

Mukesh Modi vs Sfi0, New Delhi And Another on 31 May, 2019

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Author: Amit Rawal

Bench: Amit Rawal

CRM-M-20688-2019 (O&M) AND
OTHER CONNECTED MATTERS

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 31.05.2019

1.

CRM-M-20688-2019 (O&M)

Mukesh Modi

... Petitioner

Versus

SFI0 and another

... Respondents

2.

CRM-M-20691-2019 (O&M)

Rahul Modi

... Petitioner

Versus

SFI0 and another

... Respondents

3.

CRM Nos.13179 & 12898 of 2019 in
CRM-M No.17755 of 2019

Rahul Modi

... Petitioner

Versus

Union of India and another

... Respondents

4.

CRM Nos.13161 & 12899 of 2019 in
CRM-M No.17756 of 2019

Mukesh Modi

... Petitioner

Versus

Union of India and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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CRM-M-20688-2019 (O&M) AND
OTHER CONNECTED MATTERS

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Present: Mr. Atul Nanda, Senior Advocate with
Ms. Rameeza Hakeem, Advocate
for the petitioner(s).

Mr. Aman Lekhi, Additional Solicitor General of India with
Mr. S.P. Jain, Additional Solicitor General of India with
Mr. Alok Kumar Jain, Standing Counsel for UOI,
Mr. Ujjawal Sinha, Advocate and
Mr. Hari Kishan, Prosecutor SFIO.

Mr. P.C. Maurya, Additional Director, SFIO.

AMIT RAWAL, J.

This order of mine shall dispose of two petitions bearing CRM-M No.20688 of 2019 titled as "Mukesh Modi V/s SFIO and another" and CRM-M No.20691 of 2019 titled as "Rahul Modi V/s SFIO and another" filed under Section 439 of the Code of Criminal Procedure for grant of regular bail.

FACTS IN BRIEF

1. The case, in hand, arises out of the investigation initiated by the Central Government i.e. Ministry of Corporate Affairs (in short 'MCA'), wherein, MCA, on the basis of some material, framed an opinion and vide order dated 20.06.2018 directed investigation into affairs of Adarsh Group of Companies and Limited Liability Partnerships (in short 'the LLP'), to be conducted by Serious Fraud Investigating Officer (SFIO), New Delhi, under Section 212(1)(c) of the Companies Act, 2013 and Section 43(2) and (3)(c)(i) of Limited Liability Partnership Act, 2008 (in short 'the LLP').

2. The petitioners stated to have been summoned on multiple occasions to join investigation for providing necessary information. Thereafter, the petitioners were arrested on 10.12.2018 and produced 2 of 21 CRM-M-20688-2019 (O&M) AND before Judicial Magistrate First Class, Gurugram, wherein, SFIO, vide application dated 11.12.2018, sought their remand and the Presiding Officer, granted three days' police custody till 14.12.2018.

3. It is a matter of record that the petitioners preferred respective writ petitions bearing WP(Criminal) No.3842 & 3843 of 2018 under Article 226/227 of the Constitution of India read with

Section 482 of Cr.P.C., before the High Court of Delhi, seeking declaration of their arrest to be illegal and void. Delhi High Court, vide common order dated 20.12.2018, held the order of arrest to be without jurisdiction, unlawful and illegal and noticing that the petitioners were cooperating with the investigation, granted interim relief while imposing various conditions including the embargo on their leaving the territorial jurisdiction of National Capital Region without permission. On 21.12.2018, the trial Court released the petitioners on bail

4. The aforementioned order was challenged by SFIO, vide SLP (Criminal) No.94-95 of 2019, before Hon'ble the Supreme Court. Vide order dated 27.03.2019, the order of the Delhi High Court was set aside by holding the petitions in Delhi High Court were not maintainable and the petitioners were directed to surrender and remain present before the trial Court, on 01.04.2019 at 11 A.M.

5. As per averments in bail application, during the period of their release, the petitioners adhered to all the above conditions and did not leave the territorial jurisdiction of National Capital Region (NCR) or contravened any conditions of release, reflected from various summons issued to them from December 2018 to March 2019 (Annexure P-7), collectively.

