

# State Of Manipur vs Laishram Surjit Singh on 26 March, 2021

Equivalent citations: AIRONLINE 2021 MPR 43

**Author: Mv Muralidaran**

**Bench: Mv Muralidaran**

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IN THE HIGH COURT OF MANIPUR  
AT IMPHAL

Cril. Petn. No.5 of 2021

State of Manipur

.....Petitioner/s

-Versus-

Laishram Surjit Singh, aged about 53 years, S/o Late L. Surchand Singh of  
Lilong Chajing Konjeng Leikai, P.O. & P.S. Singjamei, Imphal West District,  
Manipur - 795001.

.....Respondent/s

With Cril. Petn. No.6 of 2021 State of Manipur .....Petitioner/s

-Versus-

Laishram Suresh Singh, aged about 57 years, S/o Late L. Surchand Singh of Lilong Chajing Konjeng  
Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur - 795001.

.....Respondent/s

BEFORE  
HON'BLE MR. JUSTICE MV MURALIDARAN

For the petitioner : Mr. M. Rarry, Addl. AG

For the respondent : Mr. S. Jibon, Advocate

Date of hearing : 09.03.2021

Date of Judgment & Order : 26.03.2021

Cril. Petn. Nos.5 & 6 of 2021

JUDGMENT AND ORDER  
(CAV)

[1] The State have filed these petitions under Section 439(2) of Cr.P.C., 1973 praying for cancellation of bail, quashing and setting aside the Ld.Special Judge (PC Act), Imphal-West order dated 15.12.2020 passed in Cril.Misc.(B) Case No.104 of 2020 (Ref: FIR Case No.19(05) 2020 WGI PS U/S 420/468/471/419/168/20-B/34 of I.P.C. & 13 (PC Act 1988). [2] The brief fact of the case is that complainant Haobam Bobby Singh, Civil Supply Inspector (CSI) OF CAF & PD along with Shri. L. Ibotombi Singh, Area Officer, Consumer Affairs, Food and Public Distribution, Manipur (CAF & PD) were assigned to check and inspect illegal practices at the different oil pumps located at Imphal West and East area so as to regulate distribution of POL during the lockdown period in connection with the pandemic of COVID -

19. During the course of checking of one oil pump viz. M/S Heibok Filling KSK located at Naran Konjin, it was found that the pump was run by two brothers/Accused/Respondents namely (i) Laishram Suresh Singh and (ii) Laishram Surjit Singh, though the owner was in the name of one woman namely Smt. Khaidem (O) Shushila Devi W/o. (L) Khaidem Gojendro Singh of Lilong Chajing Chingkhong Leikal.

[3] A discrete enquiry was conducted and it was established that the said Laishram Suresh Singh/Respondent is a Government employee, an UDC of - Cril. Petn. Nos.5 & 6 of 2021 Medical Dept., Govt of Manipur, now posted at CHC, Yairipok and the pump is fraudulently owned by him and his younger brother namely Laishram Surjit Singh, who is a retired Rifleman of Manipur Police, now a pensioner, by corrupt and illegal means.

[4] The Accused Laishram Suresh Singh and Laishram Surjit Singh, the two brothers cheated a women namely Smt. Khaidem (O) Sushila Devi W/o. (L) Khaidem Gojendro Singh of Lilong Chajing Chingkhong Leikal. (L) Khaidem Gojendro Singh was a police constable killed on the line of duty during the June 18 uprising in the year 2001. The two brothers convicted the wife of the late constable that some financial benefit could be claimed by Smt. Khaidem (O) Sushila Devi W/o. (L) Khaidem Gojendro Singh from the Government of Manipur in relation to untimely death benefits of late husband of Smt. Khaidem (O) Sushila Devi who died in the line of duty and accordingly made Smt. Khaidem (O) Sushila Devi signed some documents.

