# S. Kasi vs State Through The Inspector Of Police ... on 19 June, 2020

## Author: Ashok Bhushan

## Bench: V.Ramasubramanian, M.R.Shah, Ashok Bhushan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 452 OF 2020
(ARISING OUT OF SLP (CRL.) NO.2433/2020)

S.KASI ...APPELLANT(S)

VERSUS

STATE THROUGH
THE INSPECTOR OF POLICE
SAMAYNALLUR POLICE STATION
MADURAI DISTRICT ...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN,J.

This appeal has been filed questioning the judgment of Madurai Bench of Madras High Court dated 11.05.2020 in Crl.OP(MD) No.5296 of 2020 by which judgment the bail application of the appellant has been dismissed.

2. Brief facts giving rise to this appeal are: -

> 2.1. The appellant is an accused in Crime No.495 of 2015 under Sections 457, 380, 457(2), 380(2), 411(2) and 414(2) of Indian Penal Code. The appellant was Date: 2020.06.19 16:20:02 IST Reason:
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> arrested on 21.02.2020 in the above case and lodged in Central Prison, Trichy. The bail application of the appellant under Section 439 was rejected by the trial court on 30.04.2020. After being in judicial custody for more than 73 days, the appellant filed an application Crl.OP(MD)No.5296 of 2020 before the High Court of Judicature of Madras at Madurai Bench praying for grant of bail on account of passage of such 73 days and non-filing of charge sheet. One of the contentions of the appellant before the High Court was that charge sheet having not been filed, the appellant is entitled

for bail by default as contemplated under Section 167(2) of the Code of Criminal Procedure.

2.2. The High Court referring to an order of this Court dated 23.03.2020 passed in Suo Moto W.P.(C) No.3 of 2020 took the view: -

> "...The Supreme Court order eclipses all provisions prescribing period of limitation until further orders. Undoubtedly, it eclipses the time prescribed
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> under Section 17(2) of the code of Criminal Procedure..."

2.3 Aggrieved by the order of the Madras High Court dated 11.05.2020, this appeal has been filed.

3. We have heard Shri Sidharth Luthra, learned senior counsel appearing for the appellant and Shri Jayanth Muthuraj, learned Additional Advocate General for the State.

4. Shri Sidharth Luthra, learned senior counsel for the appellant contends that the High Court committed error in taking the view that this Court's order dated 23.03.2020 extended the period for submission of charge sheet as prescribed under Section 167(2) Cr.P.C. It is submitted that the provisions of Section 167(2) Cr.P.C. are provisions for protection of personal liberty and in event charge sheet has not been filed by the police within the stipulated period, the appellant is entitled for default bail. The order of this Court dated 23.03.2020 in no manner can be read as extending the period for the prosecution to submit the charge sheet. The High Court had erroneously taken the view that the order of this Court eclipses the time prescribed under Section 167(2) of Code of Criminal Procedure.

5. Learned senior counsel further submits that learned Single Judge in the impugned judgment had also erred in taking a contrary view to an earlier judgment delivered by another learned Single Judge in Settu versus The State, Crl. O.P. (MD) No. 5291 of 2020 where the learned Single Judge of Madras High Court decided on 08.05.2020 has taken the view that the order of this Court dated 23.03.2020 in no manner can be applied on the provisions of Section 167(2) of Code of Criminal Procedure.

6. Learned counsel for the State supports the impugned judgment and submits that due to enormous difficulties in carrying out the investigation, charge sheet could not be filed in the present case and the appellant is not entitled to take benefit of Section 167(2) in precarious situation which has occurred on account of pandemic of Covid-19.

7. We have considered the submissions of learned counsel for the parties and perused the record.

8. The only issue which need to be decided in this appeal is as to whether the appellant due to non-

submission of charge sheet within the prescribed period by the prosecution was entitled for grant of bail as per section 167(2) of the Code of Criminal Procedure. Before we notice the order of this Court dated 23.03.2020 passed in Suo Motu W.P.(C) No. 3 of 2020 which has been applied by the High Court on the provisions of Section 167(2) Cr.P.C., we need to notice object and purpose of enactment of Section 167 of the Code of Criminal Procedure.

