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CRM-M-21371-2025
Decided on: 05.08.2025

...Petitioner

State of Punjab

...Respondent

Present: Mr. Raghav Soni, Advocate for the petitioner.

Ms. Pooja Nayar Sharma, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
143	25.07.2018	Ajnala, District Amritsar, Punjab	326/148/149 IPC

1. The petitioner, incarcerated in the offence captioned above, had come up before this court seeking regular bail by filing the present petition on 09th April 2025.
2. When the matter was taken up for the first time on the 9th of May 2025, the High Court Bar was abstaining, and the case was not taken up. After that, the matter was adjourned because the State had not filed the reply and subsequently adjourned to the present date, i.e., 05th August 2025. Today, the State has also filed a custody certificate dated 04th August 2025, which points out that the petitioner's custody in this FIR is 5 months and 29 days, i.e., as on today, pre-trial custody is of six months.
3. However, the petitioner's Counsel informed this Court that during the pendency of the petition, the petitioner's custody in the trial court exceeded the statutory period and consequently, vide order dated 16-07-2025, the trial court had released the petitioner on bail granting benefits under Section 167(2) CrPC, which corresponds to Section 187(3) BNSS. The petitioner's Counsel also handed over a downloaded copy of the order dated 16th July 2025, passed by Sub Divisional Judicial Magistrate, Ajnala, and submits that the present petition has rendered infructuous.
4. The proposition of law which needs a judicial answer is whether the Magistrate was competent to grant default bail, also known as compulsive bail or statutory bail, even when the regular bail petition was pending before the Sessions Court or the High Court, and similarly, the Sessions Judge, when the regular bail is pending before the High Court?



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5. To answer the above proposition, it would be relevant to extract section 187 of BNSS, 2023 which is parallel to Section 167 of CrPC, 1973 reads as follows:

S. 187. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), 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.

(3) The Magistrate may authorise the detention of the accused person, 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 sub-section 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 ten years or more;

(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 XXXV for the purposes of that Chapter.

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6. In *Mantoo Majumdar v. State of Bihar*, (1980) 2 SCC 406, decided on 27-02-1980, a three-Judge bench of the Hon'ble Supreme Court holds,

[6]. Section 167(2) which we have extracted above empowers the Magistrate to authorise the detention of an accused in such custody as he thinks fit for a term not exceeding 15 days in the whole. More importantly, there is a precious interdict protective of personal freedom which states that no Magistrate shall authorise the detention of the accused person exceeding 90 days in grave cases and 60 days in lesser cases. "On the expiry of the said period.....the accused person shall be released on bail if he is prepared to and does furnish bail...." Not 60 days but six years have passed in the present case; not 90 days but 1900 days or more have passed, and yet, the Magistrates concerned have been mechanically authorising repeated detentions unconscious of the provisions which obligated them to monitor the proceedings which warrant such detention. In short, the police have abdicated their



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function of prompt investigation. The prison staff have not bothered to know how long these internees should be continued in their custody and, most grievous of all, the judicial officers concerned have routinely signed away orders of detention for years by periodically appending their incarceratory authorisations. We know not how many others are languishing in prison like the petitioners before us. 'If the salt hath lost its savour, wherewith shall it be salted?' If the law officers charged with the obligation to protect the liberty of persons are mindless of constitutional mandates and the Code's dictates, how can freedom survive for the ordinary citizen?

7. In *Sanjay Dutt v State through CBI Bombay*, 1994 (5) SCC 410, decided on 09-9-1994, a Constitutional Bench of the Hon'ble Supreme Court holds,

[53](2)(6) 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 Code of Criminal Procedure 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 Code of Criminal Procedure. 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.