6. The petitioners, in pursuance of the order of Hon'ble Supreme 3 of 21 CRM-M-20688-2019 (O&M) AND Court, surrendered before the Special Court, at Gurugram on 01.04.2019 and sought regular bail before the Special Court at Gurugram.

7. The National Company Law Tribunal, vide order dated 04.10.2018 and 31.10.2018 (Annexure P-17) (collectively), appointed the Executive Officer, Mr. Shyam Murari Nigam (IRS) Retired, Member of Central Board of Direct Taxes, for Supervising all 22 companies units. The appeal preferred before National Company Law Appellate Tribunal had been disposed of vide order dated 07.12.2018.

8. On 15.04.2019, the petitioners served advance notice to SFIO seeking urgent interim bail before the learned Special Court owing to the health condition of their mother and grandmother respectively while relying upon medical record (Annexures P-10 to P-14). However, it is stated in the petition since the charge of Special Court was not assigned to any court between 15.04.2019 to 17.04.2019 the petitioner could not invoke the jurisdiction of the special court for the said relief.

9. Vide CRM-M-17755-56 of 2019, the petitioners sought regular bail and interim relief in this court. Vide order dated 18.04.2019 (Annexure P-20) regular bail was rejected and as a temporary arrangement, the petitioners were ordered to be released for a period of 15 days that too under police escort.

10. On 19.04.2019, SFIO filed an application seeking suspension as well as clarification of the order dated 18.04.2019. On 22.04.2019, the said application was directed to be listed on 23.04.2019 and till such time, the petitioners were ordered to be kept in custody.

11. It is averred that respective SLP's were filed by both the 4 of 21 CRM-M-20688-2019 (O&M) AND petitioners as well as the SFIO against the order dated 18.04.2019.

12. Vide Order dated 29.04.2019, this Court disposed of the application filed by the petitioners seeking rectification of certain factual errors. However, since the respective SLP's preferred by both sides were pending hearing before the Hon'ble Supreme Court, the matter was adjourned to 10.05.2019. Vide order dated 30.04.2019 (Annexure P-30), Hon'ble Supreme Court, disposed of the Special Leave Petitions, leaving open the petitioners before it to avail the remedy available in law and also granted liberty to the parties including Union of India to take whatever steps they deemed appropriate. Contentions of both sides were kept open.

CONTENTIONS OF THE PETITIONERS

13. Though several grounds had been urged in the petition, but Mr. Atul Nanda, learned Senior Counsel assisted by Ms. Rameeza Hakeem, learned counsel appearing on behalf of the petitioners, confined their arguments to the solitary issue of default bail in terms of Section 167(2) of Cr.P.C, which are enumerated hereinbelow:-

(i) It was urged that computed from the date of first remand , the maximum period of 60 days stood expired on 19.05.2019 and despite the lapse of said period, the petitioners were confined in custody without taking any cognizance of the offence by the Trial Court.

(ii) The power vested with the court to remand a person in custody is governed by Section 167 Cr.P.C. During the period of investigations, the maximum limit whereof in an offence like the present case is 60 days. After the expiry of said maximum 5 of 21 CRM-M-20688-2019 (O&M) AND period of 60 days, the remand to custody could be made in exercise of powers under Section 309 Cr.P.C. only at post cognizance stage. Though the period of 60 days had expired on 19.05.2019, but the cognizance was not taken on the expiration thereof.

(iii) As per second proviso to Section 212(6) of the Companies Act 2013, cognizance could be taken by a special court upon a complaint. It is also urged that in view of Section 212(15) thereof, the investigation report filed with the special court for framing of charges shall be deemed to be a report filed by the police under Section 173 of the Cr.P.C.

(iv) In support of the aforementioned contentions, the attention of this Court was drawn to the provisions of Section 57, 167, 190 and 309 of Cr.P.C. By referring to the aforementioned provisions, learned senior counsel buttressed his arguments by elaborating that once the Court has not taken cognizance within the maximum period of 60 days, the further incarceration of the petitioners is not sustainable in law. He relied upon the judgment rendered by Hon'ble the Supreme Court in "Central Bureau of Investigation, Special Investigation Cell-I, New Delhi V/s Anupam J. Kulkarni" (1992) 3 Supreme Court Cases 141.