[5] Subsequently, a trade license to run business which deals in petroleum (MS/HSD) of Indian Oil Corporation Ltd., under the name and style of M/s Heibok Filling KSK, Naran Konjin, Imphal was procured in the name of Smt. Khaidem (O) Sushila Devi and has been run by the two brother namely Laishram Suresh Singh and Laishram Surjith Singh, since 2014 by cheating and playing fraud on Smt. Khaidem (O) Sushila Devi, Officials of [OCL and CAF & PD. Laishram Suresh Singh and Laishram Surjith Singh invested huge amount of money, disproportionate to their known sources of incomes to open Cril. Petn. Nos.5 & 6 of 2021 and run the said M/s Heibok Filling KSK without disclosing their source of income as well as the subsequent income generated from the oil pump to the competent authority as a Public Servant and thus committed the offence of criminal conspiracy also.

[6] Hence the present FIR Case No.19(05) 2020 WGI PS U/S 420/468/471/419/168/20-B/34 of I.P.C. & 13 (PC Act 1988) was registered by the Wangoi Police in connection with the case.

[7] In the course of investigation, the complainant detailed statement was recorded U/s.161 Cr.P.C. The Accused/Respondent namely Shri. Laishram Suresh Singh (57) S/o. (L) L. Surchand Singh of Chajing Konjing Leikai and Laishram Surjit Singh were arrested on 09.05.2020 at about 5:00 pm in connection with the case referred above. On being interrogated, the Accused/Respondent disclosed that he is a Government employee, of an UDC of Medical Dept., Government of Manipur and presently posted at CHC. [8] The Accused/Respondent were arrested on 18/04/2020 in connection with another FIR No.14(4) 2020 WGI-PS U/s.353/326/307/34-IPC & 25 (1-C) Arms Act for assaulting a public servant and causing grievous hurt and attempt to murder with a common intention by holding small arms. Charges under Sections 325/353/34 IPC were framed by the Ld. Judicial Magistrate First Class Imphal-West on 04/12/2020 in connection with FIR 14(4) 2020 WGI-PS U/s 353/326/307/34-IPC & 25 (1-C) Arms Act and it is in the stage of PW Cril. Petn. Nos.5 & 6 of 2021 examination. The Respondent/Accused is still in judicial custody in connection with this different FIR No.14(4) 2020 WGI-PS U/s.353/326/307/34-IPC & 25 (1- C) Arms Act for assaulting a public servant and causing grievous hurt and attempt to murder with a common intention by holding small arms. [9] The Respondent/Accused was produced before the court of Special Judge (PC Act), Imphal West, from the police custody on 15/05/2020 with a prayer for further police custody remand till 22/05/2020. The Ld. Special Judge (PC Act), Imphal-West was pleased to remand the respondent/Accused till 18/05/2020 by observing that further police custody remand for investigation as prayed for by the investigating officer.

[10] On 23/06/2020 the Respondent/Accused filed an application 437 Cr.P.C praying for releasing on bail in another FIR Case No.14(4) 2020 WGI-PS U/s.353/326/307/34-IPC & 25 (1-C) Arms Act, bearing Cril.Misc.(B) Case No. 30 of 2020 in the court of Judicial Magistrate First Class, Imphal-West, 1, Manipur. Subsequently, the Ld. Judicial Magistrate First Class, Imphal-West, 1, Manipur was pleased to reject the bail application on the ground of submitting false documents/certificates by forging the signature of prof. Th. Premchand Singh of Imphal Hospital and Research Centre, RIMS Road, Imphal. The said doctor has reported that the two certificates dated 07.05.2020 were not signed and issued by him.

