

A ENFORCEMENT DIRECTORATE, GOVERNMENT OF INDIA

v.

KAPIL WADHAWAN & ANR. ETC.

(Criminal Appeal Nos. 701–702 of 2020)

B MARCH 27, 2023

**[K. M. JOSEPH, HRISHIKESH ROY AND
B.V. NAGARATHNA, JJ.]**

- Code of Criminal Procedure, 1973 : s. 167(2) proviso (a) (ii)
– Default Bail – Claim for – 60/90 day period of remand under
C proviso (a) to s. 167(2) – Computation of – Day on which the
Magistrate orders remand to be included or excluded – Held: s.
167(2) pertains to the power of the Magistrate to remand an accused
and there is no reason why the date of the Magisterial Court's gaze
on the accused, should be excluded – Ignoring the date of remand
u/s. 167 in the 60/90 day period would militate against the legislative
intent of providing an accused protection from being in prolonged
custody, because of slothful investigation – Stipulated 60/90 day
remand period u/s. 167 ought to be computed from the date when a
Magistrate authorizes remand – Thus, the very moment the stipulated
60/90 day remand period expires, an indefeasible right to default
D bail accrues to the accused – On facts, accused were remanded on
14.05.2020 and as such, the chargesheet ought to have been filed
E on or before 12.07.2020 (i.e. the sixtieth day) – But the same was
filed, on the 61st day of their custody – Therefore, the right to default
bail accrued to the accused persons on 61st day at 12:00 AM,
F midnight, onwards – On that very day, the accused filed their default
bail applications – ED filed the chargesheet, later in the day – Thus,
the default bail applications were filed well before the chargesheet
– In cases where the chargesheet/final report is filed on or after the
61st/91st day, the accused would be entitled to default bail – Thus,
the High Court justified in granting default bail to the respondents
G by applying the proviso (a) (ii) of s.167(2) – Prevention of Money
Laundering Act, 2002 – s. 3.*
- s. 167(2) – Conflicting opinions as to computation of the 60/
90 day remand period by including/ excluding day of remand –
Rustum's case ignored the binding precedent in Chaganti's case on*

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computing the prescribed 60/90 day period under proviso (a) of s. 167(2) – Thus, the decision in Rustam’s case held to be per incuriam. A

Doctrine of judicial precedent: Per incuriam – Rule of – Held: Is an exception to the doctrine of judicial precedent – It provides that when a judgment is passed in ignorance of a relevant precedent or any other binding authority, the same is said to be postulating incorrect law – It becomes pertinent to resolve the conflict arising from diverging opinions by taking recourse to the ratio decidendi of the earliest opinion. B

General Clauses Act, 1897: Applicability of, while computing period of 60/90 days given under proviso (a) of s.167(2) – Held: General Clauses Act is not applicable to s. 167, as there is no definite ‘from’ period from which the stipulated remand, may commence. C

Answering the Reference, the Court

HELD: 1.1 The law of binding precedent provides that the rule of *per incuriam* is an exception to the doctrine of judicial precedent. Quite literally, it provides that when a judgment is passed in ignorance of a relevant precedent or any other binding authority, the same is said to be postulating incorrect law. It becomes pertinent to resolve the conflict arising from diverging opinions by taking recourse to the *ratio decidendi* of the earliest opinion. [Para 30][938-D-E] D E

1.2 In *Chaganti’s case*, it was held that the 90/60 days prescribed in proviso (a) to Section 167 (2) can be reckoned only from the date of remand and it is made clear through the amendment that the legislature had intended to provide a 90/60 day remand period, for the purpose of investigation. It was also expressly opined that the proviso (a) in reference to the total period of detention can be interpreted on the plain language of the proviso itself, being a complete code on its own and it being wholly unnecessary to invoke provisions of the *General Clauses Act* or *Limitation Act*. In *State of M.P. vs. Rustam’s case*, it was held that the period specified in proviso (a) to Section 167 (2) should exclude the date of remand. On reading *Rustam’s case*, it comes to light that the Court while counting the period has considered Sections 9 and 10 of the General Clauses Act. But in doing so, the Court in *Rustam’s case* failed to appreciate the ratio F G H

- A in *Chaganti's case* where it was categorically observed, that for the purpose of computing the period under Section 167(2), the provisions of General Clauses Act will have no application. Considering the legislative intent behind Section 167 (2), and the proviso (a) being a complete code in itself, as also elucidated
- B in *Chaganti's case* the computation method laid down in *Rustum's case* may not be the correct way. Further, since *Rustum's case* ignored the binding precedent in *Chaganti's case* on computing the prescribed 60/90 day period under proviso (a) of Section 167(2), from the date a Magistrate ordered remand, it is a *per incuriam* decision. Thus, the operative part in *Rustum's case* with
- C respect to the 60/90 day period of computation, arrived at after, invoking *Sections 9 and 10 of the General Clauses Act*, where the court excluded the date of remand and ignored the contrary opinion in *Chaganti's case*, cannot be a binding judicial precedent as the same is rendered per incuriam. [Para 26, 28, 29, 31][937-D-F, G-H; 938-A-C; 939-B-C]
- D 1.3 In application Section 167, there is no starting or ending point for completion of the investigation. In the scheme of the CrPC, the provisions contained in sub-section (1) of Section 167 runs in continuation of sub-section (2). The production of the accused before the Magistrate is a sequel to his arrest by the police and at the same time, the accused too has a right to be produced before the Magistrate, within 24 hours of his arrest. The day on which the accused is brought on remand before the Magistrate, sub-section (2) of Section 167 empowers the Magistrate to authorize the detention with the police either by
- E F continuing it or remanding him to Magisterial custody. There cannot be a pause/break between the two processes. No delimitation is conceptualized in Section 167 nor can it be fitted into a period of limitation 'from' and 'to' since there is no limitation for completion of investigation and filing of the chargesheet. The production before the Magistrate is a process in continuation of arrest by the police and the Magistrate will authorize detention for not more than 15 days in the whole but if he is satisfied that sufficient grounds exist, he may authorize an accused's detention beyond 15 days otherwise than in the custody of police. Pertinently, there is no fixed end point within which, the police
- G H or investigation authorities are required to complete the

investigation. However, if the investigation is not completed and chargesheet is not filed within 60 or 90 days, a right of default bail accrues to the accused. The anterior period of custody with the police prior to the remand is not detention. It is only so, pursuant to an authorization issued from the Magistrate. [Para 34][939-H; 940-A-E]

1.4 The period of detention by the Magistrate runs from the very day of remand order. Sub-section (2) of Section 167 CrPC pertains to the power of the Magistrate to remand an accused and there is no reason why the date of the Magisterial Court's gaze on the accused, should be excluded. In order to avoid long incarceration of an accused only because the investigation is being carried out in a leisurely manner, the legislature was prompted, to confer a right on the accused to be released on default bail if he is prepared to offer bail bond and the investigation may still continue. This is why the *General Clauses Act* cannot be made applicable to sub-section (2) of Section 167. Moreover, excluding the date of the remand order would also result in a break in the continuity of the custody of the accused which begins on his date of arrest under Section 56 and continues till the stipulated 60/90 day period, under Section 167. Additionally, it is to be noted that when the date of remand order is included as the first day of the stipulated remand period— there arises no fixed 60-day period for which the accused is remanded. Once the Magistrate authorises remand, irrespective of the time of the day, when he does so, the prosecution, in each case will have a varying period of custody which may range in a moving cursor manner from a spectrum of 59 days and 23 hours or so to 59 days and 1 hour or so for offences covered under proviso (a)(ii) of Section 167(2). The exact period of remand for an accused is subject to the first gaze of the Magisterial court and the signing of the remand order. This explains the finding in *Chaganti's case* that *General Clauses Act* is inapplicable to Section 167 CrPC, as there is no definite 'from' period from which the stipulated remand, may commence. Moreover, the fact that the date of remand is included and not excluded from the stipulated period, is based on the pivotal consideration that personal liberty of the individual commands that any lacuna in the specificity of the law has to be so interpreted in the accused's favour. [Para 34][940-E-H; 941-A-C]