9. In the earlier Code, i.e., the Code of Criminal Procedure, 1898, Section 167 laid down the procedure to be followed in the event the investigation of an offence was not completed within 24 hours. Section 167 in the Code of Criminal Procedure, 1898, was premised on the conclusion of investigation within 24 hours or within 15 days on the outside regardless of the nature of the offence or the punishment.

10. The Law Commission of India in its Forty-first Report recommended for increasing the time limit for completion of investigation to 60 days. The new Code of Criminal Procedure, 1973 gave effect to the recommendation of the Law Commission. Section 167 as enacted provided for time limit of 60 days regardless of the nature of offence or the punishment. In the year 1978, Section 167 was amended. Section 167(2) which is relevant for the present case existing as of now is to the following effect:-

> "167.(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-
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> (a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(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 in any custody under this section unless the accused is produced before him;

(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"

11. A three-Judge Bench of this Court in Uday Mohanlal Acharya versus State of Maharashtra, (2001)5 SCC 453, has noticed the object of enacting the provisions of Section 167 Cr.P.C. Section 57 of the Code of Criminal Procedure contains the embargo on the Police Officers to detain in custody a person arrested beyond 24 hours. The object is that the accused should be brought before a Magistrate without delay within 24 hours, which provision is, in fact, in consonance with the constitutional mandate engrafted under Article 22(2) of the Constitution. The provision of Section 167 is supplementary to Section 57. The power under Section 167 is given to detain a person in custody while police goes on with the investigation. Section 167 is, therefore, a provision which authorises the Magistrate permitting the detention of the accused in custody prescribing the maximum period. In Uday Mohanlal Acharya(Supra), this court while dealing with Section 167 laid down following:-

"...This provision of Section 167 is in fact supplementary to Section 57, in consonance with the principle that the accused is entitled to demand that justice is not delayed. The object of requiring the accused to be produced before a Magistrate is to enable the Magistrate to see that remand is necessary and also to enable the accused to make a representation which he may wish to make. The power under Section 167 is given to detain a person in custody while the police goes on with the investigation and before the Magistrate starts the enquiry. Section 167, therefore, is the provision which authorises the Magistrate permitting detention of an accused in custody and prescribing the maximum period for which such detention could be ordered. Having prescribed the maximum period, as stated above, what would be the consequences thereafter has been indicated in the proviso to sub-section (2) of Section 167. The proviso is unambiguous and clear and stipulates that the accused shall be released on bail if he is prepared to and does furnish the bail which has been termed by the judicial pronouncement to be "compulsive bail" and such bail would be deemed to be a bail under Chapter 33. The right of an accused to be released on bail after expiry of the maximum period of detention provided under Section 167 can be denied only when an accused does not furnish bail, as is apparent from Explanation I to the said

> section. The proviso to sub-section (2) of Section 167 is a beneficial provision for curing the mischief of indefinitely prolonging the investigation and thereby affecting the liberty of a citizen..."

12. Again, there has been very detailed consideration of Section 167 by a Three-Judge Bench of this Court in Rakesh Kumar Paul versus State of Assam, (2017)15 SCC 67. This Court in the above case has traced the legislative history of the provision of Section 167. This Court in the above case emphasised that the debate on Section 167 must also be looked at from the perspective of expeditious conclusion of investigation and from the angle of personal liberty. This Court also held that right for default bail is indefeasible right which cannot be allowed to be frustrated by the prosecution. Following was laid down in paragraphs 37, 38 and 39: -

> "37. This Court had occasion to review the entire case law on the subject in Union of India v. Nirala Yadav, (2014) 9 SCC 457. In that decision, reference was made to Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 and the conclusions arrived at in that decision. We are concerned with Conclusion (3) which reads as follows:
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> "13.(3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate."
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> 38. This Court also dealt with the decision rendered in Sanjay Dutt, (1994) 5 SCC 410 and noted that the principle laid down by the Constitution bench is to the effect that if the charge sheet is not filed and the right for "default bail" has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.
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> 39. This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right.

Reference was made to Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 wherein it was observed that some courts keep the application for "default bail" pending for some days so that in the meantime a charge-sheet is submitted. While such a practice both on the part of the prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for "default bail" during the interregnum when the statutory period for filing the charge-sheet or challan expires and the submission of the charge-sheet or challan in court."