(v) The twin limitations for bail as contemplated under section 212(6) of 2013 Act, are akin to the twin limitations contained in Prevention of Money Laundering Act, 2002 (in short 6 of 21 CRM-M-20688-2019 (O&M) AND 'PMLA') (prior to their having been struck down by the Hon'ble

Supreme Court.) It is contended that when the said twin limitations under PMLA were still in force, the Hon'ble Supreme Court in "Ashok Munilal Jain and another V/s Assistant Director, Directorate of Enforcement" (2018) 16 Supreme Court Cases 158, clearly held that right of the accused to be released under section 167(2) Cr.P.C was indefeasible and that the said provision was fully applicable even to the special statute in view of Section 4(2) Cr.P.C.

(vi) On the above premises, Mr. Nanda contended that there was violation of Right to Life & Liberty as enshrined under Article 21 of The Constitution and therefore de hors the merits of the case, the petitioners are entitled to bail. CONTENTIONS OF THE RESPONDENTS

14. Mr. Aman Lekhi, learned Additional Solicitor General of India and Mr. S.P. Jain, learned Additional Solicitor General of India, assisted by Mr. Alok Kumar Jain, Standing Counsel appearing on behalf of the Union of India, opposed the prayer of grant of bail on account of alleged non-compliance of Section 167(2) Cr.P.C., by raising following submissions:-

(i) The aforementioned provisions have to be read in conjunction with Article 22(2) of the Constitution of India.

(ii) The prosecution complaint has been filed within the statutory period of 60 days and therefore, the prayer of the petitioners for grant of regular bail, for non compliance with section 167(2) Cr.P.C., would not lie. It was also stated that 7 of 21 CRM-M-20688-2019 (O&M) AND even otherwise, the remedy was to move an application before the trial Court and till date, no such application has been filed.

In such circumstances, detention cannot be said to be unauthorized. In other words, the petitioners are not entitled to default bail.

(iii) Section 167 Cr.P.C., is proceeded by Section 190 Cr.P.C., which postulates the conditions requisite for initiation of the proceedings i.e. cognizance of offences by the Magistrate etc. Cognizance is taken upon of the investigation. The cognizance is not mandatorily required to be taken by the Court below, therefore no benefit under Section 167(2) of Cr.P.C. can accrue to the accused. The facts of Central Bureau Investigation's case (supra), were pertaining to the computation of period of detention and not with regard to taking of the cognizance and in Ashok Munilal Jain's case, it was noticed that the challan was not filed within 60 days.

(iv) Section 309 Cr.P.C., would come post the cognizance. The expression 'cognizance' means an application of mind by the Court. The Court below is still applying its mind. It is not only application of mind by the Court, but two agencies i.e. Investigating Agency and Court, are actively applying their mind within the realm of their jurisdiction, therefore, the judgments cited by Mr. Nanda, do not support proposition in the present case. It was clarified that the complaint having trappings of the challan was filed on 18.05.2019. A person is 8 of 21 CRM-M-20688-2019 (O&M) AND branded an accused of an offence, when FIR is registered, therefore, connotation and the expression 'cognizance' is wholly irrelevant in so far as the present case pertaining to a special statute is concerned.

15. In rebuttal, Mr. Nanda, submitted that it is undisputed that the custody of the petitioners beyond the statutory period of 60 days was without any cognizance under section 309 Cr.P.C. He argued that in Ashok Munilal Jain's case (supra), the question as to the legality of the detention of the accused beyond the statutory period of 60 days without taking cognizance, was not an issue. The detention of the petitioners, in such circumstances, is wholly unauthorized. The Court has no power to order for remand and detain the petitioners in the absence of any cognizance, therefore, the petitioners are entitled to be released on bail.

FINDINGS OF THE COURT

16. I have heard learned counsel for the parties and appraised the paper book.

17. It would be apt to reproduce Section 57, 167 (1) and (2), 190 and 309 of Cr.P.C., and Article 22 of the Constitution of India, which reads as under:-

"57. Person arrested not to be detained more than twenty- four hours. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

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167. Procedure when investigation cannot be completed in twenty four hours.

(1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub- inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) 1 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;

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(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 in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

1 Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;

Explanation II- If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorizing detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Section 190

190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

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- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try.

