Hyder Ali vs State Of Karnataka on 13 December, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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Reserved on : 12.12.2024

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Pronounced on : 13.12.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.13459 OF 2024

C/W

WRIT PETITION No.33526 OF 2024 (GM - RES)

IN CRIMINAL PETITION No.13459 OF 2024

BETWEEN:

STATE OF KARNATAKA
BY KAVOOR POLICE STATION,
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU - 560 001.

... PETITIONER

(BY SRI B.N.JAGADEESHA, ADDL.SPP)

AND:

1. KALANDAR SHAFI
S/O LATE ISMMAIL,
AGED ABOUT 39 YEARS,
RESIDING AT NO. 11-29/1, NEAR GOODU,
B'MUDA VILLAGE,
BANTWAL TALUK,

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D.K.DISTRICT - 574 211.

2. MAHAMMAD MUSTHAFA @
PALKHAN MUSTHFA,
S/O LATE IDDINABBA,
AGED ABOUT 50 YEARS,
RESIDING AT NO. 7-44 B, 7TH BLOCK,
KRISHNAPURA, KATIPALLA,
MANGALURU - 575 030.

3. SHOAIB,
S/O LATE UMMAR HUSSAIN,
AGED ABOUT 45 YEARS,
RESIDING AT NO. 7-216, SITE NO.298,
AYISHA IMAN, 7TH BLOCK,
KRISHNAPURA, KATIPALLA
MANGALURU - 575 030.

... RESPONDENTS

(BY SRI B.LETHIF, ADVOCATE FOR R-1 AND R-3;
SRI HASHMATH PASHA, SR.ADVOCATE FOR
SRI KARIAPPA N.A., ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 PRAYING TO SET ASIDE THE ORDER DATED 04.12.2024 PASSED IN CR.NO.150/2024 ON THE FILE OF THE JMFC (III COURT) MANGALURU AND CONSEQUENTLY ALLOW THE REQUISITION FILED BY THE PETITIONER AS PAYED FOR AND THEREBY GRANT POLICE CUSTODY OF THE ACCUSED NOS.3 TO 5 SO AS TO ENABLE THE POLICE TO CONDUCT FURTHER INVESTIGATION AND GRANT SUCH OTHER AND FURTHER RELIEF'S AS THIS HON'BLE COURT DEEMS FIT AND PROPER UNDER THE CIRCUMSTANCES OF THIS CASE.

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IN WRIT PETITION No.33526 OF 2024

BETWEEN:

HYDER ALI
AGED ABOUT 52 YEARS
S/O B.M.AHAMMED BAVA
RESIDING AT FLAT NO.1904
ABHIMAN HILLS
LIGHTHOUSE HILL ROAD
MANGALURU - 575 003.

... PETITIONER

(BY SRI P.P.HEGDE, SR.ADVOCATE FOR
SRI VENKATESH SOMAREDDI, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY KAVOOR POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA AT
BENGALRUU - 560 001.

2 . MR.KALANDAR SHAFI
AGED ABOUT 39 YEARS
S/O LATE ISMAIL
11-29/1 GOODINA BALI
MOODU GRAMA
BANTWAL - 575 003.

3 . MR.MOHAMMED MUSTAFA
AGED ABOUT 50 YEARS
S/O LATE IDINABBA
7-44B, 7TH BLOCK
KRISHNAPURA, KATIPALYA
MANGALURU - 575 003.

4 . MR.SHOIB
AGED ABOUT 45 YEARS
S/O LATE UMMER HUSSAIN
RESIDING AT 298, AYISHA IMAN
7TH BLOCK, KATIPALYA
MANGALURU - 575 003.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1;
SRI B.LETHIF, ADVOCATE FOR R-2 AND R-4;
SRI HASHMATH PASHA, SR.ADVOCATE FOR
SRI KARIAPPA, N.A., ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 OF BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 PRAYING TO QUASH THE ORDER DTD. 04.12.2024 PASSED IN CRIME NO. 150/2024 OF KAVOOR POLICE STATION BY JMFC III COURT, MANGALURU VIDE ANNEXURE-D REJECTING THE APPLICATION OF R-1 SEEKING CUSTODY OF R-2 TO 4 VIDE ANNX-C AND ETC.,

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.12.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

Both these petitions call in question a solitary order dated 04-12-2024 passed by the Judicial Magistrate First Class (III Court) Mangalore, by which the Court rejects the requisition of the

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prosecution for grant of Police custody of the accused. Writ Petition No.33526 of 2024 is preferred by the complainant and Criminal Petition No.13459 of 2024 is preferred by the State.

