would cease to be available to the accused. 12.4 Having considered both opinions, we have arrived at the conclusion that the majority opinion in Uday Mohanlal Acharya (supra) is the correct interpretation of the decision rendered by the Constitution Bench in Sanjay Dutt (supra). The decision in Sanjay Dutt merely casts a positive corresponding obligation upon the accused to promptly apply for default bail as soon as the prescribed period of investigation expires. As the decision in Hitendra Vishnu Thakur (supra) expressly cautions, the Court cannot suo motu grant bail without considering whether the accused is ready to furnish bail or not. This is an in□built safeguard within Section 167(2) to ensure that the accused is not automatically released from custody without obtaining the satisfaction of the Court that he is able to guarantee his presence for further investigation, or for trial, as the case may be. Further, as the majority opinion in Rakesh Kumar Paul (supra) pointed out, there could be rare occasions where the accused voluntarily forfeits his right to bail on account of threat to his personal security outside of remand or for some other reasons. The decision in Sanjay Dutt clarifies that once a chargesheet is filed, such waiver of the right by the accused becomes final and Section 167(2) ceases to apply.

However, the Constitution Bench decision in Sanjay Dutt cannot be interpreted so as to mean that even where the accused has promptly exercised his right under Section 167(2) and 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.

12.5 The arguments of the State that the expression "availed of" would only mean actual release after furnishing the necessary bail would cause grave injustice to the accused and would defeat the very purpose of the Proviso to Section 167(2), CrPC. If the arguments of Mr. Lekhi are accepted, there will be many instances where the Public Prosecutor might prolong the hearing of the application for bail so as to facilitate the State to file an additional complaint or investigation report before the Court during the interregnum. In some cases, the Court may also delay the process for one reason or the other. In such an event, the indefeasible right of the accused to get the order of bail in his favour would be defeated. This could not have been the intention of the legislature. If such a practice is permitted, the same would amount to deeming illegal custody as legal. After the expiry of the stipulated period, the Court has no further jurisdiction to remand the accused to custody. The prosecution would not be allowed to take advantage of its own default of not filing the investigation report/complaint against the appellant within the stipulated period.

12.6 It was noted by B.N. Agrawal, J. in his minority opinion in Uday Mohanlal Acharya (supra) that a distinction can be made between cases where the Court has adopted dilatory tactics to defeat the right of the accused and where the delay in deciding the bail application is bona fide and unintentional. In case of the former, the accused could move the superior Court for appropriate direction. Whereas in case of the latter, the Court must dismiss the bail petition if the prosecution files the challan in the meantime. In a similar manner, the Respondent/ complainant in the present case has also sought to distinguish Uday Mohanlal Acharya and subsequent decisions of this Court pertaining to Section 167(2) on the ground that the Trial Court considered the bail application on the same day it was filed, and hence there was no unjust delay which would make the accused entitled to be released on bail.

In our considered opinion, such a distinction cannot be adopted as it would give rise to parallel litigations necessitating separate inquiries into the motivation of the Court for delaying a bail application, or for posting it for hearing on a particular date at a particular time. Delay in deciding the bail application could be due to a number of factors and there may not be a clear-cut answer to the same in all circumstances. Hence irrespective of the reasons for delay in deciding the bail application, the accused is deemed to have exercised his indefeasible right upon filing of the bail application, though his actual release from custody is inevitably subject to compliance with the order granting bail.

12.7 We agree with the view expressed in Rakesh Kumar Paul (supra) 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 obligations spelled out under Article 21 of the Constitution and the Statement of Objects and Reasons of the CrPC are upheld. IV. The Import of Explanation I to Section 167(2), CrPC

13. It is true that Explanation I to Section 167(2), CrPC provides that the accused shall be detained in custody so long as he does not furnish bail. However, as mentioned supra, the majority opinion in

Uday Mohanlal Acharya expressly clarified that Explanation I to Section 167(2) applies only to those situations where the accused has availed of his right to default bail and undertaken to furnish bail as directed by the Court, but has subsequently failed to comply with the terms and conditions of the bail order within the time prescribed by the Court. We find ourselves in agreement with the view of the majority. In such a scenario, if the prosecution subsequently files a chargesheet, it can be said that the accused has forfeited his right to bail under Section 167(2), CrPC. Explanation I is only a safeguard to ensure that the accused is not immediately released from custody without complying with the bail order.