8. In *Uday Mohanlal Acharya v. State of Maharashtra*, decided on 29-03-2001; (2001) 5 SCC 453, a three-Judge bench of the Hon'ble Supreme Court holds, (Majority View),

[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 upto 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. There is no provision in the Criminal Procedure Code authorising detention of an accused in custody after the expiry of the period indicated in the 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 avails 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



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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 challan within the specified period and the interest of the society, at large, in lawfully preventing an accused for being released on bail on account of inaction on the part of the prosecuting agency. On the aforesaid premises, we would record our conclusions as follows :-

1. Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days on the whole.
2. Under the proviso to the aforesaid sub-section (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.
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.
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 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.
5. If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the 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 the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.
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



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to offer bail on being directed. In other words, on expiry of the period specified in paragraph (a) of the 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.

With the aforesaid interpretation of the expression “availed of” if charge-sheet is filed subsequent to the availing of the indefeasible right by the accused then that right would not stand frustrated or extinguished, necessarily therefore, if an accused entitled to be released on bail by application of the proviso to sub-section (2) of Section 167, makes the application before the Magistrate, but the Magistrate erroneously refuses the same and rejects the application and then accused moves the higher forum and while the matter remains pending before the higher forum for consideration a charge-sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby, and on the other hand, the accused has to be released on bail. Such an accused, who thus is entitled to be released on bail in enforcement of his indefeasible right will, however, have to be produced before the Magistrate on a charge-sheet being filed in accordance with Section 209 and the Magistrate must deal with him in the matter of remand to custody subject to the provisions of the Code relating to bail and subject to the provisions of cancellation of bail, already granted in accordance with law laid down by this Court in the case of Mohd. Iqbal v. State of Maharashtra, (1996) 1 SCC 722 [supra].

9. In Suresh Kumar Bhikamchand Jain v. State of Maharashtra and another, 2013 (3) SCC 77, decided on 13.02.2013, a three-judge bench of the Hon’ble Supreme Court holds,

[17]. ... In the event, the investigation is not completed by the investigating authorities, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. Accordingly, if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the Court has no option but to release the accused on bail. The said provision has been considered and interpreted in various cases, such as the ones referred to hereinbefore. Both the decisions in Natabar Parida's case(supra) and in Sanjay Dutt's case (supra) were instances where the charge-sheet was not filed within the period stipulated in Section 167(2) Criminal Procedure Code and an application having been made for grant of bail prior to the filing of the charge-sheet, this Court held that the accused enjoyed an indefeasible right to grant of bail, if such an application was made before the filing of the charge-sheet, but once the charge-sheet was filed, such right came to an end and the accused would be entitled to pray for regular bail on merits.

10. In Rakesh Kumar Paul v. State of Assam, 2017 (15) SCC 67, decided on 16-08-2017, a three-Judge Bench of the Hon’ble Supreme Court holds, [Per Majority Views]

[16]. Generally speaking therefore, it could be said that the legislative intent is and always has been to complete the investigation into an offence within twenty-four hours, failing which within 15 days (Cr.P.C. of 1898). The period of 15 days was later extended to 60 days (Cr.P.C. of 1973) and eventually it was extended to 90 days if the investigation was relatable to an offence punishable with death, imprisonment for life



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or imprisonment for a term of not less than ten years. In respect of all other offences, the period of 60 days remained unchanged.

[82]. The right to get 'default bail' is a very important right. Ours is a country where millions of our countrymen are totally illiterate and not aware of their rights. A Constitution Bench of this Court in the case of Sanjay Dutt (supra) has held that the accused must apply for grant of 'default bail'. As far as Section 167 of the Code is concerned, Explanation I to Section 167 provides that notwithstanding the expiry of the period specified (i.e. 60 days or 90 days, as the case may be), the accused can be detained in custody so long as he does not furnish bail. Explanation I to Section 167 of the Code reads as follows:

"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."

This would, in my opinion, mean that even though the period had expired, the accused would be deemed to be in legal custody till he does not furnish bail. The requirement is of furnishing of bail. The accused does not have to make out any grounds for grant of bail. He does not have to file a detailed application. All he has to aver in the application is that since 60/90 days have expired and charge-sheet has not been filed, he is entitled to bail and is willing to furnish bail. This indefeasible right cannot be defeated by filing the charge-sheet after the accused has offered to furnish bail.