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- A **1.5** Section 57 CrPC mandates that the accused be produced before a Magistrate within 24 hours of arrest and under Section 167(2) the Judicial Magistrate is required to scrutinize the executive action and determine whether the rights of the accused are not subjugated by police action. The separation of the Executive and the Judicial exercise of power, ultimately protects an individual's personal liberty which is also constitutionally protected under Articles 21 and 22(2). If the date of remand ordered by a Magistrate is ignored, then an accused even though in custody, the same will not be counted within the 60/90 day period. The custody on the date of remand is distinct from the arrest of an accused under Section 56 CrPC as that is considered as a period prior to production before the Magistrate. By this logic, even if the accused is under custody it would neither be under Section 56, nor under 167(2) CrPC. This would lead to an apparent legal vacuum. This can however be avoided if the remand period is considered from the very day of the remand order. Furthermore, if an accused is remanded by a Magistrate on say, 01.01.2023, then, the police, post judicial scrutiny, is empowered to investigate, starting on the same day, as per Section 167 CrPC, irrespective of whether the police actually commence investigation on the same day. So, if the police is empowered to investigate an accused person on the day of the remand order itself, the 60/90 day stipulated period, upon whose expiry, the right of default bail accrues to the accused, should logically be calculated from that day itself. Ignoring the date of remand under Section 167 CrPC in the 60/90 day period, would militate against the legislative intent of providing an accused protection from being in prolonged custody, because of slothful investigation. [Para 36][941-E-G; 942-A-C]
- B **1.6** The 60/90 day limit is a statutory requirement which allows the State agencies to investigate serious offences beyond the 15-day police custody. In case the State fails to file chargesheet or supplementary request for remand within the stipulated 60/90 day period, a balance is to be struck between the rights of the individual and the restriction on those rights and prevent prolonged incarceration without legal support. The very instance, the statutory remand period ends, an indefeasible right to default bail accrues to the accused and same needs to be guarded. The

liberty of the individual is surely relative and regulated. Absolute liberty is something that cannot be conceived in a societal setting. The law therefore allows authorities to detain accused persons and facilitate investigation. However, it is the duty of this court to discourage prolonged incarceration. The right to default bail is not extinguished by the subsequent filing of the chargesheet, and the accused continues to have the right to default bail. [Para 42][944-C-E]

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1.7 When the day of remand order is included in the stipulated period under Section 167(2), the same would encourage the prosecution to promptly comply with Section 57 CrPC. The leaning towards the accused's right to personal liberty by reducing the 60 day period to something more than 59 days, and a few hours, is based on the constitutional protection afforded to an accused under Article 22(2) and Article 21. In this way, the Code's application in dealing with an accused would be consistent with the inviolable right of personal liberty and dignity. [Para 48][947-C-D]

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1.8 Since there exists vacuum in the application and details of Section 167 CrPC, an interpretation which advances the cause of personal liberty is opted. The accused were remanded on 14.05.2020 and as such, the chargesheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on 13.07.2020 which was the 61st day of their custody. Therefore, the right to default bail accrued to the accused persons on 13.07.2020 at 12:00 AM, midnight, onwards. On that very day, the accused filed their default bail applications at 8:53 AM. The ED filed the chargesheet, later in the day, at 11:15 AM. Thus, the default bail applications were filed well before the chargesheet. If the accused persons avail their indefeasible right to default bail before the chargesheet/final report is filed, then such right would not stand frustrated or extinguished by any such subsequent filing. The stipulated 60/90 day remand period under Section 167 CrPC ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period, will extend beyond the permitted 60/90 days' period resulting in unauthorized detention beyond the period envisaged under Section 167 CrPC. In cases where

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- A the chargesheet/final report is filed on or after the 61st/91st day, the accused would be entitled to default bail. The very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused. [Para 50][947-G; 948-A-D]
- B 1.9 The impugned order of the High Court granting default bail to the respondents by applying the proviso (a) (ii) of Section 167(2) is found to be in order. Hence, the judgment passed by the Single Judge of the High Court is upheld. [Para 51][948-E]

State of M.P. Vs. Rustam & Ors. 1995 (Supp) 3 SCC

- C 221 – per incuriam.

Chaganti Satyanarayan Vs. State of Andhra Pradesh (1986) 3 SCC 141 : [1986] 2 SCR 1128 – relied on.

- D *Ravi Prakash Singh Vs. State of Bihar (2015) 8 SCC 340 : [2015] 2 SCR 241; M. Ravindran Vs. Intelligence Officer, Director of Revenue Intelligence (2021) 2 SCC 485; CBI Vs. Anupam J Kulkarni (1992) 3 SCC 141 : [1992] 3 SCR 158; State Vs. Mohd. Ashraft Bhat (1996) 1 SCC 432 : [1995] 6 Suppl. SCR 300; State of Maharashtra Vs. Bharati Chandmal Varma (2002) 2 SCC 121 : [2001] 5 Suppl. SCR 422; Gautam Navlakha Vs. National Investigation Agency 2021 SCC OnLine SC 382; Aslam Babalal Desai vs. State of Maharashtra (1992) 4 SCC 272 : [1992] 1 Suppl. SCR 545; N. Sureya Reddy vs. State of Orissa 1985 Crl. LJ 939 (Ori); Pragyna Singh Thakur Vs. State of Maharashtra (2011) 10 SCC 445 : [2011] 14 SCR 617; S.Kasi Vs. State (2020) SCC Online SC 529; Deepak Satyavan Kudalkar vs. State of Maharashtra MANU/MH/0843/2020 LD/VC; Rajoo alias Raj Kishore Singh Vs. State of Bihar (1980) 1 SCC 108; Raj Kumar Vs. State of Punjab AIR 1979 P&H 80; Batna Ram vs. State of H.P 1980 Crl. LJ 748 (HP); Jagdish vs. State of M.P. 1984 Crl. LJ 79 (MP); A.R. Antulay vs. R.S. Nayak (1988) 2 SCC 602 : [1988] 1 Suppl. SCR 1; Shah Faesal vs. Union of India (2020) 4 SCC 1 : [2020] 3 SCR 1115; Sandeep Kumar Bafna Vs. State of Maharashtra 2014 (16) SCC 623 : [2014] 4 SCR 486; Econ Antri Ltd. vs.*
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Rom Industries (2014) 11 SCC 769 : [2013] 14 SCR 74; Saketh India Ltd. vs. India Securities Ltd. (1999) 3 SCC 1 : [1999] 1 SCR 963; Rakesh Kumar Paul vs. State of Assam (2017) 15 SCC 67 : [2017] 8 SCR 785; Union of India vs. Nirala Yadav (2014) 9 SCC 457 : [2014] 6 SCR 148; Uday Mohanlal Acharya vs. State of Maharashtra (2001) 5 SCC 453 : [2001] 2 SCR 878; Sanjay Dutt Vs. Bombay through C.B.I. 1994 (5) SCC 410 : [1994] 3 Suppl. SCR 263; Bikramjit Singh vs. State of Punjab (2020) 10 SCC 616; AK Gopalan vs. State of Madras, AIR 1950 SC 27 : [1950] SCR 88; Rustom Cavasjee Cooper vs. Union of India (1970) 1 SCC 248 : [1970] 3 SCR 530; Maneka Gandhi vs. Union of India AIR 1978 SC 597 : [1978] 2 SCR 621; Kesavananda Bharti vs. State of Kerala (1973) 4 SCC 225 : [1973] 0 Suppl. SCR 1; Olmstead vs. US, 277 US 438 (1928); ADM Jabalpur vs. Shivkant Shukla (1976) 2 SCC 521 : [1976] 0 Suppl. SCR 172; K.S. Puttaswamy Vs. Union of India (2017) 10 SCC 1 : [2017] 10 SCR 569; Munn v. Illinois, 94 U.S. 113 (1876); Kharak Singh vs. State of UP (1964) 1 SCR 332; Francis Coralie Mullin vs. The Administrator, 1981 AIR 746 – referred to.