2. Heard Sri P.P. Hegde, learned senior counsel appearing for the petitioner in the writ petition No.33526 of 2024; Sri B N Jagadeesha, learned Additional State Public Prosecutor appearing for petitioner in Criminal Petition No.13459 of 2024 and for respondent No.1 in writ petition No.33526 of 2024; Sri B.Lethif, learned counsel appearing for respondents 2 and 4 in writ petition and respondents 1 and 3 in Criminal Petition and Sri Hasmath Pasha, learned senior counsel appearing for respondent No.3 in Writ Petition and respondent No.2 in Criminal Petition.

3. Facts, in brief, germane are as follows:-

On 06-10-2024 brother of the original complainant one

B.M.Mumtaz Ali dies leading to registration of crime in Crime No.150 of 2024 for offences punishable under Sections 190, 308(2), 308(5), 351(2) and 352 of BNS. Pursuant to registration of crime

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accused Nos.1 and 5 are arrested and produced before the learned Magistrate, after which, it appears, they were remanded to judicial custody. Subsequently, during investigation on 10-10-2024 accused Nos. 2, 3 and 4 were arrested and produced before the learned Magistrate and were also remanded to judicial custody. On 12-10-2024 the Investigating Officer causes arrest of accused No.6 and produced him before the learned Magistrate who has remanded him to judicial custody. The learned Magistrate then on a requisition made by the Police grants police custody of accused Nos. 1 to 3. In the course of investigation, the prosecution is said to have come across certain voice samples of accused persons which were recorded and which were within the knowledge of the Court. The prosecution then files an application seeking police custody. This comes to be objected to by the accused. On the application and the objection, the concerned Court passes the impugned order by which police custody that is sought by the prosecution comes to be rejected, on the ground that the period of investigation in the case at hand was 60 days and the police custody available in terms of Section 187 of BNSS is within 40 days. Those 40 days having lapsed, there was no warrant to grant police custody is the reason

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rendered by the concerned Court to reject the

application/requisition. Challenging these orders, the petitioners-State and the complainant - are before this Court in these petitions.

4. The learned senior counsel Sri P.P.Hegde, appearing for the complainant and the Additional State Public Prosecutor for the State would vehemently contend that the punishment imposable in the case at hand for an offence of abetment to suicide is ten years. Section 187 of BNSS, which is akin to Section 167 of the earlier regime Cr.P.C., would clearly permit investigation in an offence punishable with ten years or more to 90 days. The period for filing the charge sheet is 90 days and under Section 187 of the BNS if the period of investigation is 90 days, the police custody available in total for 15 days would be between day one to day 60. If it is interpreted that the offences are punishable with less than ten years, the police custody will be for 15 days between day one to day forty. Both the learned counsel would contend that Section 108 of BNS which deals with abetment to suicide is punishable up to ten years. Therefore, it should be construed that it is ten years or more

and the police custody must be extended to a period from day one to day 60 and not restricted to day one to day forty.

5. The learned Additional State Public Prosecutor would however add that many voice samples are procured during investigation which had to be put to the accused for which police custody is imperative. The prosecution has now filed an application

to add the offence of abetment for ransom as obtaining under Section 140(2) of BNS which is akin to Section 364 of the earlier regime of IPC which is punishable with death or imprisonment for life. The application is yet to be considered at the hands of the learned Magistrate.

6. The learned senior counsel Sri P. P. Hegde appearing for the complainant would submit that investigation is yet to complete despite passing of 60 days from registration of crime. However, applications are moved before the concerned Court for grant of statutory bail and these people who have rendered themselves in heinous and horrendous offences will walk out of the prison on erroneous interpretation of Section 187 by the concerned Court.