13. One more judgment of this Court on Section 167 Cr.P.C. be noticed, i.e., Achpal Alias Ramswaroop and Another versus State of Rajasthan, (2019) 14 SCC 599. After referring to several earlier judgments of this Court including the judgment of this Court in Uday Mohanlal Acharya(supra) and Rakesh Kumar Paul(supra), this Court had laid down that the provisions of the Code do not empower anyone to extend the period within which the investigation must be completed. This Court held that no Court either directly or indirectly can extend such period. Following are the observations of this Court in paragraph 20: -

> "20. We now turn to the subsidiary issue, namely, whether the High Court could have extended the period. The provisions of the Code do not empower anyone to extend the period within which the investigation must be completed nor does it admit of any such eventuality. There are enactments such as the Terrorist and Disruptive Activities (Prevention) Act, 1985 and the Maharashtra Control of Organised Crime Act, 1999 which clearly contemplate extension of period and to that extent those enactments have modified the provisions of the Code including Section 167. In the absence of any such similar provision empowering the Court to extend the period, no court could either directly or indirectly extend such period. In any event of the matter all that the High Court had recorded in its order dated 03.07.2018 was the submission that the investigation would be completed within two months by a gazetted police officer. The order does not indicate that it was brought to the notice of the High Court that the period for completing the investigation was coming to an end. Mere recording of submission of the Public Prosecutor could not be taken to be an order granting extension. We thus reject the submissions in that behalf advanced by the learned counsel for the State and the complainant."

14. The scheme of Code of Criminal Procedure as noticed above clearly delineates that provisions of Section 167 of Code of Criminal Procedure gives due regard to the personal liberty of a person. Without submission of charge sheet within 60 days or 90 days as may be applicable, an accused cannot be detained by the Police. The provision gives due recognition to the personal liberty.

15. After noticing the purpose and object of Section 167, we now come to the judgment of this Court dated 23.03.2020 which has been relied and referred by learned Single Judge in the impugned judgment for holding that the time period in Section 167(2) is eclipsed by judgement of this Court dated 23.03.2020. The Order dated 23.03.2020 was passed by this Court in Suo Motu W.P.(C) No.3 of 2020. The entire order passed on 23.03.2020 is to the following effect: -

"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/ applications/ suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby

ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities. This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

16. The reason for passing the aforesaid order for extending the period of limitation w.e.f. 15.03.2020 for filing petitions/ applications/ suits/ appeals/all other proceedings are indicated in the order itself. Two reasons, which are decipherable from the order of this Court dated 23.03.2020 for passing the order are: -

> i) The situation arising out of the challenge faced by the country on account of Covid-19 virus and resultant difficulties that are being faced by the litigants across the country in filing their petitions/ applications/ suits/ appeals/all other proceedings within the period of limitation prescribed.
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> ii) To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court.

17. The limitation for filing petitions/ applications/ suits/ appeals/all other proceedings was extended to obviate lawyers/litigants to come physically to file such proceedings in respective Courts/Tribunals. The order was passed to protect the litigants/lawyers whose petitions/ applications/ suits/ appeals/all other proceedings would become time barred they being not able to physically come to file such proceedings. The order was for the benefit of the litigants who have to take remedy in law as per the applicable statute for a right. The law of limitation bars the remedy but not the right. When this Court passed the above order for extending the limitation for filing petitions/ applications/ suits/ appeals/all other proceedings, the order was for the benefit of those who have to take remedy, whose remedy may be barred by time because they were unable to come physically to file such proceedings. The order dated 23.03.2020 cannot be read to mean that it ever intended to extend the period of filing charge sheet by police as contemplated under Section 167(2) of the Code of Criminal Procedure. The Investigating Officer could have submitted/filed the charge sheet before the (Incharge) Magistrate. Therefore, even during the lockdown and as has been done in so many cases the charge-sheet could have been filed/submitted before the Magistrate (Incharge) and the Investigating Officer was not precluded from filing/submitting the charge-sheet even within the stipulated period before the Magistrate (Incharge).