309. Power to postpone or adjourn proceedings. (1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

Provided that when the inquiry or trial relates to an offence under Section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

12 of 21 CRM-M-20688-2019 (O&M) AND Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Explanation 1.- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand. Explanation 2.- The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused. Article 22 in The Constitution Of India 13 of 21 CRM-M-20688-2019 (O&M) AND

22. Protection against arrest and detention in certain cases (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate (3) Nothing in clauses (1) and (2) shall apply

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause

(b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

14 of 21 CRM-M-20688-2019 (O&M) AND (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order (6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose (7) Parliament may by law prescribe

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub clause (a) of clause (4)"

18. It is not disputed that the petitioners have undergone a period of 60 days in custody and no cognizance has not been taken. Thus, the question which arises for consideration is whether the petitioners are entitled to be released in terms of Section 167(2) Cr.P.C., when despite the complaint having been filed within the statutory period of 60 days, no cognizance has been taken by the court concerned even on the lapse of such period. While deliberating on the issue in hand, Hon'ble the Supreme Court in Central Bureau Investigation's case (supra), has observed as under:-

15 of 21 CRM-M-20688-2019 (O&M) AND "Para No.9 At this juncture we want to make another aspect clear namely the computation of period of remand. The proviso to Section 167(2) clearly lays down that the total 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 cognizance is not taken on the expiry of the said periods the accused shall be released on bail as mentioned therein."

19. From the above, it is clear that Section 309 Cr.P.C., would come in to operation only after taking cognizance. It is undisputed that remand cannot be beyond 60 days under section 167 Cr.P.C. and further remand could only be at post cognizance stage.

20. It is a matter of record that the complaint was filed on 18.05.2019, but till date, no cognizance has been taken, which is reflected from the orders dated 28.05.2019 and 30.05.2019 of the trial Court, which read as under:-

28.05.2019 "Today the case was fixed for further contentions of the complainant on the issue of taking cognizance and summoning the accused. However, an application has been filed on behalf of the complainant seeking permission to place on record amended memo of accused and list of witnesses along with complete address. It is stated by the complainant and learned Prosecutor, SFIO that although the complainant has sought the prosecution of about 186 accused persons as per the details mentioned in the complaint but in the list of accused filed along with the complaint names of six accused persons left to be the complaint. As such, subject to just exceptions since amendment is only to amend the title to correct inadvertent 16 of 21 CRM-M-20688-2019 (O&M) AND mistake the application is allowed and the amended list of accused persons as well as the list of witnesses is taken on record and let be made part of the complaint accordingly.

Some more contentions have been heard on behalf of the complainant on the issue of summoning of the accused. File be now put up on 30.05.2019, the date already fixed for further proceedings and further contentions.

Order dated 30.05.2019 "An application for exemption of personal appearance of accused Vivek Harivyasi has been filed on the plea that the applicant has suffered very serious medical complications last night and has been admitted in Park Hospital. The application is duly supported by medical records also. In these facts and circumstances the personal appearance of accused Vivek Harivyasi is excepted for today. He is directed to appear on 01.07.2019.

Since the personal appearance of accused Vivek Harivyasi has been excepted for today, his main counsel will appear on 03.06.2019 to receive the copies of complaint etc. Report of the Duty Magistrate perused. As per the report the presence of the accused Rahul Modi and Mukesh Modi has been marked. Request for further remand made. Heard. The accused Rahul Modi and Mukesh Modi are remanded to judicial custody till 13.06.2019 and be produced through Video Conference facility.

Contentions on the question of summoning of the accused concluded. To come up on 03.06.2019 for orders on the point of summoning of the accused.

So far as the prayer of the accused party to get the soft copy of the entire complaint and documents etc. is concerned, on instruction from the department the Senior Standing Counsel for the complainant SFIO stated that no soft copy can be given.

17 of 21 CRM-M-20688-2019 (O&M) AND As such, the prayer at this stage is declined."

21. In Ashok Munilal Jain's case (supra), the question raised was as to whether a person can take the benefit of Section 167 (2) of Cr.P.C., in case, where the Investigating Agency fails to complete investigation within statutory period. It was laid down that the provisions would be applicable, inter alia, by virtue of Section 4(2) Cr.P.C.

