

ENFORCEMENT DIRECTORATE, GOVERNMENT OF INDIA A

v.

KAPIL WADHAWAN & ANR. ETC.

(Criminal Appeal Nos. 701-702 of 2020)

FEBRUARY 23, 2021 B

[SANJAY KISHAN KAUL AND HRISHIKESH ROY, JJ.]

Code of Criminal Procedure, 1973 – s.167(2)(a)(ii) – Default bail – Issue as to whether while computing the period of 90 days or 60 days as contemplated in s.167(2)(a)(ii) CrPC, the day of remand is to be included or excluded, for considering a claim for default bail – Because of the conflicting view on the proposition of law for grant of default bail, a judicial conundrum has arisen which is required to be resolved for guidance of the Court – Issue referred to larger Bench – Bail. C

State of M.P. v. Rustom & Ors. 1995 (Supp) 3 SCC 221; *Ravi Prakash Singh v. State of Bihar* (2015) 8 SCC 340 : [2015] 2 SCR 241; *M. Ravindran v. Intelligence Officer, Director of Revenue Intelligence* (2020) SCC OnLine SC 867; *Chaganti Satyanarayan v. State of Andhra Pradesh* (1986) 3 SCC 141 : [1986] 2 SCR 1128; *CBI v. Anupam J Kulkarni* (1992) 3 SCC 141: [1992] 3 SCR 158; *State v. Mohd. Ashraff Bhat* (1996) 1 SCC 432 : [1995] 6 Suppl. SCR 300 *State of Maharashtra v. Bharati Chandmal Varma* (2002) 2 SCC 121 : [2001] 5 Suppl. SCR 422; *Pragyna Singh Thakur v. State of Maharashtra* (2011) 10 SCC 445 : [2011] 14 SCR 617 – referred to. D E F

Case Law Reference

1995 (Supp) 3 SCC 221	referred to	Para 5
[2015] 2 SCR 241	referred to	Para 5
[1986] 2 SCR 1128	referred to	Para 5
[1992] 3 SCR 158	referred to	Para 6
[1995] 6 Suppl. SCR 300	referred to	Para 6

- A [2001] 5 Suppl. SCR 422 referred to Para 6
 [2011] 14 SCR 617 referred to Para 6

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
 Nos.701-702 of 2020.

- B From the Judgment and Order dated 20.08.2020 of High Court of
 Judicature at Bombay in LDVC Bail Application No. 400 of 2020.

Surya Prakash V. Raju, ASG, Zoheb Hussain, Ms. Sairica Raju,
 A. Venkatesh, Guntur Pramod Kumar, Ms. Zeal Shah, Vivek Gurnani,
 Agni Sen, Rajan K. Chourasia, B. V. Balaram Das, B. Krishna Prasad,
 C Advs. for the Appellant.

Dr. Abhishek Manu Singhvi, Amit Desai, Mukul Rohatgi, Sr. Advs.,
 Mahesh Agarwal, Ankur Saigal, RohanDakshini, Ms. Aakanksha Saxena,
 Shubham Kulshreshtha, Ms. Tanvi Manchanda, E. C. Agrawala, Sarad
 Kumar Singhania, Amit K. Nain, Advs. for the Respondents.

- D The following order of the Court was passed:

ORDER

1. These Appeals are directed against the order dated 20.08.2020
 of the Bombay High Court, granting default bail to the respondents under
 E Section 167 (2)(a)(ii) of Code of Criminal Procedure, 1973 (for short
 “CrPC”). The respondents were arrested on 14.05.2020 for alleged
 commission of offence under Section 3 of the Prevention of Money
 Laundering Act, 2002 and were remanded on the same date. On
 11.07.2020 through e-mail, the Enforcement Directorate filed a Complaint
 and subsequently on 13.7.2020, i.e., a Monday, a physical copy thereof
 F was tendered before the Court. The applications for enlargement of bail
 were moved on 13.07.2020 at 8.53 am with physical filing token being
 issued by 11 am.