VM Bachal, Indian Journal of Political Science, Vol.25, No.3/4 (July-Sept. Dec, 1964), pp. 231–240; Second Treatise of Government by John Locke – referred to.

<u>Case Law Reference</u>	F
[2015] 2 SCR 241	referred to
(2021) 2 SCC 485	referred to
[1986] 2 SCR 1128	referred to
[1992] 3 SCR 158	referred to
[1995] 6 Suppl. SCR 300	referred to
[2001] 5 Suppl. SCR 422	referred to
[1992] 1 Suppl. SCR 545	referred to

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A	[2011] 14 SCR 617 AIR 1979 P&H 80 [1995] (Supp) 3 SCC 221 [1988] 1 Suppl. SCR 1	referred to referred to per incuriam referred to	Para 18.1 Para 25 Para 29, 31, 33 Para 30
B	[2020] 3 SCR 1115 [2014] 4 SCR 486 [2013] 14 SCR 74 [1999] 1 SCR 963	referred to referred to referred to referred to	Para 30 Para 30 Para 35 Para 35
C	[2017] 8 SCR 785 [2014] 6 SCR 148 [2001] 2 SCR 878	referred to referred to referred to	Para 37 Para 37 Para 37
D	[1994] 3 Suppl. SCR 263 (2020) 10 SCC 616 (2017) 15 SCC (109) [1950] SCR 88	referred to referred to referred to referred to	Para 37 Para 41 Para 43 Para 43
E	[1970] 3 SCR 530 [1978] 2 SCR 621 [1973] 0 Suppl. SCR 1 [1976] 0 Suppl. SCR 172	referred to referred to referred to referred to	Para 43 Para 43 Para 45 Para 45
F	[2017] 10 SCR 569 (1964) 1 SCR 332 1981 AIR 746	referred to referred to referred to	Para 45 Para 47 Para 47

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

G From the Judgment and Order dated 20.08.2020 of the High Court of Judicature at Bombay in LDVC Bail Application Nos.400 and 401 of 2020.

H Tushar Mehta, Solicitor General, S. V. Raju, Sanjay Jain, A.S.Gs., Mukesh Kumar Maroria, Kanu Agarwal, Rajan Kumar Choursia, Annam

Venkatesh, Ms. Sairica Raju, Arkaj Kumar, Zoheb Hussain, Advs. for A
the Appellant.

Kapil Sibal, Mukul Rohatgi, Amit Desai, Sr. Advs., Mahesh Agarwal, Ankur Saigal, Rohan Dakshini, Shubham Kulshreshtha, Kaustubh Singh, Ms. Kamakshi Sehgal, Ms. Pooja Kothari, Ms. Urvi Gupte, Ms. Kajal Dalal, Ms. Akanksha Saxena, E. C. Agrawala, Shrirang B. Varma, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Ms. Kirti Dadheechee, Sarad Kumar Singhania, Amit K. Nain, Advs. for the Respondents.

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

1. John Locke in his work, *Two Treatises of Government* (1689)-stressed on personal liberty and stated that, “*The end of Law is not to abolish or restrain, but to preserve and enlarge Freedom: For in all the states of created beings capable of Laws, where there is no law, there is no Freedom.*”¹

2. In the present case, we discuss the rights of such accused, whose right to default bail, hangs in the balance by difference of a single day or even less. Ostensibly, one may presume this to be insignificant. However, the constitutional import of the matter is such, that personal liberty, which may only be taken away by a just and fair procedure established by law, needs to be analyzed and protected. The issue is simple to state but hard to answer. It is embedded in a maze of case law that this Court needs to negotiate. Simply put, the Court needs to answer whether the period of remand under the first proviso to Sec. 167 (2) of the Code of Criminal Procedure, 1973 (hereinafter ‘CrPC’) is inclusive of the day on which the Magistrate orders remand. Whatever be the outcome, this Court is conscious that none should suffer incarceration without legal authority. Although, the State is tasked to prevent crime and maintain security, personal liberty-should not be the collateral.

3. We have heard Mr. S.V. Raju, learned Additional Solicitor General of India on behalf of the appellants. Mr. Mukul Rohatgi, Mr. Kapil Sibal and Mr. Amit Desai, learned Senior Counsel appear for the respondents who were granted the benefit of default bail by the High Court.

¹ John Locke, ‘*The Second Treatise of Civil Government*’, December 1689.

- A 4. These Appeals are directed against the order dated 20.08.2020 of the Bombay High Court, granting default bail to the respondents under proviso (a) (ii) of Section 167 (2) of the 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 (hereinafter ‘PMLA’)
- B and were remanded on the same date. On 11.07.2020 through e-mail, the Enforcement Directorate (hereinafter ‘ED’) claimed to file a Complaint and subsequently on 13.7.2020, i.e., a Monday, a physical copy thereof was tendered before the Court. The applications for enlargement of bail were moved on 13.07.2020 at 8:53 AM, through e-mail and physical filing token being issued by 11 AM.
- C 5. 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) and on the next day, the default bail applications were presented before the Court. The learned Special Judge, however, denied default bail to the respondents taking the view that the 60 day period would start from
- D 15.5.2020, thereby excluding the date of remand (i.e. 14.5.2020). However, the High Court, under the impugned judgment felt that, excluding the date of remand while computing the 60- day period was erroneous and held that the filing of the Chargesheet by the ED on 13.7.2020, being the 61st day, would entitle the respondents to default bail. The aforesaid decision of the High Court was stayed by this Court
- E on 3.9.2020.

ISSUES AND REFERENCE

- F 6. The core issue that arises for consideration is whether the date of remand is to be included or excluded, for considering a claim for default bail, when computing the 60/90 day period as contemplated in proviso (a) of Section 167 (2) of the CrPC. The moot question has been considered by this Court in various cases, but there is a divergence of opinion on how the stipulated period, for the right of default bail, accruing to the accused, is to be computed. Some judgements have favoured the exclusion of date of remand, while a contrary view is taken in other
- G cases.

- H 7. The prosecution relies, on the line of reasoning in *State of M.P. Vs. Rustam & Ors.*², which was later followed in *Ravi Prakash Singh Vs. State of Bihar*³ and *M. Ravindran Vs. Intelligence Officer,*

² 1995 (Supp) 3 SCC 221

³ (2015) 8 SCC 340

*Director of Revenue Intelligence*⁴, where it was held that the date of remand is to be excluded for computing the stipulated 60/90 day period, for the right of default bail, to arise. A

8. On the other hand, the Accused rely, *inter alia*, on *Chaganti Satyanarayan Vs. State of Andhra Pradesh*⁵, *CBI Vs. Anupam J Kulkarni*,⁶ *State Vs. Mohd. Ashraft Bhat*⁷ and *State of Maharashtra Vs. Bharati Chandmal Varma*,⁸ to contend that the first date of remand must be included for computing the remand period for determining an accused's entitlement to default bail. B

9. Due to the aforementioned conflict in law, a judicial conundrum has arisen which is required to be resolved in this reference. In *Chaganti* (supra), this Court while examining the legislative intent, with regard to conclusion of investigation within the statutory remand period, held that the day of remand order should be included. On the other hand, the 3-judge bench in *M Ravindran* (supra), relied on *Ravi Prakash* (supra), which in turn followed the principle laid down in *Rustum* (supra) and declared that the date of remand is to be excluded for computing the mandated 60/90 day period, in order to facilitate the accused's right to default bail. C

10. The earlier position of law as declared in *Chaganti* was ignored in *Rustum*. And since, *Rustum* later became the basis for excluding the date of remand from the stipulated period in *Ravi Prakash* and thereafter in *Ravindran*, which is the latest decision of a 3-judge bench, it becomes necessary for a bench of appropriate strength to settle the law taking note of the earlier precedents and the confusion therein. Unless the issue is resolved, there will be a divergence of opinion on how the right to default bail, which is ultimately a fundamental right,⁹ is to be protected. D

11. A two-judge Bench of this Court, on 23.2.2021, noticing the divergence of law on computation of the 60/90 day remand period under proviso (a) of Section 167 (2) of the CrPC, referred the issue to this three-judge Bench. The answer here will facilitate a uniform application of the law on the issue of right to default bail. The reference is being answered as under:- F