22. The contention of Mr. Lekhi, that Section 212 (6) of the Companies Act starts with a non-obstante clause with regard the applicability of Code of Criminal Procedure, in respect of the offences covered under Section 447 of the Companies Act 2013, creates an embargo on the grant of bail subject to the twin conditions that the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail, must fail in the light of the authoritative pronouncement of the Hon'ble Supreme Court in *Union of India Versus. Thamisharasi* (1995) 4 SCC 190, wherein while dealing with the applicability of the rigors of twin limitations contained in Section 37 of the Narcotics Drugs and Psychotropic Substances Act, 1985, even to statutory bail under Section 167(2) Cr.P.C., it was, in para No.16, held as under:-

Para 16. It is settled that "the court will have no power of remand of an accused to any custody unless the power is conferred by law". (See *Matabar Parida Bisnu Charan Parida Batakrushna Parida Babaji Parida v. State of Orissa* - (1975)2 SCC 220). The power must, therefore, be traced to some provision of the statute. There is clear mention of Section 167 Cr.P.C. in the NDPS Act for the exercise of this power. Ordinarily, there must also be an outer limit prescribed by 18 of 21 CRM-M-20688-2019 (O&M) AND specification of the total period of permissible remand during investigation. This too is provided in Section 167. To exclude merely this part of Section 167, an express provision in the statute was necessary assuming there could be conferment of power of remand unlimited in point of time which, in substance, is the argument of the learned Additional Solicitor General. The effect of the proviso to sub-section (2) of Section 167 CrPC was stated in *Matabar Parida*, thus: (SCR pp. 142- 43 : SCC p. 225, para 8) "The law as engrafted in proviso (a) to Section 167(2) and Section 309(2) of the new Code confers the powers of remand to jail custody during the pendency of the investigation only under the former and not under the latter. Section 309(2) is attracted only after cognizance of an offence has been taken or commencement of trial has proceeded. But then the command of the Legislature in proviso (a) is that the accused person has got to be released on bail if he is prepared to and does furnish bail and cannot be kept in detention beyond the period of 60 days even if the investigation may still be proceeding. In serious offences of criminal conspiracy --

murders, dacoities, robberies by inter-State gangs or the like, it may not be possible for the police, in the circumstances as they do exist in the various parts of our country, to complete the investigation within the period of 60 days. Yet the intention of the Legislature seems to be to grant no discretion to the court and to make it obligatory for it to release the accused on bail. Of Course, it has been provided in proviso (a) that the accused released on bail under Section 167 will be deemed to be so released under the provisions of Chapter XXXIII and for the purposes of that Chapter. That may empower the court releasing him on bail, if it considers necessary so to do, to direct that such person be arrested and committed to custody as provided in sub-Section (5) of Section 437 occurring in 19 of 21 CRM-M-20688-2019 (O&M) AND Chapter XXXIII. It is also clear that after the taking of the cognizance the power of remand is to be exercised under Section 309 of the New Code. But if it is not possible to complete the investigation within a period of 60 days then even in serious and

ghastly types of crimes the accused will be entitled to be released on bail. Such a law may be a 'paradise for the criminals', but surely it would not be so, as sometimes it is supposed to be, because of the courts. It would be so under the command of the Legislature." (emphasis supplied)

23. As an upshot of my above discussion, there is no escape from the conclusion that the petitioners are lying incarcerated in custody beyond the period of 60 days without the trial Court having taken cognizance and the petitioners, in such circumstances, are entitled to statutory bail, it being their infeasible right.

24. Keeping in view the aforementioned facts and circumstances, the petitions are disposed of. The petitioners are ordered to be released on bail upon their furnishing bail bonds in the sum of Rupees two lacs and two sureties of like amount each to the satisfaction of the Trial Court. Petitioners shall not misuse the concession of bail; regularly appear before the trial Court unless exempted and shall not leave the country without prior permission the court. Petitioners shall be released from custody unless required in any other case.

CRM Nos.13179 & 12898 of 2019 in CRM-M No.17755 of 2019 CRM Nos.13161 & 12899 of 2019 in CRM-M No.17756 of 2019

25. Since the petitioners are ordered to be released on bail, the aforesaid applications for suspension of ad interim 20 of 21 CRM-M-20688-2019 (O&M) AND bail/modification/clarification of order dated 18.04.2019, are rendered infructuous, accordingly, disposed of as such.

31.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No