13.1 However, the expression 'the accused does furnish bail' in Section 167(2) and Explanation I thereto cannot be interpreted to mean that if the accused, in spite of being ready and willing, could not furnish bail on account of the pendency of the bail application before the Magistrate, or because the challenge to the rejection of his bail application was pending before a higher forum, his continued detention in custody is authorized. If such an interpretation is accepted, the application of the Proviso to Section 167(2) would be narrowly confined only to those cases where the Magistrate is able to instantaneously decide the bail application as soon as it is preferred before the Court, which may sometimes not be logistically possible given the pendency of the docket across courts or for other reasons. Moreover, the application for bail has to be decided only after notice to the public prosecutor. Such a strict interpretation of the Proviso would defeat the rights of the accused. Hence his right to be released on bail cannot be defeated merely because the prosecution files the chargesheet prior to furnishing of bail and fulfil the conditions of bail of furnishing bonds, etc., so long as he furnishes the bail within the time stipulated by the Court. 13.2 Hence we reject Mr. Lekhi's argument that the Appellant□accused is not entitled to the protection of Section 167(2), CrPC if he has not furnished bail at the time the additional complaint was filed.

V. Rights of the Prosecutor under Section 167(2), CrPC read with Section 36(A) (4), NDPS Act

14. There also appears to be some controversy on account of the opinion expressed in Hitendra Vishnu Thakur (supra) that the Public Prosecutor may resist grant of default bail by filing a report seeking extension of time for investigation. The Court held that:

> "30...It is, however, permissible for the public prosecutor to resist the grant of bail by seeking an extension under clause (bb) by filing a report for the purpose before the court. However, no extension shall be granted by the court without notice to an accused to have his say regarding the prayer for grant of extension under clause (bb). In this view of the matter, it is immaterial whether the application for bail on ground of 'default' under Section 20(4) is filed first or the report as envisaged by clause (bb) is filed by the public prosecutor first so long as both are considered while granting or refusing bail. If the period prescribed by clause (b) of Section 20(4) has expired and the court does not grant an extension on the report of the public prosecutor made under clause (bb), the court shall release the accused on bail as it would be an indefeasible right of the accused to be so released. Even where the court grants an extension under clause (bb) but the charge□sheet is not filed within the extended period, the court shall have no option but to release the accused on bail if he seeks it

> and is prepared to furnish the bail as directed by the court…" (emphasis supplied) This was affirmed by the Constitution Bench in Sanjay Dutt (supra), wherein it was held that the grant of default bail is subject to refusal of the prayer for extension of time, if such a prayer is made. This seems to have given rise to the misconception that Sanjay Dutt (supra) endorses the view that the prosecution may seek extension of time (as provided for under the relevant special statute) for completing the investigation or file a final report at any time before the accused is released on bail, notwithstanding the fact that a bail application on ground of default has already been filed.

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

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

15. We are fortified in our aforementioned conclusions by the three❑Judge Bench decision of this Court in Mohamed Iqbal Madar Sheikh v. State of Maharashtra, (supra). In that case, though the chargesheet was submitted after expiry of the statutory period under Section 20(4)(bb) of the TADA Act, it was admitted that no prior application for bail had been filed by the appellants. Hence the Court held, relying upon Sanjay Dutt, that the right to bail could not be exercised once the chargesheet has been submitted and cognizance has been taken.

However, at the same time, the three❑Judge Bench also expressed with consternation that Courts cannot engage in practices such as keeping the applications for bail pending till the time chargesheets are submitted, so that the statutory right which has accrued to the accused is defeated.

