

HEARING THROUGH VIDEO CONFERENCING**State Vs. Satish @ Pawan****FIR NO. 52/13****PS : Begumpur****U/S. 3 & 4 MCOCA****12.08.2021**

Present: Sh. Shiv Kumar-I, Ld. Addl. PP for the State.
Sh. Jitender Sethi, Ld. Defence Counsel for the
accused.
IO/ ACP Sh. B.K.Singh is present.

1. This is an application U/s. 167 (2) Cr.P.C. seeking
statutory / default bail filed on behalf of the applicant.

2. It is submitted by the Ld. Defence Counsel that
applicant was arrested on 12.02.2021 in the present FIR. The
statutory period of 90 days for filing the charge sheet had already
expired. It is further submitted that no application seeking
extension of time in filing the charge sheet has either been filed
by the Ld.APP or the IO. The charge sheet has not been filed till
date even after expiry of the stipulated period, hence, the
applicant is entitled for statutory bail.

3. Heard detailed arguments on behalf of Ld. Defence
Counsel, Ld. APP for the State and perused the report of the IO.

4. As per record, the applicant was arrested in the
present FIR on 12.02.2021. The statutory period for filing the
chargesheet in the offences under MCOC Act is 90 days. The

said period of 90 days can be extended on the application by the Ld. Addl. PP for the State, if, it is shown that there are reasonable grounds and the investigation could not be completed in 90 days.

5. Admittedly, in the present case, no such application for extension of time for filing the charge sheet or carrying out further investigation has either been filed by the IO or Ld. Addl. PP for the State. As per record, no chargesheet has been filed till date i.e. 12th day of August 2021 since the date of arrest of the applicant.

6. It is no more res integra that the right to bail U/s. 167 (2) proviso (a) thereto is absolute. If the investigating agency fails to file charge sheet before the expiry of 90/ 60 days as the case may be, the accused in custody is entitled to be released on bail. At that stage, merits of the case are not to be examined. Even under special statutes like MCOCA, unless the court grants extension of time based on the report of the Public Prosecutor, the Court does not has jurisdiction to deny to the accused his indefeasible right to default bail, if the accused seeks and is prepared to furnish the bonds as directed by the Court.

7. At this stage, it is submitted by the IO ACP B.K. Singh that he had submitted the charge sheet at the filing counter on 10.8.2021 itself. As per record, the present application has been filed on 09.08.2021. The charge sheet has not been received in the present Court till date. It is well settled law that the right of the accused to be released on statutory bail cannot be defeated merely because the prosecution filed the charge sheet subsequent

to his application. The right in favour of the accused accrues, the moment he files the application enforcing his rights.

8. In M. Ravindran Vs The Intelligence officer, Directorate of Revenue Intelligence, SLP (Crl. No.2333 of 2020 dated 26.10.2020, Hon'ble Supreme Court of India while dealing with the law on statutory bail has concluded as follows:

"18.1 Once the accused files an application for bail under the Proviso to Section 167(2), he is deemed to have 'availed of' or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2) , Cr.P.C. read with Section 36A (4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor , as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigating agency.

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

chargesheet or a report seeking extension of time by the prosecution before the court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.

18.3 However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the Cr.P.C.

18.4 Notwithstanding the order of default bail passed by the court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the court, his continued detention in custody is valid."

9. Also in **Bikramjeet Singh Versus State of Punjab**, 2020 SCC online SC 824, dealing with similar situation, which

arose in an application for default bail under UAPA, a three judge bench of Hon'ble supreme Court of India, after considering the various judgments on the points , observed thus,

"A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes off such application wrongly before the charge sheet is filed. So long as an application has been made for default bail on expiry of stated period before time is further extended to the maximum period of 180 days, default bail being, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted."

10. As discussed above, in the present matter, no application seeking extension of time for filing the charge sheet after the expiry of the statutory period of 90 days has been filed by the Ld.APP or the IO. The present application has been filed on 09.08.2021 itself. The chargesheet even if, filed before the filing counter on 10.08.21 has not been received in the present court till date.

11. In view of the above discussion, present application is allowed. The applicant is entitled for statutory bail. Let he be on released on bail subject to furnishing personal bond in the sum of Rs.1,00,000/- with one surety of the like amount.

12. It is painful to note that in the present FIR, which is for the offence under Special Act- MCOC Act, 1999 to combat organized crime and terrorism, the IO in a very callous manner had neither made any effort to seek extension of time in filing the chargesheet nor apprised the court about the fact that the stipulated period for filing the chargesheet had expired in the present case in May 2021 itself. The manner in which the investigation is being carried out by the IO is very causal and not as per the procedure prescribed under the Act.

13. The concerned DCP is directed to look into the matter and file his report within seven days from today about the conduct of the IO and the manner of investigation in the present FIR, which is against an organized syndicate and involves very serious nature of offences.

Let the digitally signed scanned order be uploaded as per rules.

**KIRAN GUPTA
ADDITIONAL SESSIONS JUDGE-03,
NORTH WEST DISTRICT,
ROHINI COURTS,
DELHI/ 12.08.2021**