18. If the interpretation by learned Single Judge in the impugned judgment is taken to its logical end, due to difficulties and due to present pandemic, Police may also not produce an accused within

24 hours before the Magistrate's Court as contemplated by Section 57 of the Code of Criminal Procedure, 1973. As noted above, the provision of Section 57 as well as Section 167 are supplementary to each other and are the provisions which recognises the Right of Personal Liberty of a person as enshrined in the Constitution of India. The order of this Court dated 23.03.2020 never meant to curtail any provision of Code of Criminal Procedure or any other statute which was enacted to protect the Personal Liberty of a person. The right of prosecution to file a charge sheet even after a period of 60 days/ 90 days is not barred. The prosecution can very well file a charge sheet after 60 days/90 days but without filing a charge sheet they cannot detain an accused beyond a said period when the accused prays to the court to set him at liberty due to non-filing of the charge sheet within the period prescribed. The right of prosecution to carry on investigation and submit a charge sheet is not akin to right of liberty of a person enshrined under Article 21 and reflected in other statutes including Section 167, Cr.P.C. Following observations of Madras High Court in the impugned judgment are clearly contrary to the order dated 23.03.2020 of this Court: -

> "...The Supreme Court order eclipses all provisions prescribing period of limitation until further orders. Undoubtedly, it eclipses the time prescribed under Section 167(2) of the Code of Criminal Procedure also..."
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> 19. Learned Single Judge in paragraph 13 of the impugned judgment has also observed that the lockdown announced by the Government is akin to proclamation of Emergency. Learned Single Judge has also referred to Financial Emergency under Article 360 of the Constitution. Learned Single Judge also noticed that presently though the State is not passing through Emergency duly proclaimed but the whole nation has accepted the restrictions for the well-being of the mankind. Let us also examine as to whether in event of proclamation of Emergency under Article 352 of the Constitution, whether right to liberty as enshrined under Article 21 stands suspended?
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> 20. We may recall the Constitution Bench Judgment of this Court in Additional District Magistrate, Jabalpur versus Shivakant Shukla, (1976) 2 SCC 521, where majority of the Judges(Justice H.R. Khanna dissenting) had taken the view that after proclamation of Emergency under Article 352, no proceedings can be initiated for enforcement of right under Article 21. Justice A.N. Ray, C.J., with whom three other Hon'ble Judges have concurred in paragraph 136 and paragraph 137 laid down following:-
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> "136. First, In view of the Presidential Order dated June 27, 1975 under clause (1) of Article 359 of our Constitution no person has locus standi to move any writ petition under Article 226 before a High Court for Habeas Corpus or any other writ or order or direction to enforce any right to personal liberty of a person detained under the Act on the grounds that the order of detention or the continued detention is for any reason not under or in compliance with the Act or is illegal or mala fide.

137. Second, Article 21 is the sole repository of rights to life and personal liberty against the State. Any claim to a writ of habeas corpus is enforcement of Article 21 and, is, therefore, barred by the Presidential Order."

21. Another Three-Judge judgment of this Court in Union of India and others versus Bhanudas Krishna Gawde and others, (1977) 1 SCC 834, took the same view following the majority of this Court in ADM, Jabalpur versus Shivakant Shukla. In paragraph 23, following was observed: -

"23.....Accordingly, if a person was deprived of his personal liberty not under the Defence of India Act or any rule or order made thereunder but in contravention thereof, his locus standi to move any court for the enforcement of his rights, conferred by Articles 21 and 22 of the Constitution was not barred. More or less, similar was the pattern and effect of the presidential Order dated November 16, 1974. The position with respect to the Presidential Orders dated 27, 1975 and January 8, 1976 is, however, quite different. These orders are not circumscribed by any limitation and their applicability is not made dependent upon the fulfilment of any condition precedent. They impose a total or blanket ban on the enforcement inter alia of the fundamental rights conferred by Articles 19,21 and 22 of the Constitution which comprise all varieties or aspects of freedom of person compendiously described as personal liberty. [See A.K. Gopalan v. State of Madras, AIR 1950 SC 27; Kharak Singh v. State of U.P., AIR 1963 SC 1295 and A.D.M. Jabalpur v. Shivakant Shukla(supra).] Thus there is no room for doubt that the Presidential orders dated June 27, 1975, and January 8, 1976, unconditionally suspend the enforceability of the right conferred upon any person including a foreigner to move any court for the enforcement of the rights enshrined in Articles 14, 19, 21 and 22 of the Constitution."