⁴ (2021) 2 SCC 485

⁵ (1986) 3 SCC 141

⁶ (1992) 3 SCC 141

⁷ (1996) 1 SCC 432

⁸ (2002) 2 SCC 121

⁹ *Gautam Navlakha Vs. National Investigation Agency*, 2021 SCC OnLine SC 382 G

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FACTUAL BACKDROP

12. The two respondents, while being confined in judicial custody since 10.5.2020 in RC No.219/2020 registered by the CBI, came to be arraigned as accused in ECIR/MBZO-I/3/2020 registered by the ED for the alleged commission of offence under Section 3 of the PMLA.
- B On 14.5.2020, the applicants were produced before the learned Special Court, Mumbai and were then remanded to police custody and on 27.5.2020 were subsequently remanded to judicial custody. The High Court while granting default bail to the applicants formulated the following question for decision:
- C *“Whether in computing the remand period of 60 or 90 days as contemplated in proviso (a) of Section 167 (2) of CrPC, the day of remand is to be included or excluded.”*
13. The applicants contended before the High Court that they were arrested on 14.5.2020 and on the very same day, they were remanded by the Magistrate and such remand orders came to be passed from time to time. As per the ED, on 11.7.2020, (i.e. a Saturday), a complaint was filed by them, through e-mail and it was argued by the applicants that this was only a forward but not the entire complaint. On 13.7.2020 i.e. Monday, the ED filed the physical complaint before the Court. Based on these facts, the applicants' counsel submitted that the period of 60 days from the date of remand of the applicants (14.5.2020) expired on 12.7.2020 (Sunday) and the applicants on 13.7.2020 sought enlargement on default bail, under the proviso (a) (ii) of Section 167 (2), CrPC. Initially, the applications were transmitted through e-mail at around 8:53 AM and after about two hours on 13.7.2020, at around 11 AM, the bail applications were presented for physical filing in the Sessions Court and a token acknowledging the filing was issued and the applications were also numbered.
14. The ED claimed to have filed the complaint through e-mail on 11.7.2020 followed by a physical application on 13.7.2020. As per the ED, relying on *Rustum*(supra), the 60 day period ends on 13.7.2020 (wherein it seeks to exclude the date of remand i.e. 14.5.2020). Thus, as per the ED, complaint was filed in time.
- H 15. The learned Special Court denied default bail on 14.7.2020 with the understanding that the 60 days' time limit for filing the complaint expired. The learned Judge opined that the date of remand will have to

be excluded and the 60 days period will have to be computed from 15th May 2020. With this reasoning the bail application came to be rejected. A

16. On respondents' challenge to the rejection of their default bail applications, the High Court after analyzing the implication of the rival submissions and interpreting the statutory provisions and their applications to the facts of the case, concluded that the learned Special Judge incorrectly excluded the date of remand, while computing the 60 day period. Since the chargesheet by the ED was filed on 13.7.2020, being beyond 60 days by including the day of remand i.e. 14.5.2020, the applicants were found to be entitled to default bail. Accordingly, a direction was issued for release of the respondents by advertizing to the provisions of Section 167 (2) of the CrPC, subject to the accused persons furnishing their bail bonds. This order of the High Court is challenged in the present appeals. B

CONTENTIONS OF THE COUNSEL

17.1 Assailing the legality of the judgment dated 20.8.2020, Mr. S.V. Raju, learned ASG, argues that for computation of the prescribed 60/90 day remand period, one of the days on either side of the remand period has to be excluded and in the present case, either the date of remand i.e. 14.5.2020 or the 60th day i.e. 12.07.2020 must be excluded for computing the eligibility for default bail. In support of the ED's contentions, Mr. Raju would place strong reliance, *inter-alia*, on *Aslam Babalal Desai vs. State of Maharashtra*¹⁰, *State of MP vs. Rustam* (supra) and *Ravi Prakash Singh alias Arvind Singh vs. State of Bihar* (supra). C

17.2 An alternate argument is also made to the effect that even if the period of 60 days as stipulated under the first proviso to Section 167 (2) of the CrPC expired on 12.7.2020, the same being a Sunday, the provisions of Section 10, *General Clauses Act* would come into play and as such the 60 day period which expired on Sunday will stand extended to Monday i.e. 13.7.2020. In support of such contention, Mr. Raju placed reliance on *N. Sureya Reddy vs. State of Orissa*¹¹. F

17.3. The learned ASG additionally argued that the ratio in *Chaganti* (supra) was wrongly relied upon by the High Court to compute the period of default bail under the first proviso to Section 167 (2) of the G

¹⁰ (1992) 4 SCC 272.

¹¹ 1985 Crl. LJ 939 (Ori)

- A CrPC. Since the date of arrest is the same as the date of remand, the ratio in *Chaganti (supra)* according to the learned ASG has no application and was therefore wrongly applied by the High Court in the present facts.
- 18.1 Per contra, Mr. Mukul Rohatgi, Mr. Kapil Sibal and Mr. Amit Desai, learned Senior Counsels for the respondents, argue that the period envisaged under proviso (a) of Section 167 (2) of the CrPC must be calculated from the date of remand order and exclusion of the first day of the Court's gaze upon the accused would be illogical. The counsel have based their arguments on the ratio in *Chaganti (supra)* which was approved in several subsequent judgements such as *CBI Special Investigation Cell, New Delhi Vs Anupama Kulkarni (supra)*, *Pragyna Singh Thakur Vs. State of Maharashtra*¹². The counsels for the respondents also rely on the decisions in *State Vs. Mohd Ashraf Bhat (supra)*, *S.Kasi Vs. State*¹³, and *Gautam Navlakha Vs. NIA (supra)*.

DISCUSSION

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- 19. In the impugned judgment, the learned Judge of the Bombay High Court had cited with approval, the judgment of a coordinate Bench in *Deepak Satyavan Kudalkar vs. State of Maharashtra*,¹⁴ where all the previous judgments of the Supreme Court applicable for default bail were considered and analyzed. We may benefit from the opinion penned down by *Prakash D. Naik J.*, who had analyzed the applicable provisions of the CrPC in the following paragraph.

- F “ 7 . On perusal of aforesaid provision (Sec. 167 CrPC), it may be seen that sub-Section (1) is the mandatory provision, governing what a police officer should do, when the person is arrested and detained in custody and when it appears that the investigation cannot be completed within the period of Twenty Four hours fixed by Section 57. Sub-Section (2) pertains to the powers of remand available to a Magistrate and the manner in which, such powers should be exercised.
- G The term of Sub- Section (1) of Section 167 have to be read in conjunction with Section 57. It is clear that Section 57 interdicts a police officer from keeping in custody a person without warrant for a longer period than Twenty Four hours

¹² (2011) 10 SCC 445

¹³ (2020) SCC Online SC 529

H ¹⁴ MANU/MH/0843/2020; LD/VC Criminal Bail Application 197/2020.

without production before the Magistrate, subject to the exception that the time taken for performing the journey from the place of arrest to the Magistrate Court, can be excluded from the prescribed period of Twenty Four hours. Since, Sub-Section (1) provides that, if the investigation cannot be completed, within the period of Twenty Four hours, fixed by Section 57, the accused has to be forwarded to the Magistrate along with the entries in the diary, it follows that a police officer is entitled to keep an arrested person in custody for a maximum period of Twenty Four hours for the purposes of investigation. Hence, the initial period of custody of an arrested person, till he is produced before a Magistrate is neither referable to nor in pursuance of an order of remand passed by a Magistrate. The powers of remand given to a Magistrate, become exercisable after an accused is produced before him in terms of Sub-Section (1) of Section 167. Sub-section (1) of Section 167 covers this procedure and also state that the police officer while forwarding the accused to the nearest Magistrate should also transmit a copy of entries in the diary relating to the case. The entries in the diary are meant to afford to the Magistrate the necessary information upon which he can take the decision whether the accused should be detained in the custody or not. The law enjoins upon the investigating agency to carry out the investigation, in a case where a person has been arrested and detained, with utmost urgency and complete the investigation promptly in prescribed period. The proviso to sub-section (2) fixes the outer limit within which investigation must be completed and in case the same is not completed within the prescribed period, the accused would acquire a right to be released on bail and if he is prepared to and does furnish bail, the Magistrate shall release him on bail and such release shall be deemed to be grant of bail under chapter XXXIII of Cr.P.C. The proviso inserted by Act No. 45 of 1978, comes into operation where the Magistrate thinks fit that further detention beyond the period of fifteen days is necessary and it lays down that, the Magistrate may authorise the detention of the accused person otherwise than in the custody of police beyond period of 15 days. The proviso to Section 167(2) clearly state that the total