If the Court deliberately does not decide the bail application but adjourns the case by granting time to the prosecution, it would be in violation of the legislative mandate. It may be pertinent to note that the three-Judge Bench in Mohamed Iqbal Madar Sheikh had also been part of the Constitution Bench in Sanjay Dutt. 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 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 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 claim the right at a subsequent stage of the proceedings after the prosecution has filed a chargesheet.

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.

15.2 It is useful to refer to the decisions of this Court in Mohd. Ashraft Bhat (supra); Ateef Nasir Mulla v. State of Maharashtra, (2005) 7 SCC 29; and Mustaq Ahmed Mohammed Isak v. State of Maharashtra, (2009) 7 SCC 480. In Mohd. Ashraft Bhat, the Court rejected the application for bail as the police report already stood submitted. Reliance was placed upon Sanjay Dutt (supra). Similarly, in Ateef Nasir Mulla the Court held that since the order granting extension of time under Section 49(2)(b) of the Prevention of Terrorism Act, 2002 ('POTA'), which is in pari materia with the Proviso to Section 36A (4) of the NDPS Act, had been passed prior to the application for default bail, the accused would not be entitled to bail. In Mustaq Ahmed Mohammed Isak, the Court similarly rejected the application for bail under Section 21(2)(b) of the Maharashtra Control of

Organised Crime Act, 1999 as the chargesheet was filed on the same day, but which was the last day of the extended period granted by the Special Court and hence within the statutory time limit.

15.3 On the other hand in Sayed Mohd. Ahmad Kazmi v. State (Government of NCT of Delhi), (2012) 12 SCC 1, the accused filed an application for default bail on 17.7.2012. The Chief Metropolitan Magistrate, instead of hearing the application on the said date, re-notified the hearing for 18.7.2012. On 18.7.2012, the State filed an application seeking extension of remand under Section 43-D (2)(b) of the Unlawful Activities (Prevention) Act, 1967 ('UAPA') which is also in pari materia with the Proviso to Section 36A (4) of the NDPS Act. The Magistrate took up both matters on 20.7.2012 and allowed the application for extension of custody with retrospective effect from 2.6.2012 without considering the application under Section 167(2), CrPC. Subsequently, the chargesheet was filed on 31.7.2012. It was contended by the learned Additional Solicitor General, in reliance upon Sanjay Dutt, that the right to statutory bail stood extinguished once the application for extension of time was filed.

The three-Judge Bench rejected the aforesaid contention and held that the right of the accused to statutory bail, which was exercised at the time his bail application was filed, remained unaffected by the subsequent application for extension of time to complete investigation. Further, the Court expressly censured the dilatory tactic adopted by the Magistrate in that case in the following words:

> "25. Having carefully considered the submissions made on behalf of the respective parties, the relevant provisions of law and the decision cited, we are unable to accept the submissions advanced on behalf of the State by the learned Additional Solicitor General Mr Raval. There is no denying the fact that on 17-7-2012, when CR No. 86 of 2012 was allowed by the Additional Sessions Judge and the custody of the appellant was held to be illegal and an application under Section 167(2) CrPC was made on behalf of the appellant for grant of statutory bail which was listed for hearing. Instead of hearing the application, the Chief Metropolitan Magistrate adjourned the same till the next day when the Public Prosecutor filed an application for extension of the period of custody and investigation and on 20-7-2012 extended the time of investigation and the custody of the appellant for a further period of 90 days with retrospective effect from 2-6-2012. Not only is the retrospectivity of the order of the Chief Metropolitan Magistrate untenable, it could not also defeat the statutory right which had accrued to the appellant on the expiry of 90 days from the date when the appellant was taken into custody. Such right, as has been commented upon by this Court in Sanjay Dutt and the other cases cited by the learned Additional Solicitor General, could only be distinguished (sic extinguished) once the charge-sheet had been filed in the case and no application has been made prior thereto for grant of statutory bail. It is well-established that if an accused does not exercise his right to grant of statutory bail before the charge-sheet is filed, he loses his right to such benefit once such charge-sheet is filed and can, thereafter, only apply for regular bail.