22. Article 359 of the Constitution was amended by the Forty-fourth Constitutional Amendment Act, 1978. In sub-Article (1) of Article 359, the expression "except Articles 20 and 21 have been inserted". After the amendment, Article 359(1) reads as follows:-

" Suspension of 359(1). Where a the Proclamation of enforcement Emergency is in of the rights operation, the President conferred by may by order declare Part III that the right to move during any court for the emergencies. enforcement of such of the rights conferred by Part III (except articles 20 and 21) as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order"

23. The sting of the judgment of this Court in Additional District Magistrate, Jabalpur versus Shivakant Shukla (supra), and retrograde steps taken in respect of right protected under Article 21 was, thus, immediately remedied by the Parliament by the above Constitutional Amendment.

The minority judgment of Justice H.R. Khanna in Additional District Magistrate, Jabalpur versus Shivakant Shukla (supra) has held that State has no power to deprive the person of his life or liberty without the authorities of law. In paragraphs 525 and 530, Justice Khanna observed:-

> "525....I am of the opinion that Article 21 cannot be considered to be the sole repository of the right to life and personal liberty. The right to life and personal liberty is the most precious right of human beings in civilised societies governed by the rule of law.

Many modern Constitutions incorporate certain fundamental rights, including the one relating to personal freedom.

According to Blackstone, the absolute rights of Englishmen were the rights of personal security, personal liberty and private property. The American Declaration of Independence (1776) states that all men are created equal, and among their inalienable rights are life, liberty, and the pursuit of happiness.

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530. Even in the absence of Article 21 in the Constitution, the State has got no power to deprive a person of his life or liberty without the authority of law. This is the essential postulate and basic assumption of the rule of law and not of men in all civilised nations. Without such sanctity of life and liberty, the distinction between a lawless society and one governed by laws would cease to have any meaning. The principle that no one shall be deprived of his life or liberty without the authority of law is rooted in the consideration that life and liberty are priceless possessions which cannot be made the plaything of individual whim and caprice and that any act which has the effect of tampering with life and liberty must receive sustenance from and sanction of the laws of the land. Article 21 incorporates an essential aspect of that principle and makes it part of the fundamental rights guaranteed in Part III of the Constitution. It does not, however, follow from the above that if Article 21 had not been drafted and inserted in Part III, in that event it would have been permissible for the State to deprive a person of his life or liberty without the authority of law. No case has been cited before us to show that before the coming into force of the Constitution or in countries under the rule of law where there is no provisions corresponding to Article 21, a claim was ever sustained by the courts that the State can deprive a person of his life or liberty without the authority of law....."

24. We may notice that the Constitution Bench Judgment of this Court in A.D.M., Jabalpur versus Shivakant Shukla (supra), foundation of which judgment was knocked out by Forty-fourth Constitutional Amendment has been formally over- ruled by Seven-Judges Constitution Bench Judgment in K.S.Puttaswamy and another versus Union of India and others, (2017) 10 SCC 1. Dr. D.Y. Chandrachud, J., speaking for the Court in paragraphs 136 and 139 held:-

> "136. The judgments rendered by all the four judges constituting the majority in ADM Jabalpur are seriously flawed. Life and personal liberty are inalienable to human

existence. These rights are, as recognised in Kesavananda Bharati, primordial rights. They constitute rights under Natural law. The human element in the life of the individual is integrally founded on the sanctity of life. Dignity is associated with liberty and freedom. No civilized state can contemplate an encroachment upon life and personal liberty without the authority of law. Neither life nor liberty are bounties conferred by the state nor does the Constitution create these rights. The right to life has existed even before the advent of the Constitution. In recognising the right, the Constitution does not become the sole repository of the right. It would be preposterous to suggest that a democratic Constitution without a Bill of Rights would leave individuals governed by the state without either the existence of the right to live or the means of enforcement of the right. The right to life being inalienable to each individual, it existed prior to the Constitution and continued in force under Article 372 of the Constitution. Khanna, J. was clearly right in holding that the recognition of the right to life and personal liberty under the Constitution does not denude the existence of that right, apart from it nor can there be a fatuous assumption that in adopting the Constitution the people of India surrendered the most precious aspect of the human persona, namely, life, liberty and freedom to the state on whose mercy these rights would depend. Such a construct is contrary to the basic foundation of the Rule of Law which imposes restraints upon the powers vested in the modern state when it deals with the liberties of the individual. The power of the Court to issue a Writ of Habeas Corpus is a precious and undeniable feature of the rule of law.