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7. Per-contra, the learned senior counsel Sri Hasmath Pasha appearing for the respondents would vehemently refute the submissions in contending that there is no change in Section 187 of BNSS in comparison to Section 167 of the Cr.P.C. What should be looked into is not Section 167 or 187, it is the offence that is alleged. The offence, in the case at hand, is the one punishable under Section 108 of the BNS which is Section 306 of the IPC. It is punishable up to ten years. If it is punishable up to ten years, the period of investigation is 60 days. If the period of investigation is 60 days, the police custody runs from day one to day forty totally for 15 days. The period is admittedly over. Therefore, the police custody cannot be sought after forty days in terms of Section 187

of BNSS. He would contend that the order of the learned Magistrate does not require any interference. Learned counsel Sri B. Lethif representing other accused would also toe the lines of the learned senior counsel and seek dismissal of these petitions.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

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9. In furtherance whereof, what requires consideration and interpretation is the purport of statutory provisions. At the outset, I deem it appropriate to notice the order that has driven the petitioners to this Court in these petitions. The order reads as follows:

".... ....

18. In the present case accused persons were given to police custody as follows:

Accused no.1 Smt. Rehmath and accused no.2 Shohaib were given to police custody	From 4.15 PM of 09.10.2024 till 4.15 PM of 17-10-2024 (8 days)
Accused by name Abdul Sattar, Kalandar Shafi and Mohammed Musthafa were given to police custody	From 3.30 PM of 10.10.2024 till 3.30 PM of 17-10-2024 (7 days)
Accused persons by name Smt. Rehmath, Shohaib, Abdul Sattar, Kalandar Shafi and Mohammed Musthafa were given to police custody	Were produced in Home office at 17-10-2024 at 2.45 PM
Accused persons by name Smt. Rehmath, Abdul Sattar	From 3.30 PM of 22.10.2024 till 3.30 PM of 25-10-2024 (3

and Kalandar Shafi were given to police custody	days)
Accused persons by name Smt. Rehmath, Abdul Sattar and Kalandar Shafi were produced	in Open Court on 25-10-2024 at 1.45 PM.

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19. In Rakesh Kumar Paul, the Supreme Court by 2:1 majority (Justices Madan B Lokur and Deepak Gupta in majority, Justice Prafulla C Panth in dissent).

20. In Sec. 187(3)

> (i) - 90 days where investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of 10 years or more.

21. But in the present case, maximum punishment for the alleged offences are imprisonment either description for a term which may extend to 10 years. This court relied on judgment of Hon'ble Supreme Court In Rakesh Kumar Paul vs. State of Assam and Rajiv Choudary Vs. State (NCT) of Delhi. As per the observation of the Hon'ble Apex Court this case is comes under the category of 187 (3)(ii) of B.N.S.S. Hence, as per the provision of B.N.S.S., I.O. must seek police custody within 40 days from the date of arrest. But in this case, I.O. seeks police custody after the lapse of statutory period. Hence requisition filed by the I.O. is hereby rejected."

The Court records the offences alleged. The offences alleged are the ones punishable under Section 108, 308(2), 308(5), 351(2) and 352 of BNS as on the date of consideration of application for Police custody before the learned Magistrate. The said provisions read as follows:-

> "108. Abetment of suicide.--If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
>
> ... ...

> 308. Extortion.--(1) ...
> (2) Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.
> ... ...
> (5) Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
> ... ...
> 351. Criminal intimidation.--(1) ...
> (2) Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
> ... ...
>
> 352. Intentional insult with intent to provoke breach of peace.--Whoever intentionally insults in any manner, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Section 108 of BNS punishes for abetment to suicide which is Section 306 of the earlier regime, IPC. The maximum term of punishment may extend to ten years. Section 308 deals with extortion. Section 308(2) punishes a person who commits extortion by a term up to 7 years and Section 308(5) if it is extortion putting the person in fear of death, the term may extend to ten years. The

other two provisions under Sections 351 and 352 have maximum punishment of 2 years. Therefore, the offences alleged in the case at hand, at this juncture, have their punishments to run up to a

maximum of ten years and the phrases used "may extend to ten years". Section 187 of BNSS which deals with conduct of investigation reads as follows:

> "187. Procedure when investigation cannot be completed in twenty-four hours.--(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.
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>
> (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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> (Emphasis supplied)

Section 187 of BNSS deals with procedure when investigation cannot be completed within 24 hours. Section 187(3) which is Section 167(2) of the earlier regime forms the fulcrum of the entire lis. The language deployed and the purport has slightly changed from the earlier regime. Now the period of investigation has twin conditions. The investigation, as was earlier obtaining, has its completion period of 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or

imprisonment for a period of ten years or more, for the remaining offences, it is 60 days. I now deem it appropriate to juxtapose with Section 167 of the Cr.P.C., Section 167 of the Cr.P.C., reads as follows:

> "167. Procedure when investigation cannot be completed in twenty-four hours.--(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 57, 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 Judicial Magistrate a copy of the entries in the diary hereinafter prescribed 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, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that--

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,--

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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:

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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.

(2-A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate, or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it to the Chief Judicial Magistrate.

(5) If in any case triable by Magistrate as a summons-case, the investigation is not concluded within a period of six

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months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify."

(Emphasis supplied)

Section 167 (2) had also the same phraseology but it read as 90 days where investigation relates to an offence with death, imprisonment for life. These words are identical for imprisonment for a term of not less than ten years. The marked difference between Section 167 (2) of Cr.P.C., and Section 187 of BNSS is only in these words. In Section 167(2), 90 days of investigation is permitted, where imprisonment is for a term not less than ten years. In BNSS, the same 90 days is permitted where imprisonment is for a term of ten years or more. In the considered view of this Court, it is only a play of words. Section 167(2) using the words 'not less than ten years'

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would be, that the imposable punishment would be at ten years. Section 187(3) using the words 'ten years or more', is to the

same effect, it only depicts a threshold sentence of ten years.

10. Therefore, if the prosecution wanting 90 days to file their final report, it will only be for an offence which has minimum sentence of ten years. If the offence now alleged against these accused are noticed, it does not have a threshold minimum sentence of ten years, but it is extendable up to ten years. Therefore, the term can be between one year to ten years. If it is one year to ten years, Section 187(3) of BNSS cannot be pressed into service for the purpose of police custody or any other reason for that matter, as the investigation for offences punishable upto ten years must get completed in 60 days. I hasten to add that it is only in few cases where it relates to life, death or ten years or more, the investigation can be for 90 days. In all other offences under the IPC or BNS, investigation must complete within 60 days. In the considered view of the Court, there can be no other interpretation. The purport of the word 'up to five years or five

years and more or extendable up to five years, or up to ten years', have borne judicial interpretation from time to time.

11. The Apex Court in the case of RAJEEV CHAUDHARY v. STATE (NCT) OF DELHI1 interpreting Section 167(2) or the words found therein "imprisonment for a term of not less than ten years" has held as follows:

".... ....

6. From the relevant part of the aforesaid sections, it is apparent that pending investigation relating to an offence punishable with imprisonment for a term "not less than 10 years", the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days. For rest of the offences, the period prescribed is 60 days. Hence in cases where offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days. In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider clause (i) of proviso (a) to Section 167(2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be

1 (2001) 5 SCC 34

imprisonment for less than 10 years. Under Section 386 IPC, imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years."

(Emphasis supplied)

Later, the Apex Court in the case of RAKESH KUMAR PAUL v. STATE OF ASSAM2 carrying forward the interpretation afore-quoted, has held as follows:

".... ....

71. A bare reading of Section 167 of the Code clearly indicates that if the offence is punishable with death or life imprisonment or with a minimum

sentence of 10 years, then Section 167(2)(a)(i) will apply and the accused can apply for "default bail" only if the investigating agency does not file charge-sheet within 90 days. However, in all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of "default bail" after 60 days in case charge-sheet is not filed.