26. The circumstances in this case, however, are different in that the appellant had exercised his right to statutory bail on the very same day on which his custody was held to be illegal and such an application was left undecided by the Chief Metropolitan Magistrate till after the application filed by the prosecution for extension of time to complete investigation was taken up and orders were passed thereupon.

27. We are unable to appreciate the procedure adopted by the Chief Metropolitan Magistrate, which has been endorsed by the High Court and we are of the view that the appellant acquired the right for grant of statutory bail on 17□7□2012, when his custody was held to be illegal by the Additional Sessions Judge since his application for statutory bail was pending at the time when the application for extension of time for continuing the investigation was filed by the prosecution. In our view, the right of the appellant to grant of statutory bail remained unaffected by the subsequent application and both the Chief Metropolitan Magistrate and the High Court erred in holding otherwise." (emphasis supplied) 15.4 Similarly, in Union of India v. Nirala Yadav, (2014) 9 SCC 457, the accused filed application for default bail on 14.3.2007. The State filed application seeking extension of time under Section 49(2)(b) of the POTA on 15.3.2007. However, no order was passed on either application. In the meanwhile, the chargesheet was filed on 26.3.2007. On 3.4.2007 the Special Judge took up both applications and retrospectively extended the time for filing of the chargesheet. It was contended by the Union Government that according to the decision in Sanjay Dutt, the indefeasible right to bail was totally destroyed as no order on bail was passed before the chargesheet was filed.

The Court noted that the prosecution had not filed any application for extension prior to the date of expiry of 90 days. It was further observed that "had an application for extension been filed, then the matter would have been totally different". The Court ultimately held that the Magistrate was obligated to deal with the application for default bail on the day it was filed. Hence the Court, in reliance upon Uday Mohanlal Acharya, upheld the order of the High Court granting default bail to the accused.

16. Mr. Lekhi pressed into service the judgment of this Court in Pragyna Singh Thakur v. State of Maharashtra, (2011) 10 SCC 445, wherein it was held, in reliance upon Sanjay Dutt (supra), that where an application for bail is filed on the ground of non□filing of the chargesheet within the prescribed period, the said right to bail would be extinguished if the prosecution subsequently files a chargesheet before consideration of the application and the release of the accused. Thereafter, the release of the accused on bail can only be on merits. Though the learned Judges in Pragyna Singh Thakur (supra) had referred to the Uday Mohanlal Acharya case, they have expressed a completely contrasting opinion as mentioned supra.

16.1 It ought to be noted that in Pragyna Singh Thakur, the learned Judges had concluded on the facts of that case that the chargesheet had been filed within 90 days from the first order of remand of the accused to custody. The aforementioned observations on the extinguishment of the right to default bail were only made as obiter, in the form of a hypothetical arguendo, and hence cannot be said as laying down a binding precedent as such. However in any case, given that the decision continues to be relied upon by the State, we must clarify that in our considered opinion, the

observations made in Pragyna Singh Thakur run counter to the principles laid down in the judgments rendered by larger Benches.

16.2 It is pertinent to note that the two-Judge Bench in Nirala Yadav (supra) has already illuminated that the principles stated by the earlier co-ordinate Bench in Pragyna Singh Thakur, particularly in paragraphs 54 and 58 of the decision, do not state the correct position of law. Having studied both opinions, we are constrained to conclude and hold that the position as stated in Nirala Yadav is correct. We find that the opinion expressed in Pragyna Singh Thakur that the right to bail can be considered only on merits once the chargesheet is filed, is based on an erroneous interpretation of the conclusions of the Constitution Bench in Sanjay Dutt. As mentioned supra, the expression "if not already availed of" used in the Constitution Bench decision has been misinterpreted by the Courts, including the two-Judge Bench in Pragyna Singh Thakur, to mean that the accused can only avail of the right to default bail if he is actually released prior to the filing of the chargesheet. However, this Court in Uday Mohanlal Acharya (supra) has correctly understood and analysed the principles stated in the case of Sanjay Dutt before coming to its conclusion as stated above.