139. ADM Jabalpur must be and is accordingly overruled. We also overrule the decision in Union of India v. Bhanudas Krishna Gawde, which followed ADM Jabalpur."

25. We, thus, are of the clear opinion that the learned Single Judge in the impugned judgment erred in holding that the lockdown announced by the Government of India is akin to the proclamation of Emergency. The view of the learned Single Judge that the restrictions, which have been imposed during period of lockdown by the Government of India should not give right to an accused to pray for grant of default bail even though charge sheet has not been filed within the time prescribed under Section 167(2) of the Code of Criminal Procedure, is clearly erroneous and not in accordance with law.

26. We, thus, are of the view that neither this Court in its order dated 23.03.2020 can be held to have eclipsed the time prescribed under Section 167(2) of Cr.P.C. nor the restrictions which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-submission of charge sheet within the time prescribed. The learned Single Judge committed serious error in reading such restriction in the order of this Court dated 23.03.2020.

> 27. There is one more reason due to which the impugned judgment of the learned Single Judge deserves to be set aside. A learned Single Judge of Madras High Court in Crl.OP(MD)No. 5291 of 2020, Settu versus the State, had already considered the judgment of this Court dated 23.03.2020 passed in Suo Moto W.P(C)No.3 of 2020 and its effect on Section 167(2) Cr.P.C. The above was also a case of a bail where the accused was praying for grant of default bail due to non-submission of charge sheet.

The prosecution had raised objection and had relied on the order of this Court dated 23.03.2020 passed in Suo Moto W.P(C)No.3 of 2020 claiming that period for filing charge sheet stood extended until further orders. The submission of prosecution was rejected by learned Single Judge. The learned Single Judge had made following observations in paragraphs 14 and 15:-

> "14. Personal liberty is too precious a fundamental right. Article 21 states that no person shall be deprived of his personal liberty except according to procedure established by law. So long as the language of Section 167(2) of Cr.P.C. remains as it is, I have to necessarily hold that denial of compulsive bail to the petitioner herein will definitely amount to violation of his fundamental right under Article 21 of the Constitution of India. The noble object of the Hon'ble Supreme Court's direction is to ensure that no litigant is deprived of his valuable rights. But, if I accept the plea of the respondent police, the direction of the Hon'ble Supreme Court which is intended to save and preserve rights would result in taking away the valuable right that had accrued to the accused herein.
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> 15. Of course, the construction placed by me will have no application whatsoever in the case of certain offences under certain special laws, such as Unlawful Activities (Prevention) Act, 1967 and NDPS Act, 1985.

For instance, Section 36-A (4) of the NDPS Act enables the investigation officer to apply to the special court for extending the period mentioned in the statute from 180 days to 1 year if it is not possible to complete the investigation. Thus, under certain statutes, the prosecution has a right to apply for extension of time. In those cases, the benefit of the direction of the Hon'ble Supreme Court made 23.03.2020 in Suo Motu Writ Petition (Civil) No.3 of 2020 will apply. But, in respect of the other offences for which Section 167 of Cr.P.C. is applicable, the benefit of the said direction cannot be availed."

28. The Prayer of the accused in the said case for grant of default bail was allowed. The claim of the prosecution that by order of this Court dated 23.03.2020, the period for filing charge sheet under Section 167 Cr.P.C. stands extended was specifically rejected.