72. Even if I were to assume that two views are possible and third category envisaged in Section 167(2)(a)(ii) is ambiguous, as suggested by learned Brother Pant, J., then also I have no doubt in my mind that a statute which curtails the liberty of a person must be read strictly. When any human right; a constitutional fundamental right of a person is curtailed, then the statute which curtails such right must be read strictly. Section 167 of the Code lays

2 (2017) 15 SCC 67

down the procedure established by law by which a person can be deprived of his personal liberty guaranteed to him under Article 21 of the Constitution of India. If two meanings could be attributed to such a provision then the courts must lean towards liberty and accept that interpretation of the statute which upholds the liberty of the citizen and which keeps the eternal flame of liberty alive. If words are ambiguous then also the court should be reluctant to accept that interpretation which curtails the right of a human being of being free."

(Emphasis supplied)

The Apex Court holds that even an assumption of two views emerging possible it should be in favour of the liberty under Article 21 of the Constitution of India. Later, the Apex Court in the case of M. RAVINDRAN v. INTELLIGENCE OFFICER, DIRECTORATE OF REVENUE INTELLIGENCE3 has held as follows:

".... ....

II. Section 167(2) and the Fundamental Right to Life and

Personal Liberty

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

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(2021) 2 SCC 485
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"13. ... Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution."

17.1. Article 21 of the Constitution of India provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law". It has been settled by a Constitution Bench of this Court in Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2) CrPC and the safeguard of "default bail" contained in the proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law.

17.2. Under Section 167 of the Code of Criminal Procedure, 1898 ("the 1898 Code") which was in force prior to the enactment of the CrPC, the maximum period for which an accused could be remanded to custody, either police or judicial, was 15 days. However, since it was often

unworkable to conclude complicated investigations within 15 days, a practice arose wherein investigating officers would file "preliminary charge-sheets" after the expiry of the remand period. The State would then request the Magistrate to postpone commencement of the trial and authorise further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final charge-sheet was filed. The Law Commission of India in Report No. 14 on Reforms of the Judicial Administration (Vol. II, 1948, pp. 758-760) pointed out that in many cases the accused were languishing for several months in custody

without any final report being filed before the courts. It was also pointed out that there was conflict in judicial opinion as to whether the Magistrate was bound to release the accused if the police report was not filed within 15 days.

17.3. Hence the Law Commission in Report No. 14 recommended the need for an appropriate provision specifically providing for continued remand after the expiry of 15 days, in a manner that "while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual". Further, that the legislature should prescribe a maximum time period beyond which no accused could be detained without filing of the police report before the Magistrate. It was pointed out that in England, even a person accused of grave offences such as treason could not be indefinitely detained in prison till commencement of the trial.

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

17.5. 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:
>
> (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."

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

17.7. 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 [Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401] , 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 [Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401] 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 : (SCC pp. 95-96 & 99, paras 29, 32 & 41)

> "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. ...
***

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.

***

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.

17.8. We may also refer with benefit to the recent judgment of this Court in S. Kasi v. State [S. Kasi v. State, (2021) 12 SCC 1 : 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 emphasised 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 charge-sheet.

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

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

17.11. 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.

... ...

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

20. There also appears to be some controversy on account of the opinion expressed in Hitendra Vishnu Thakur [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] that the Public Prosecutor may resist grant of default bail by filing a report seeking extension of time for investigation. The Court held that : (SCC p. 635, para 30) "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 reportfor 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 in original and supplied) This was affirmed by the Constitution Bench in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] , 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 [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] 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.

20.1. The observations made in Hitendra Vishnu Thakur [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] and Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] 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.

20.2. 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.

20.3. 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."

(Emphasis supplied) The Apex Court, in the afore-quoted judgment, dealt with interplay of Section 167(2), the fundamental right to life and personal liberty.

The Apex Court holds that resolution of the dilemma of interpretation of Section 167(2) should always be leaning towards the purport of Article 21 of the Constitution of India. The unmistakable inference of afore-quoted elucidation by the Apex Court is that when the punishment is up to ten years, the investigation is 60 days and in those cases, the accused were held entitled to statutory bail, if the investigation is not completed within 60 days. In Section 187 of BNSS the phraseology is offence punishable for ten years or more. As observed hereinabove, ten years or more would unequivocally mean that the threshold punishment is ten years, and not a punishment up to ten years.