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- A *period of detention should not exceed Ninety days in cases where the investigation relates to serious offences mentioned therein and sixty days in other cases and if by that time charge-sheet is not filed on the expiry of said periods the accused shall be released on bail.”*
- B 20. The precedents referred to in the impugned judgment, and the coordinate Bench in *Deepak Satyavan* (supra), show that the Court confers power on the prosecution to arrest a suspect and the investigation contemplated under the Code would cover all the steps including proceedings for collection of evidence and on conclusion of the investigation a report is required to be furnished under Section 173 of the CrPC. The aim of Chapter XII is that investigation should be completed without unnecessary delay, although there is no express outer limit for completion of investigation. The CrPC prescribes, under Section 173(2), for filing the final report, which empowers the Court, to take cognizance of an offence. It also allows for further investigation under sub-Section (8) of Section 173. Further, as per Section 173(4), upon the final report being filed, if an accused has been released on bail, his bail bond maybe cancelled by the Magistrate based on merits of the investigation. Thus, the protection extended to an accused in lieu of proviso (a) of Section 167(2) CrPC is only with respect to the prescribed 60/90 day period, beyond which an accused’s custody cannot be sought, even if the investigation is incomplete.
- C 21. Unless a special order from a Magistrate is obtained under Section 167 of the CrPC, a person arrested cannot be detained for more than 24 hours as stipulated under Section 57 of the CrPC. The time necessary for the journey from the place of arrest to the Magistrate’s Court can however be excluded, for computing the 24 hours permitted to the Police to keep an accused in their custody prior to a Magistrate’s authorization, as mandated under Section 167 CrPC.
- D 22. After the accused is arrested and police is unable to complete the investigation within the mandated 24 hours period, the police officer making the investigation is duty bound to transmit the accused to the Magistrate under Section 167 of the CrPC. Sub-section (2) of Section 167 then sets out the action to be taken by the Magistrate to whom the accused person is forwarded and the Magistrate may then authorize the detention of the accused to further custody. In terms of sub-section (2), the Magistrate may authorize the detention of the accused in such custody
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as he thinks fit for a term not exceeding 15 days in the whole but if he has no jurisdiction to try the case or commit it for trial and consider that the detention is unnecessary, on perusal of the entries in the diary, he may release the accused or forward him to the Magistrate having appropriate jurisdiction. The sub-section is appended with a proviso which places an embargo on the power of the Magistrate and authorizes detention of the accused person beyond the 15 days period, other than in the custody of the police, if he is of the opinion that the circumstances so demand. But, the Magistrate shall not authorize the detention of an accused person in custody for a total period exceeding 90 or 60 days in clause (i) or clause (ii) of proviso (a), respectively. A right accrues to the accused if the investigation is not completed within the period prescribed in clause (i) or clause (ii) and on expiry of the said period, the accused person shall be released on bail if he is prepared to and furnishes bail for his release.

23. As can be seen from the above, the further detention beyond 24 hours of the accused is subject to authorization by the Magistrate and the power of the Magistrate to authorize detention of the accused either in police custody or under magisterial custody is circumscribed by the period specified in Section 167 of the CrPC. If the Magistrate is satisfied that continuing custody exceeding 15 days is warranted, he may authorize such detention but in any case the authorized detention cannot exceed a period of 90 days or 60 days, as the case may be. On the expiry of the stipulated period specified in the proviso to Section 167 (2) of the CrPC, if the prosecution fails to file the chargesheet/final report, the accused person has an indefeasible right to be released on default bail.

24. Section 167, as originally enacted in the *Code of Criminal Procedure, 1898* envisages completion of investigation within 24 hours. But, noticing the difficulty in completing the investigation within the limited time, particularly for complex crimes, the Law Commission of India recommended to increase the time limit for completion of investigation. On the basis of the recommendation in the 41st Law Commission Report (September, 1969), CrPC was amended through the Act 45 of 1978. The Proviso (a) containing clauses (i) and (ii) were inserted to Section 167 of the CrPC. With such inclusion, while investigation is still expected to be completed with promptitude, it was additionally provided that only with a Magistrate's authorization, further detention is permitted, for the period specified in clauses (i) and (ii) under proviso (a). A Magistrate

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- A authorizing detention must however record his reasons for extending detention of an accused under sub-section (3) of Section 167. The purpose of the first proviso to Section 167(2) is to impress upon the police officers to expeditiously complete investigation within the prescribed period and prevent laxity. In default, the Magistrate shall release the accused on bail. This is subject to the restriction imposed in Section 436-A, providing for the maximum period for which, an under-trial prisoner may be detained. Chapter XXXVI provides for limitation for taking cognizance in certain offences. Section 468 imposes a bar on taking cognizance of an offence specified in sub-section (2) after the expiry of the period of limitation. Section 469 provides for commencement of period of limitation
- B and it is to be noted that while setting out the date on which the period of limitation would have started, sub-section (2) states that in computing the period of limitation, the day from which such period is to be computed, shall be excluded. Barring the said provision contained in Section 468 and Section 436A, there is no limitation prescribed in completion of investigation and the investigation may continue except for the default-bail right which accrues to the accused on expiry of the 60th or 90th day, in terms of the first proviso to sub-section (2) of Section 167. Thus, the legislative intent providing for the 60/90 day statutory period- serves a twin purpose, firstly speedy trial of the accused which would transform him into a convict or his release on culmination of the trial and secondly, to assure speedy justice to the victim and to the society in general.
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25. The insertion of proviso (a) to Section 167(2) of the Code was examined and analyzed in *Chaganti (supra)*. In writing the two-judge bench opinion in the case, S. Natarajan J. had the occasion to examine the reasoning and the ratio in *Rajoo alias Raj Kishore Singh Vs. State of Bihar*¹⁵ as also the High Court decisions in *Raj Kumar Vs. State of Punjab*¹⁶, *Batna Ram vs. State of H.P*¹⁷, *Jagdish vs. State of M.P.*¹⁸ and *N. Sureya Reddy vs. State of Orissa* (*supra*) and the learned Judge observed the following :-

G “*31. Some of the decisions cited on either side have been rendered prior to the amendment of proviso (a) by Act 45 of 1978 and some have been rendered after the amendment. Mr.*

¹⁵ (1980) 1 SCC 108

¹⁶ AIR 1979 P&H 80

¹⁷ 1980 Crl. LJ 748 (HP)

H ¹⁸ 1984 Crl. LJ 79 (MP)

Ram Reddy sought to make a distinction of the earlier decisions by contending that they ceased to have relevance because of the amendment to proviso (a) making it an independent paragraph all by itself. Since, we have held that in whichever way proviso (a) is construed i.e. with reference to Section 167(2) or without reference to it the periods of 90 days and 60 days prescribed by the legislature can be reckoned only from the date of remand the distinction sought to be made between the decisions rendered prior to Amendment Act 45 of 1978 and subsequent to it does not have much of significance. A

32. As the terms of proviso (a) with reference to the total periods of detention can be interpreted on the plain language of the proviso itself we do not think it is necessary to invoke the provisions of the General Clauses Act or seek guidance from the Limitation Act to construe the terms of the proviso.” C

26. However, noticing that some of the aforesaid decisions were prior to the insertion of proviso (a) by the amending *Act 45 of 1978*, it was opined in *Chaganti (supra)* that those earlier case laws have no relevance. The Court then went on to state that the 90/60 days prescribed in proviso (a) to Section 167 (2) can be reckoned only from the date of remand and it is made clear through the amendment that the legislature had intended to provide a 90/60 day remand period, for the purpose of investigation. It was also expressly opined that the proviso (a) in reference to the total period of detention can be interpreted on the plain language of the proviso itself, being a complete code on its own and it being wholly unnecessary to invoke provisions of the *General Clauses Act* or *Limitation Act*. D E F

27. The above authoritative pronouncement in *Chaganti (supra)* was later considered in *Gautam Navlakha (supra)*, wherein, for computing the prescribed 60/90 day remand period, the date of remand was included.