29. The view taken by learned Single Judge of Madras High Court in Settu versus The State (supra) that the order of this Court dated 23.03.2020 passed in Suo Moto W.P(C)No.3 of 2020 does not extend the period for filing charge sheet under Section 167(2) Cr.P.C. has been followed by Kerala High Court as well as Rajasthan High Court. Kerala High Court in its judgment dated 20.05.2020 in Bail Application No. 2856 of 2020 – Mohammed Ali Vs. State of Kerala and Anr. after noticing the

contention raised on the basis of order of this Court dated 23.03.2020 passed in Suo Moto W.P(C)No.3 of 2020 rejected the said contention and followed the judgment of the learned Single Judge of Madras High Court in Settu versus The State (supra). Kerala High Court in paragraph 13 of the judgment observes: -

> "13. I respectfully concur with the exposition of law laid down by the learned Single Judge of the Madras High Court in Crl.O.P.(MD) No.5291 of 2020 as well by the learned Single Judge of Uttarakhand High Court when their lordships held that the investigating agency cannot benefit from the directions issued by the Supreme Court in the Suo moto Writ Petition."

30. Rajasthan High Court had occasion to consider Section 167 as well as the order of this Court dated 23.03.2020 passed in Suo Moto W.P(C)No.3 of 2020 and Rajasthan High Court has also come to the same conclusion that the order of this Court dated 23.03.2020 has no consequence on the right, which accrues to an accused on non-filing of charge sheet within time as prescribed under Section 167 Cr.P.C. Rajasthan High Court in S.B. Criminal Revision Petition No. 355 of 2020 – Pankaj Vs. State decided on 22.05.2020 has also followed the judgment of learned Single Judge of the Madras High Court in Settu versus The State (supra) and has held that accused was entitled for grant of the default bail. Uttarakhand High Court in First Bail Application No.511 of 2020 – Vivek Sharma Vs. State of Uttarakhand in its judgment dated 12.05.2020 has after considering the judgment of this Court dated 23.03.2020 passed in Suo Moto W.P(C)No.3 of 2020 has taken the view that the order of this Court does not cover police investigation. We approve the above view taken by learned Single Judge of Madras High court in Settu versus The State (supra) as well as the by the Kerala High Court, Rajasthan High Court and Uttarakhand High Court noticed above.

31. Learned Single Judge in the impugned judgment has taken a contrary view to the earlier judgment of learned Single Judge in Settu versus The State (supra). It is well settled that a coordinate Bench cannot take a contrary view and in event there was any doubt, a coordinate Bench only can refer the matter for consideration by a Larger Bench. The judicial discipline ordains so. This Court in State of Punjab and another versus Devans Modern Breweries ltd. and another, (2004) 11 SCC 26, in paragraph 339 laid down following:-

> "339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a Larger Bench. (See Pradip Chandra Parija v. Pramod Chandra Patnaik, (2002) 1 SCC 1 followed in Union of India Vs. Hansoli Devi, (2002) 7 SCC 273. But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. Kalyani Stores (supra) and K.K. Narula (supra) both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority."

32. Learned Single Judge did not follow the judicial discipline while taking a contrary and diagonally opposite view to one which have been taken by another learned Single Judge in Settu versus The State (supra). The contrary view taken by learned Single Judge in the impugned judgment is not only erroneous but also sends wrong signals to the State and the prosecution emboldening them to act in breach of liberty of a person.

33. We may further notice that learned Single Judge in the impugned judgment had not only breached the judicial discipline but has also referred to an observation made by learned Single Judge in Settu versus The State as uncharitable. All Courts including the High Courts and the Supreme Court have to follow a principle of Comity of Courts. A Bench whether coordinate or Larger, has to refrain from making any uncharitable observation on a decision even though delivered by a Bench of a lesser coram. A Bench sitting in a Larger coram may be right in overturning a judgment on a question of law, which jurisdiction a Judge sitting in a coordinate Bench does not have. In any case, a Judge sitting in a coordinate Bench or a Larger Bench has no business to make any adverse comment or uncharitable remark on any other judgment. We strongly disapprove the course adopted by the learned Single Judge in the impugned judgment.

34. In view of the foregoing discussions, we allow this appeal, set aside the judgment of learned Single Judge, direct that appellant be released on default bail subject to personal bond of Rs.10,000/- with two sureties to the satisfaction of trial court.

.....J. ( ASHOK BHUSHAN ) .....J. ( M.R.SHAH ) .....J. ( V.RAMASUBRAMANIAN ) NEW DELHI, JUNE 19,2020