12. Three decades ago, a learned single Judge of this Court in the case of DHARMASINGH v. STATE OF KARNATAKA4, while interpreting the provisions of Narcotic Drugs and Psychotropic Substances Act has held as follows:

".... ....

5. The learned Government Pleader relied on 1991 Criminal Law Journal, 654 [Narcotics Control Bureau v. Kishan Lal.] wherein the Supreme Court has laid down as follows:--

> ILR 1992 KAR 3137 "Section 37 as amended starts with a non-
>
> obstante clause stating that notwithstanding anything contained in the Code of Criminal Procedure, 1973 no person accused of an offence prescribed therein shall be released on bail unless the conditions contained therein were satisfied. The N.D.P.S. Act is a special enactment and it was enacted with a view to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. That being the underlying object and particularly when the provisions of Section 37 of NDPS Act are in negative terms limiting the scope of the applicability of the provisions of Cr. P.C. regarding bail, it cannot be said that the High Court's powers to grant bail under Section 439, Cr. P.C. are not subject to the limitation mentioned under Section 37 of the NDPS Act. The non-obstante clause

with which the section starts should be given its due meaning and clearly it is intended to restrict the powers to grant bail. In case of inconsistency between Section 439, Cr. P.C. and Section 37 of the NDPS Act, Section 37 prevails. The provisions of Section 4, Cr. P.C. also make it clear that when there is a special enactment in force relating to the manner of investigation, enquiry or otherwise dealing with such offences, the other powers under Cr. P.C. should be subject to such special enactment. In interpreting the scope of such a statute the dominant purpose underlying the statute has to be borne in mind. Consequently the power to grant bail under any of the provisions of Cr. P.C. should necessarily be subject to the conditions mentioned in Section 37 of the NDPS Act."

In view of the interpretation of Section 37 by the Supreme Court in the said Ruling, the provisions of Cr. P.C. regarding bail are subject to the conditions mentioned in Section 37 of the Act. The learned Counsel for the petitioners have argued that Section 37 will be applicable only to a person who is accused of an offence which is punishable for a term of minimum 5 years or more. According to them if the offence is punishable for a term less than 5 years, Section 37 of the Act will not be attracted. The relevant provision of Section 37 of the Act lays down that no person accused of an offence punishable for the term of imprisonment for a period 5 years or more shall be released on bail unless the conditions laid down in sub-section (b)(1)(2) are satisfied. Now it will have to seen whether the expression "an offence punishable for a term of imprisonment of 5 years or more under this Act"

means that it refers to an offence for which the minimum punishment is 5 years or more. In A.I.R. 1988 SC 1875 [Dr. Ajay Pradhan v. State of Madhya Pradesh.] , the Supreme Court while dealing as to how the words in statutes are to be interpreted has laid down guidelines in the following words:--

"A rule must be interpreted by the written text. If the precise words used are plain and unambiguous, the Court is bound to construe them in their ordinary sense and give them full effect. The plea of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Where the language is explicit its consequences are for Parliament, and not for the Courts, to consider."

In A.I.R. 1954 SC 496 [Tolaram v. State of Bombay.] , the Supreme Court has given guidance as to how the penal provisions in an Act are to be interpreted in the following words:--

"If two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature."

Interpreting the expression "punishable for a term of imprisonment of 5 years or more" in the light of the Supreme Court Ruling quoted above, I am of the opinion that the expression means that the offence should be punishable with minimum of 5 years or more because the words "or more" are added only to emphasise that the offences punishable with minimum 5 years or more are to be offence for which the provision of Section 37 of the Act is made applicable. The said expression means that the offence should be punishable with minimum of 5 years or more. The words "or more" are to be read with reference to "5 years" in their grammatical meaning. "5 years or more" mean that the basis is 5 years and "or more" is the period that has to be considered with reference to the basis of "5 years". If the intention of the Legislature was to make Section 37 of the Act applicable to the offences which are punishable even upto 5 years or less, then the Legislature would not have used the expression "5 years or more". It could have simply said for any offences. It could not have qualified the words offence in Section 37 with the expression "punishable for a term of imprisonment for 5 years or more." Therefore the expression means that the offence must be punishable with the punishment which shall be not less than 5 years, but it can be more. The Ruling of the Supreme Court reported in 1991 Criminal Law Journal 654 [Narcotics Control Bureau v. Kishan Lal.] can be distinguished on the ground that the Supreme Court has not considered this aspect of Section 37 in that Ruling.