[83]. This Court in a large number of judgments has held that the right to legal aid is also a fundamental right. Legal aid has to be competent legal aid and, therefore, it is the duty of the counsel representing the accused whether they are paid counsel or legal aid counsel to inform the accused that on the expiry of the statutory period of 60/90 days, they are entitled to 'default bail'. In my view, the Magistrate should also not encourage wrongful detention and must inform the accused of his right. In case the accused still does not want to exercise his right then he shall remain in custody but if he chooses to exercise his right and is willing to furnish bail he must be enlarged on bail.

11. In *M Ravindran v Intelligence Officer, Directorate of Revenue Intelligence*, 2020 SCC OnLine SC 867, decided on 26 October 2020, a three-Judge bench of the Hon'ble Supreme Court holds,

[25]. Therefore, in conclusion:

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

25.2 The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet



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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.

25.3 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.

25.4 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.

12. In *Bikramjit Singh v. The State of Punjab*, (2020) 10 SCC 616, a three-Judge bench of the Hon'ble Supreme Court holds,

[36]. ...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.

[37]. ...The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled.

13. The statutory right of default bail originates from the fundamental rights guaranteed to every individual within the territories of India. Even if there are any specific rules and instructions which require that whenever a bail petition is filed before any Court, the pendency of the bail petition before the High Court must be brought to the notice of the concerned Court, still no such Rules, Orders, or Instructions can even slightly dilute or negate the statutory powers of Magistrates and Sessions Court to grant default bail because these are deeply imbedded in the fundamental rights guaranteed by the Constitution of India.

14. The powers conferred under Section 167(2) CrPC or Section 187(2) of BNSS do not eclipse unless the police report is filed within the timeframe as specified by the Legislature



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and as explained by the judicial pronouncements.

15. The right of default bail granted under Section 187(2) BNSS, 2023, which corresponds to Section 167(2) of CrPC, 1973, do not permit custody in the absence of a police report beyond a statutory period of 60 days, 90 days, or 180 days, or further extensions under some statutes, as the case may be. The legislative intention is quite clear that in case somebody has been arrested on one-sided allegations, then the investigation must be completed within the time frame provided by the statute(s) to the investigating agencies. If the Investigators are unable to complete their investigations within the specified time frame, then such an accused, if arrested and in custody, cannot be kept in custody beyond the timeframe specified by the Statute(s). Even the issuance of office orders, notifications, or framing of rules cannot divest the Magistrates of their powers under Section 187 of BNSS, 2023, or Section 167 of CrPC, 1973, to grant the default bail.

16. Resultantly, a pendency of bail petition either in the High Court or the Sessions Court would not disentitle the Magistrate or even the Sessions Court, as the case may be, from their statutory powers under Section 187(2) BNSS, 2023 or Section 167(2) CrPC, 1973. On the contrary, if the Magistrate or the Sessions Court does not grant default bail, in such circumstances, then there might be a possibility of such Court(s) violating the fundamental right or contravening the judgments of the Hon’ble Supreme Court.

17. Given the above and in the light of the binding judicial precedents, the answer to the proposition is that even when the regular bail petition was pending before the High Court, the Sessions Court is competent to grant default bail, also known as compulsive bail or statutory bail, and similarly the Magistrate is competent to grant default bail even when the regular bail petition was pending before the Sessions Court or the High Court.

18. Consequently, the present petition has rendered infructuous because the concerned trial Court rightly granted default bail to the accused on completion of the statutory period, and the pendency of a petition for regular bail before this Court shall not undermine the powers of the Court to grant statutory bail under Section 187(2) of BNSS, 2023 or Section 167(2) of CrPC, 1973.

19. Petition disposed of, and all pending applications, if any, are closed.

(ANOOP CHITKARA)
JUDGE

05.08.2025
anju rani

Whether speaking/reasoned	YES
Whether reportable	YES