2. It was asserted by the respondents that the period of 60 days
 from the date of remand i.e., 14.5.2020, expired on 12.7.2020 (Sunday)
 G and on the next day, the bail petition was presented before the Court.
 The learned Special Judge however denied default bail to the respondents
 taking the view that the 60 days will have to be computed from 15.7.2020,
 by excluding the date of first remand. However, the High Court, under
 the impugned judgment felt that, excluding the first date of remand while
 H computing the period of 60 days was erroneous and held that the filing

of the Charge Sheet by the ED on 13.7.2020, being on the 61st day, A
would entitle the respondents to default bail. This order of the High
Court was stayed on 3.9.2020.

3. The core issue that arises for consideration is whether while
computing the period of 90 days or 60 days as contemplated in Section
167 (2)(a)(ii) of the CrPC, the day of remand is to be included or excluded, B
for considering a claim for default bail.

4. The moot question has been considered by this Court in various
matters, but there is divergence of opinion on how the period available
for completing the investigation is to be computed. Some judgements
have favoured the exclusion of date of remand, while few other cases C
have taken a contrary view.

5. The appellants rely inter alia on the line of reasoning in *State of
M.P. Vs. Rustom & Ors.*¹, *Ravi Prakash Singh Vs. State of Bihar*²
and *M. Ravindran Vs. Intelligence Officer, Director of Revenue
Intelligence*³ where it was held that the date of remand is to be excluded D
for computing the permitted period for completion of investigation.

6. On the other hand, the Respondents seek to rely inter alia on
*Chaganti Satyanarayan Vs. State of Andhra Pradesh*⁴, *CBI Vs.
Anupam J Kulkarni*⁵, *State Vs. Mohd. Ashraft Bhat*⁶, *State of
Maharashtra Vs. Bharati Chandmal Varma*⁷, and *Pragyna Singh
Thakur Vs. State of Maharashtra*⁸ to contend that the date of remand E
must be included for computing the available period for investigation for
determining entitlement to default bail.

7. Because of the conflicting view on the proposition of law for
grant of default bail, a judicial conundrum has arisen which is required to F
be resolved for guidance of the Court. In *Chaganti*⁹, the Court examined
the legislative intent for expeditious conclusion of investigation and the
consequences of the failure of the prosecution to conclude investigation

¹ 1995 (Supp) 3 SCC 221

² (2015) 8 SCC 340

³ (2020) SCC OnLine SC 867

⁴ (1986) 3 SCC 141

⁵ (1992) 3 SCC 141

⁶ (1996) 1 SCC 432

⁷ (2002) 2 SCC 121

⁸ (2011) 10 SCC 445

⁹ *Supra* note 4.

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A within the permitted period. However, the ratio in *Chaganti*¹⁰ and also in *Mhd. Ashrafi Bhat*¹¹ was not brought to the notice of the 3 judges bench in *M Ravindran*¹² and the Court took a contrary view in declaring that the date of remand is to be excluded for computing the period of investigation, to facilitate the claim of default bail by an accused.

B 8. Since the earlier position of law was not considered and the latest decision is of a 3 judges bench, it is necessary for a bench of appropriate strength to settle the law taking note of the earlier precedents. Unless the issue is appropriately determined, the courts across the country may take decision on the issue depending upon which judgement is brought to the Court's notice or on the Courts own understanding of the law, covering default bail under Section 167 (2)(a) II of CrPC.

C 9. In the above circumstances, we feel it appropriate to refer the above-mentioned issue to a larger Bench of this Court for an authoritative pronouncement to quell this conflict of views as the same shall enable the Courts to apply the law uniformly.

D 10. Accordingly, we direct the Registry to place all the relevant documents before the Hon'ble Chief Justice for constituting a bench of at least 3 judges to resolve the conflict in law on the issue of grant of default bail.

E 11. In the meantime, as the respondents are praying for benefit of the High Court's bail order, which was stayed on 3.9.2020, this matter be placed before a bench of 3 judges on a near date, for consideration of the interim prayer for the respondents.

Bibhuti Bhushan Bose

Matter referred to larger bench.

¹⁰ *Ibid.*

¹¹ *Supra* note 6.

¹² *Supra* note 3.