28. In the above context, let us now examine the decision in *State of M.P. vs. Rustam (supra)*, and *Ravi Prakash Singh Vs. State of Bihar (supra)* which are relied upon by the learned ASG to argue that the period specified in proviso (a) to Section 167 (2) of the CrPC should exclude the date of remand. On reading *Rustam (supra)*, it comes to light that the Court while counting the period has considered Sections 9 G H

- A and 10 of the *General Clauses Act*. But in doing so, the Court in *Rustum(supra)* failed to appreciate the ratio in *Chaganti (supra)* where it was categorically observed, that for the purpose of computing the period under Section 167 (2), the provisions of *General Clauses Act* will have no application. Insofar as *Ravi Prakash Singh (supra)* cited by Mr. Raju, it can be seen that the Court merely follows *Rustum (supra)* and it does not lay down any law as such, which may have a bearing on the present consideration.

29. Considering the legislative intent behind Section 167 (2) CrPC, and the proviso (a) being a complete code in itself, as also elucidated in *Chaganti (supra)*, the computation method laid down in *Rustum (supra)*, may not be the correct way . Further, since *Rustum (supra)* ignored the binding precedent in *Chaganti (supra)* on computing the prescribed 60/ 90 day period under proviso (a) of Section 167(2), from the date a Magistrate ordered remand, it is a *per incuriam* decision.

- D The law of binding precedent provides that the rule of *per incuriam* is an exception to the doctrine of judicial precedent. Quite literally, it provides that when a judgment is passed in ignorance of a relevant precedent or any other binding authority, the same is said to be postulating incorrect law. It becomes pertinent to resolve the conflict arising from diverging opinions by taking recourse to the *ratio decidendi*
- E of the earliest opinion. In this context MN Venkatchaliah J., in the 7-judge Bench decision of *A.R. Antulay vs. R.S. Nayak [(1988) 2 SCC 602]* opined that:

“...the point is that the circumstance that a decision is reached *per incuriam* merely serves to denude the decision of its precedent value.

Such a decision would not be binding as a judicial precedent. A coordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such a decision...”¹⁹

- G Likewise, a Constitution Bench in *Shah Faesal vs. Union of India*²⁰ taking note of this Court’s decision in *Sandeep Kumar Bafna Vs. State of Maharashtra*²¹ pertinently observed:

¹⁹ AR Antulay vs. RS Nayak (1988) 2 SCC 602, para 183 (per MN Venkatchaliah J.)

²⁰ Shah Faesal vs. Union of India, (2020) 4 SCC 1 (para 33)

²¹ 2014 (16) SCC 623

“...a decision or judgement can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgement of a co-equal or larger bench or if the decision of the High Court is not in consonance with the views of this court...”

31. It logically flows from the above that the operative part in *Rustum (Supra)* with respect to the 60/90 day period of computation, arrived at after, invoking *Sections 9 and 10 of the General Clauses Act, 1897*, where the court excluded the date of remand and ignored the contrary opinion in *Chaganti (supra)*, cannot be a binding judicial precedent as the same is rendered *per incuriam*. A B C

32. Significantly the principle of computing the 60/90 day period by including the date of remand, as laid down in *Chaganti (supra)*, has been followed in *State vs. Mohd. Ashraft Bhat (supra)*, *Pragnya Singh Thakur (supra)*, and in *Gautam Navlakha (supra)*. D

33. The 3-Judge Bench in *M. Ravindran (supra)*, followed *Rustum (supra) viz. a viz. Ravi Prakash (Supra)*, wherein the date of remand is excluded. However, the computation as stipulated in *Rustum (supra)*, being *per incuriam*, cannot in our opinion be considered as the correct law. Therefore, the Court in *Ravindran (supra)* ought to have followed the computation principle laid down in *Chaganti* and not *Rustum*. E F G H

34. The learned Single Judge in the impugned judgment was conscious of the ratio in *Rustum (supra)* and *Ravi Prakash (supra)* where the Court had taken into consideration *Section 9* of the *General Clauses Act, 1897* and observed that *Section 9* may have some relevance where the concerned statute prescribes the period of limitation and the exclusion of first in a series of days or any other period of time, may then be in order. The Court observed that “the principle” would be attracted when a period is delimited by a Statute or Rule, which has both a beginning and an end; the word ‘from’ indicates the beginning, i.e. the opening day which is to be excluded and, the last day is included by use of the word ‘to’. The requisite ‘from’ for applicability of *Section 9* is prescribed for a period ‘from’ and ‘to’, i.e. when the period is marked by *terminus quo* and *terminus ad quem*. This principle being the underlying method for applicability of *Section 9* of the *General Clauses Act, 1897*. Significantly, in *Section 167* application, there is no starting or ending point for completion of the investigation. In the scheme of the CrPC, as has been elaborated above, the provisions contained in sub-

- A section (1) of Section 167 runs in continuation of sub-section (2). The production of the accused before the Magistrate is a sequel to his arrest by the police and at the same time, the accused too has a right to be produced before the Magistrate, within 24 hours of his arrest. The day on which the accused is brought on remand before the Magistrate, sub-section (2) of Section 167 empowers the Magistrate to authorize the detention with the police either by continuing it or remanding him to Magisterial custody. There cannot be a pause/break between the two processes. No de- limitation is conceptualized in Section 167 nor can it be fitted into a period of limitation '*from*' and '*to*' since there is no limitation for completion of investigation and filing of the chargesheet. The production before the Magistrate is a process in continuation of arrest by the police and the Magistrate will authorize detention for not more than 15 days in the whole but if he is satisfied that sufficient grounds exist, he may authorize an accused's detention beyond 15 days otherwise than in the custody of police. Pertinently, there is no fixed end point within which, the police or investigation authorities are required to complete the investigation. However, if the investigation is not completed and chargesheet is not filed within 60 or 90 days, a right of default bail accrues to the accused. The anterior period of custody with the police prior to the remand is not detention. It is only so, pursuant to an authorization issued from the Magistrate. The period of detention by the Magistrate runs from the very day of remand order. Sub-section (2) of Section 167 of the CrPC pertains to the power of the Magistrate to remand an accused and there is no reason why the date of the Magisterial Court's gaze on the accused, should be excluded. In order to avoid long incarceration of an accused only because the investigation is being carried out in a leisurely manner, the legislature was prompted, to confer a right on the accused to be released on default bail if he is prepared to offer bail bond and the investigation may still continue. This is why the *General Clauses Act* cannot be made applicable to sub-section (2) of Section 167. Moreover, excluding the date of the remand order would also result in a break in the continuity of the custody of the accused which begins on his date of arrest under Section 56 and continues till the stipulated 60/ 90 day period, under Section 167. Additionally, it is to be noted that when we include the date of remand order as the first day of the stipulated remand period- there arises no fixed 60-day period for which the accused is remanded. Once the Magistrate authorises remand, irrespective of the time of the day, when he does so, the prosecution, in each case will

have a varying period of custody which may range in a moving cursor manner from a spectrum of 59 days and 23 hours or so to 59 days and 1 hour or so for offences covered under proviso a(ii) of Section 167(2). The exact period of remand for an accused is subject to the first gaze of the Magisterial court and the signing of the remand order. This explains the finding in *Chaganti* (supra) that *General Clauses Act* is inapplicable to Section 167 CrPC, as there is no definite 'from' period from which the stipulated remand, may commence. Moreover, the fact that the date of remand is included and not excluded from the stipulated period, is based on the pivotal consideration that personal liberty of the individual commands that any lacuna in the specificity of the law has to be so interpreted in the accused's favour.