We are of the firm opinion that the view taken in Uday Mohanlal Acharya is a binding precedent. It has been followed by a subsequent three-Judge Bench in Sayed Mohd. Ahmad Kazmi (supra). Hence, the opinion rendered by the two-Judge Bench in paragraphs 54 and 58 of Pragyna Singh Thakur, to the effect that "even if an application for bail is filed on the ground that charge-sheet was not filed within 90 days, but before consideration of the same and before being released on bail, the said right to be released on bail would be lost" or "can only be on merits", must be held per incuriam.

16.3 Quite recently, in the case of Bikramjit Singh v. State of Punjab (Criminal Appeal No. 667 of 2020 dated 12 th October, 2020), 2020 SCC OnLine SC 824, dealing with similar question which arose in an application for default bail under the UAPA, a three-Judge Bench of this Court, after considering the various judgments on the point, 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 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." This decision in Bikramjit Singh ensures that the rigorous powers conferred under special statutes for curtailing liberty of the accused are not exercised in an arbitrary manner.

At the cost of repetition, it must be emphasized that the paramount consideration of the legislature while enacting Section 167(2) and the Proviso thereto was that the investigation must be completed expeditiously, and that the accused should not be detained for an unreasonably long period as was the situation prevailing under the 1898 Code. This would be in consonance with the obligation cast

upon the State under Article 21 to follow a fair, just and reasonable procedure prior to depriving any person of his personal liberty. Conclusion

17. In the present case, admittedly the Appellant□accused had exercised his option to obtain bail by filing the application at 10:30 a.m. on the 181st day of his arrest, i.e., immediately after the court opened, on 01.02.2019. It is not in dispute that the Public Prosecutor had not filed any application seeking extension of time to investigate into the crime prior to 31.01.2019 or prior to 10:30 a.m. on 01.02.2019. The Public Prosecutor participated in the arguments on the bail application till 4:25 p.m. on the day it was filed. It was only thereafter that the additional complaint came to be lodged against the Appellant.

Therefore, applying the aforementioned principles, the Appellant□accused was deemed to have availed of his indefeasible right to bail, the moment he filed an application for being released on bail and offered to abide by the terms and conditions of the bail order, i.e. at 10:30 a.m. on 01.02.2019. He was entitled to be released on bail notwithstanding the subsequent filing of an additional complaint.

17.1 It is clear that in the case on hand, the State/the investigating agency has, in order to defeat the indefeasible right of the accused to be released on bail, filed an additional complaint before the concerned court subsequent to the conclusion of the arguments of the Appellant on the bail application. If such a practice is allowed, the right under Section 167(2) would be rendered nugatory as the investigating officers could drag their heels till the time the accused exercises his right and conveniently files an additional complaint including the name of the accused as soon as the application for bail is taken up for disposal. Such complaint may be on flimsy grounds or motivated merely to keep the accused detained in custody, though we refrain from commenting on the merits of the additional complaint in the present case. Irrespective of the seriousness of the offence and the reliability of the evidence available, filing additional complaints merely to circumvent the application for default bail is, in our view, an improper strategy.

Hence, in our considered opinion, the High Court was not justified in setting aside the judgment and order of the Trial Court releasing the accused on default bail. 17.2 We also find that the High Court has wrongly entered into merits of the matter while coming to the conclusion. The reasons assigned and the conclusions arrived at by the High Court are unacceptable.

18. Therefore, in conclusion:

18.1 Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have 'availed of' or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2), CrPC read with Section 36A (4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the 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 chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the 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 chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.

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.

19. Hence the impugned judgment of the High Court stands set aside and the Trial Court judgment stands confirmed. However, we additionally direct that apart from furnishing the sureties as directed by the Trial Court, the Appellant□accused should also surrender his passport, undertake to report to the Respondent Directorate when required for purposes of investigation, and also undertake to not leave Chennai city limits without the leave of the Trial Court. This should alleviate any concerns about the Appellant absconding from the jurisdiction of the Court.

20. The appeal is allowed accordingly.

.....J.

(UDAY UMESH LALIT) .....J. (MOHAN M. SHANTANAGOUDAR) .....J.

(VINEET SARAN) NEW DELHI, OCTOBER 26, 2020