6. The offence alleged against the petitioner is punishable under Section 20 of the Act with a term which may extend to 5 years and shall also be liable to fine, which may extend to Rs. 50,000/-. The offence alleged against the petitioner is punishable in maximum upto 5 years and not for a term of imprisonment for 5 years or more. The maximum punishment provided is 5 years and Section 37 of the Act applies to the offences punishable with imprisonment which cannot be less than 5 years but it can be more. Therefore, the provisions of Section 37 of the Act will not be attracted to the offence under Section 20 of the Act as the maximum punishment provided for the offence is 5 years. If the punishment for the offence under Section 20 were to be not less than 5 years but 5 years or more, then Section 37 would have been attracted."

(Emphasis supplied) A learned single Judge holds that five years and more would be, that the minimum sentence should be five years. Under Section 187(3) of BNSS the phrase used is ten years or more. It is axiomatic that the threshold punishment is ten years.

13. The petitioners have placed reliance upon certain judgments of this Court and that of Apex Court. In the case of KNIT PRO INTERNATIONAL v. STATE OF NCT OF DELHI reported in (2022) 10 SCC 221 the Apex Court holds that when the punishment can go up to three years, the maximum punishment imposable becomes three years. Therefore, those offences are cognizable. The same was the interpretation of this Court in the case of ANI TECHNOLOGIES PRIVATE LIMITED v. STATE OF KARNATAKA - W.P.No.32942 of 2017 decided on 20-12-2021.

The language deployed of the statute i.e., BNSS projects no ambiguity. Therefore, the order rendered in terms of Section 187 does not also brood any ambiguity. There is no error, much less an error apparent on the face of the record. Therefore, it becomes a clear case where if the offence is punishable where term can be extended up to ten years, it could vary from one to ten. The police custody in such cases would be available for 15 days within the first 40 days of investigation. 15 days

could vary from day one to day forty, but the total would be 15 days. If the offence is punishable with ten years or more with the minimum sentence being ten years, the police custody would range from day one to day sixty, 15 days in total.

14. If the offences now alleged are taken note of against these accused, the maximum punishment is that can be extended up to ten years. It is not ten years or more. Therefore, the police custody should be within forty days of investigation and final report is filed within 60 days of investigation. It is brought to the notice of the Court that the prosecution filed the application invoking Section 140 of BNS. If that has been invoked, it is for the concerned Court to pass orders by regulating its procedure. The interpretation that fell to the hands of the Court is interpreted as aforesaid.

SUMMARY OF FINDINGS:

> (i) A slight tweak in the new regime qua 187(3) of BNSS in juxtaposition to Section 167(2) of the earlier regime -

the Cr.P.C. has not changed the purpose of the provision.

(ii) The phraseology of the words 'ten years or more' found in sub-clause (i) of Section 187(3) of the BNSS would mean, the minimum threshold punishment imposable on an offence under the BNS should be ten years.

(iii) The offence in the case at hand, does not bear a minimum threshold sentence of ten years, but is extendable or to an extent of ten years, which would mean, discretion available to the concerned Court to impose punishment up to ten years. Therefore, the minimum threshold is not ten years.

(iv) Completion of investigation in a punishment which is up to ten years is undoubtedly 60 days. Rest of the other offences, be it death, life imprisonment of ten years and more, would be 90 days.

(v) If the investigation is to complete within 60 days, the period of police custody would run from day one day forty of registration of the crime. If it is 90 days, it would run from day one to day 60, maximum period in both the cases is 15 days of police custody.

(vi) In the case at hand, the offence is punishable up to ten years, Therefore, the police custody is only from day one to day forty.

15. For the aforesaid reasons, finding no warrant to interfere with the order passed by the concerned Court, the petitions deserve to be rejected and are accordingly, rejected.

Pending application if any, also stand disposed.

Sd/-

(M. NAGAPRASANNA) JUDGE Bkp CT:MJ