35. The learned ASG placing reliance on *Econ*²² and *Saketh*²³ to contend that Section 9 of the *General Clauses Act* would be applicable to Section 167 CrPC, as there is a particular time period fixed, irrespective of a 'from' and 'to' stipulation, within which investigation is to be done. This we find to be fallacious as there is no fixed time period under which the investigation is to be completed. As explained above, when we include the date of remand in the stipulated 60/90 day period under Section 167, then it would result in a varying remand period not exactly amounting to a neat 60/90 days time. Thereby, making the *General Clauses Act*, inapplicable.

36. Section 57 of the CrPC mandates that the accused be produced before a Magistrate within 24 hours of arrest and under Section 167(2) the Judicial Magistrate is required to scrutinize the executive action and determine whether the rights of the accused are not subjugated by police action. The separation of the Executive and the Judicial exercise of power, ultimately protects an individual's personal liberty which is also constitutionally protected under Articles 21 and 22(2). If the date of remand ordered by a Magistrate is ignored, then an accused even though in custody, the same will not be counted within the 60/90 day period. The custody on the date of remand is distinct from the arrest of an accused under Section 56 CrPC as that is considered as a period prior to production before the Magistrate. By this logic, even if the accused is under custody it would neither be under Section 56, nor under 167(2) of the CrPC. This will lead to an apparent legal vacuum. This can however be avoided if

²² *Econ Antri Ltd. vs. Rom Industries* [(2014) 11 SCC 769]

²³ *Saketh India Ltd. vs. India Securities Ltd.* (1999) 3 SCC 1

- A the remand period is considered from the very day of the remand order. Furthermore, if an accused is remanded by a Magistrate on say, 01.01.2023, then, the police, post judicial scrutiny, is empowered to investigate, starting on the same day, as per Section 167 CrPC, irrespective of whether the police actually commence investigation on the same day.
- B So, if the police is empowered to investigate an accused person on the day of the remand order itself, the 60/90 day stipulated period, upon whose expiry, the right of default bail accrues to the accused, should logically be calculated from that day itself. Ignoring the date of remand under Section 167 CrPC in the 60/90 day period, would in our opinion, militate against the legislative intent of providing an accused protection
- C from being in prolonged custody, because of slothful investigation.

37. In *Rakesh Kumar Paul vs. State of Assam*²⁴ a three-judge Bench of this Court while examining the ratio in *Union of India vs. Nirala Yadav*²⁵ and *Uday Mohanlal Acharya vs. State of Maharashtra*,²⁶ observed that on the expiry of the 60/90 day period as
- D 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 completion of the investigation within the prescribed period. The opinion in *Sanjay Dutt Vs. Bombay through C.B.I.*²⁷ was also considered, wherein the Constitution Bench laid down that if the chargesheet is not filed and the right for “default bail” has ripened into
 - E the status of indefeasibility, such right cannot be frustrated by the prosecution.

38. Similarly in *Bikramjit Singh vs. State of Punjab*²⁸ a three-Judge bench observed, that the right to secure a default bail under the first proviso to Section 167 (2) of the Code is a part of the procedure established by law under Article 21 of the Constitution of India. Therefore, the right therein is raised to the status of a fundamental right. The Court in this context observed that while considering the consequences that flow towards liberty of an accused, it is immaterial whether the accused makes a written or an oral application for default bail and the Court is only
- F G required to deal with such an application by considering the statutory requirements, namely, whether the statutory period for filing a chargesheet

²⁴ (2017) 15 SCC 67

²⁵ (2014) 9 SCC 457

²⁶ (2001) 5 SCC 453

²⁷ 1994 (5) SCC 410

H ²⁸ (2020) 10 SCC 616

or *challan* had expired and whether the accused is prepared to and does furnish bail. In other words, to claim default bail under Section 167 (2) first proviso CrPC, the accused does not have to make out any substantive grounds for securing bail nor does he have to file a detailed bail application. All he has to aver in the application is that since the stipulated 60/90 day period has expired and the chargesheet has not been filed, he is entitled to bail and such indefeasible right cannot be defeated by filing the chargesheet after the accused has offered to furnish bail.

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39. In *S.Kasi vs. State (supra)*, the court discussed the applicability of the *Limitation Act* to Section 167 (2) CrPC, the right to personal liberty, and the prosecution's right to file a chargesheet. The court safeguarding individual freedom then held that Supreme Court's earlier direction to relax limitation requirements, in light of Covid-19 pandemic,²⁹ would not allow the State or the investigation agencies, any relaxation in terms of computing the investigation period and thereby allowing additional incarceration of the accused- curtailing their personal liberty.

40. In construction of a penal statute in case of ambiguity, whether actual or assumed, in order to, fulfill the legislative intent underlying Section 167(2) CrPC, the ambiguity must be resolved in favour of the accused person since liberty is at stake. This was the opinion expressed in *M. Ravindran (supra)* where the following was pronounced:

"whenever there is 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 an individual and the State."

41. Similarly, In *Rakesh Paul (supra)*, a three-judge bench of this court, in context of, Section 167, held that where, on reading the statute, two views are possible, then the provision that curtails individual liberty should be read strictly. It was observed that since Article 21 rights are involved, the Court should lean in favour of the interpretation that upholds and protects personal liberty.³⁰ This interpretation is also supported by the idea that Constitutional law is logically, morally and legally superior

²⁹ Suo Motu Writ Petition (Civil) No. 3/2020

³⁰ Rakesh Kumar Paul vs. State of Assam, (2017) 15 SCC (109) para 72-73, (per Lokur J.)

- A to the statutory law.³¹ Therefore, any statutory provision, must be in conformity with the constitutional law. Further, In the specific context of the right to default Bail, under the first proviso to Section 167 (2) of the CrPC, this court in *Gautam Navlakha* (supra) held that, right to default bail is a fundamental right and in case a remand order is passed mechanically or in violation of law or be afflicted with vice of lack of jurisdiction, a writ of *habeas corpus* would lie.
- B 42. The 60/90 day limit is a statutory requirement which allows the State agencies to investigate serious offences beyond the 15-day police custody. In case the State fails to file chargesheet or supplementary request for remand within the stipulated 60/90 day period, we need to strike a balance between the rights of the individual and the restriction on those rights and prevent prolonged incarceration without legal support. The very instance, the statutory remand period ends, an indefeasible right to default bail accrues to the accused and same needs to be guarded. The liberty of the individual is surely relative and regulated. Absolute liberty is something that cannot be conceived in a societal setting. The law therefore allows authorities to detain accused persons and facilitate investigation. However, it is the duty of this court to discourage prolonged incarceration. Further, the right to default bail is not extinguished by the subsequent filing of the chargesheet, and the accused continues to have the right to default bail.
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43. The Constitutional foundation, touching upon the liberty of an individual was first explained in the dissenting opinion of Justice Fazl Ali in *AK Gopalan*³²- where he described the doctrine of interoperability of rights. This minority view became the majority ruling in the later case of *RC Cooper*³³ and *Maneka Gandhi*.³⁴ The doctrine stipulates that fundamental rights are not isolated and separate, but rather form an interconnected web of liberty and freedom. Any law that takes away liberty has to be just, fair and reasonable and pass muster of the collective operation of rights mentioned under Articles 14, 19 and 21. Any

³¹ VM Bachal, The Indian Journal of Political Science, Vol. 25, No. 3/4, Conference Number For XXVI Indian Political Science Conference 1964: Annamalainagat (July—Sept.—December, 1964), pp. 231-240

³² AK Gopalan vs. State of Madras, AIR 1950 SC 27, 1950 SCR 88; page 297, para 131. Justice Fazl Ali notes that Natural Justice is not a conception unknown, to the Indian Constitution.

³³ Rustom Cavasjee Cooper vs. Union of India (1970) 1 SCC 248, para-1,4 and 5

³⁴ Maneka Gandhi vs. Union of India AIR 1978 SC 597 paras 216, 218 to 227 (per H. Beg J.), paras 47 and 56 (per Chandrachud J.)

interpretation, given to the statutory contours of Section 167 CrPC, have to necessarily measure up to the standards of reasonableness, fairness and immutability of rights. Furthermore, this court in *Kesavananda Bharti*,³⁵ speaking through the then Chief Justice Sikri, noted that, India having acceded to the Universal Declaration of Human Rights (1948), and the Constitutional mandate in Article 51, would require the Court to treat rights as inalienable, and this should guide the constitutional interpretation.

44. At this stage, we may benefit by remembering the dissenting opinion of Justice Louis D. Brandeis in *Olmstead vs. US*.³⁶ His words in the 1920's ruling on personal liberty, ring true even after a century. Justice Brandeis observed:

"Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

45. The above passage was approvingly quoted by Justice HR Khanna in his dissenting opinion in *ADM Jabalpur*.³⁷ It hardly needs to be emphasized that the question of default Bail is inextricably linked to personal liberty and Article 21. Justice Khanna's minority view in *ADM Jabalpur* found approval in Justice DY Chandrachud's lead opinion in the privacy judgement in *KS Puttaswamy*,³⁸ wherein the learned Judge opined that even in absence of Article 21 of the Constitution, the State has no power to deprive a person of his life or personal liberty without the authority of the law; that being the essential postulate and basic assumption.³⁹ It logically follows therefrom that life and personal liberty are inalienable and are rights that are inseparable from a dignified human existence.

³⁵ *Kesavananda Bharti vs. State of Kerala* (1973) 4 SCC 225. (Per CJ Sikri)

³⁶ *Olmstead vs. US*, 277 US 438 (1928), *dissenting*

³⁷ *ADM Jabalpur vs. Shivkant Shukla* (1976) 2 SCC 521, (para 529) per HR Khanna J. *dissenting*

³⁸ *K.S. Puttaswamy Vs. Union of India* (2017) 10 SCC 1.

³⁹ Justice DY Chandrachud, in his majority opinion in *KS Puttaswamy vs. Union of India* (2017) 10 SCC 1, cites John Locke's Second Treatise (1690), stating that liberties are a matter of fundamental natural law.

- A 46. Writing on ‘natural liberty’, William Blackstone in his commentaries on *Laws of England*, in 1965 described those as absolute rights which were vested in the individual by the immutable laws of nature. In other words, the right to personal liberty came to be recognized as an unalienable and immutable right.
- B 47. The right to personal liberty is directly related to the inalienable right towards human dignity and personhood. The concept of dignity is central to our Constitutional law discourse. In fact, the Preamble itself, provides the guarantee of upholding ‘*the dignity of the individual*’. The Constitution scheme provides that all human rights, including the right to personal liberty, are specifications of one special fundamental right- that is the right to have one’s personal dignity respected. The same proposition is also supported by the scholar Hannah Arendt. According to Arendt, dignity consists of the ‘*right to have rights*’ and the ‘*right to equal political membership of some kind of organized community*’.⁴⁰ Furthermore, constitutional courts around the world have endorsed that the question of human dignity and equality form the base of personal liberty.⁴¹ The US Supreme Court in *Munn Vs. Illinois*⁴², explained the term liberty in context of the 14th Amendment to the US Constitution, and stated that, “*by the term ‘liberty’, as used in the provision, something more is meant than mere freedom from physical restraint or the bounds of a prison. It means freedom to go where one may choose, and to act in such manner, not inconsistent with the equal rights of others, that is, to pursue such callings and avocations as may be most suitable to develop (individual) capacities and give to them their highest enjoyment.*”⁴³ These words were later adopted by this Court, in the context of Article 21 to suggest that life under Article 21 does not mean, mere animal existence, but rather, a dignified existence.⁴⁴

48. Let us now test the argument propounded by the learned ASG, that if an accused is produced before a Magistrate at 11:50 PM on a given day, say, 01.01.2023, and if *Section 9 of the General Clauses Act*

- G ⁴⁰ Hannah Arendt, *The Origins of Totalitarianism* (1951)
- ⁴¹ See the German Constitution (1945) and the Helsinki Accords (1975).
- ⁴² *Munn v. Illinois*, 94 U.S. 113 (1876)
- ⁴³ *Munn v. Illinois*, 94 U.S. 113 (1876), page 142. *Munn v. Illinois*- cited with approval by Supreme Court of India, in case of *Kharak Singh vs. State of UP (1964) 1 SCR 332* and later in *KS Puttaswamy vs. UoI (2017) 10 SCC 1*.
- H ⁴⁴ *Francis Corallie Mullin vs. The Administrator*, 1981 AIR 746. (per PN Bhagwati J.)

is not applied, then only a few minutes of that day would have to be counted as an entire day for purposes of calculating the remand period. In such a situation a short ten minute window or less, would be available for the police for custodial investigation. On this it must be observed that production of an accused before a Magistrate say at 11:50 PM, has more to do with police producing the accused within the prescribed 24 hour period as mandated under Section 57 CrPC. Therefore, the legal position vis-à-vis proviso (a) of Section 167 (2) CrPC, cannot be resolved in favour of the investigation agencies, with such an extreme example. As stated earlier, when the day of remand order is included in the stipulated period under Section 167(2), the same would encourage the prosecution to promptly comply with Section 57 CrPC. The leaning towards the accused's right to personal liberty by reducing the 60 day period to something more than 59 days, and a few hours, is based on the constitutional protection afforded to an accused under Article 22(2) and Article 21. In this way, the Code's application in dealing with an accused would be consistent with the inviolable right of personal liberty and dignity, as explained above.

49. Returning now to the English philosopher John Locke, with whose words this judgment commenced,⁴⁵ we have elected to answer this reference by endorsing that interpretation of law which advances the cause of justice and freedom. The relevant provisions of the CrPC are the laws, that are essential to protect an individual's liberty. It regulates the societal need for limited detention of persons charged with serious offences. We have therefore adopted the interpretation whereby personal liberty is safeguarded and justice would not be compromised and in the grand scheme of things, the unjustified detention of individuals is eschewed. As a court of law, once the legal stipulations of the Code are satisfied, we are duty bound to apply the law and prevent unlawful detention and protect personal liberty.

50. Since there exists vacuum in the application and details of Section 167 CrPC, we have opted for an interpretation which advances the cause of personal liberty. The accused herein were remanded on 14.05.2020 and as such, the chargesheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on

⁴⁵ Locke's, in *The Second Treatise of Government*, argues that sovereignty resides in the people and explains the nature of legitimate government in terms of natural rights and the social contract.

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- A 13.07.2020 which was the 61st day of their custody. Therefore, the right to default bail accrued to the accused persons on 13.07.2020 at 12:00 AM, midnight, onwards. On that very day, the accused filed their default bail applications at 8:53 AM. The ED filed the chargesheet, later in the day, at 11:15 AM. Thus, the default bail Applications were filed well before the chargesheet. In *Ravindran(supra)* and *Bikramjit (supra)*, which followed the Constitution Bench in *Sanjay Dutt(supra)* it was rightly held that if the accused persons avail their indefeasible right to default bail before the chargesheet/final report is filed, then such right would not stand frustrated or extinguished by any such subsequent filing. We therefore declare that the stipulated 60/90 day remand period under Section 167 CrPC ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period, as we notice will extend beyond the permitted 60/90 days' period resulting in unauthorized detention beyond the period envisaged under Section 167 CrPC. In cases where the chargesheet/final report is filed on or after the 61st/91st day, the accused in our considered opinion would be entitled to default bail. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused.
- E 51. Following the above discussion and opinion, the impugned order of the High Court granting default bail to the respondents by applying the proviso (a) (ii) of Section 167(2) CrPC is found to be in order. Hence, we uphold the impugned judgment dated 20.08.2020 passed by the learned Single Judge of the Bombay High Court. Any other pending issues arising from these appeals are to be addressed by an appropriate Bench of this Court.

Nidhi Jain
(Assisted by : Tamana, LCRA)

Reference answered.