[11] That on 09.09.2020, the Respondent/Accused filed an application u/s Cril. Petn. Nos.5 & 6 of 2021 167 of Cr.P.C praying for releasing on 1st Default Bail Application in Cril.Misc.(B) Case No.82 of 2020, during the pendency of FIR Case No.19(05) 2020 WGI PS U/S 420/468/471/419/168/20-B/34 of I.P.C. & 13 PC Act, 1988 in the court of Special Judge (PC Act), Imphal-West. Subsequently, it was dismissed on 16.09.2020 by the court of Special Judge (PC Act), Imphal-West by observing that the benefit of default bail only comes into play when the accused is in custody for more than the statutory period described therein. [12] Again the Respondent/Accused filed a 2nd Default Bail Application Cril.Misc.(B) Case No.83 of 2020, of (Ref: FIR Case No.19(05) 2020 WGI PS U/S 420/468/471/419/168/20-B/34 of I.P.C. & 13 PC Act, 1988) under section 167(2) of Cr.P.C on 23.09.2020 praying for releasing on default bail during the pendency of FIR Case No.19(05) 2020 WGI PS U/S 420/468/471/419/168/20-B/34 of I.P.C. & 13 PC Act, 1988 in the court of Special Judge (PC Act), Imphal-West. Subsequently, it was dismissed on 21.10.2020 by the court of Special Judge (PC Act), Imphal-West as default bail were not ripen for the indefeasible right of default bail due to interim bail already granted to the Respondent/Accused.

[13] The Respondent/Accused filed a 3rd Default Bail Application dated 18.11.2020, for the third time bearing Cril.Misc.(B) Case No.104 of 2020, of (Ref: FIR Case No.19(05) 2020 WGI PS U/S 420/468/471/419/168/20-B/34 of I.P.C. & 13 PC Act, 1988) under section 167(2) of Cr.P.C in the court of Special Judge (PC Act), Imphal-West, praying for release them on default bail. Cril. Petn. Nos.5 & 6 of 2021 [14] A Written objection was filed by the State to the default bail application contending inter alia, as under:

a) The Default Bail Application enlarging the Accused/Respondent by the Ld. Special Judge (PC Act), Imphal-West, has been filed during the pendency of another Bail Application being Cril.Misc.(B) Case No.99 of 2020 in respect of the same FIR referred above of the same Accused/Respondent under the provision of Section 437(1) 1st Proviso of Cr.P.C. It is trite a settled law that an Accused/Respondent cannot be permitted to file a second Bail Application in respect of the same FIR case and the same Accused/Respondent before the same Ld. Special Judge (PC Act), Imphal-West, when the earlier bail Application being Cril.Misc.(B) Case No.99 of 2020 was still pending for Consideration. It is pertinent to mention that the same Accused/Respondent has filed a bail application bearing Bail Application No.12 of 2020 before the Hon'ble High Court of Manipur and the same was dismissed as another regular Bail Application was still pending being filed earlier on 02.11.2020 before the Ld. Special Judge (PC Act), Imphal-West.

b) An Accused unlike the respondent who is continuing to be in custody pending investigation simplicitor cannot be equated with an accused like the present Accused/Respondent who had already been granted bail and whose bail had been cancelled.

c) A person who has abused the freedom granted to him, like the Accused/Respondent, must certainly be distinguished from an Accused who has to continue in custody merely because the Investigator has not completed the

investigation within a period of 90 days, without ever having been granted bail before the expiry of 90 days.

Cril. Petn. Nos.5 & 6 of 2021

d) The present Accused/Respondent being already granted bail and subsequently cancelled on ground of finding that fraud has been committed, cannot invoke the provision of Section 167 (2) Cr.P.C., as per law already settled in this regard as held by Kerala High Court in Para 14 in the case reported as "Nishil Vs The Station House Officer and Anr." (2008 (1) KLJ 39).

"14. I do, in these circumstances, come to the conclusion that an accused is entitled for default bail only once in respect of a crime and in a case where the bail granted to him has been cancelled under Section 439(2) or Section 437(5) of the Cr.P.C, he cannot thereafter claim the benefit of the proviso to Section 167(2)."

e) The Accused/Respondent was granted interim bail on medical ground and is enlarged by the order of the court of Special Judge (PC Act), Imphal-West for a period of three months from 04.07.2020 till 03.10.2020. Apparently, the Accused/Respondent being already released on bail, albeit on medical ground, the same is in the exercise of power under the Chapter and Under section 437 (1) or (2) of the Code {When bail may be taken in the case of non-bailable offence}.

f) The Hon'ble Supreme Court has held that an order passed under section 167(2) would be an order under section 437(1) or (2) or Section 439 (1) of the Code and would have same consequence. Thus, the contention of the Accused/Respondent that "both applications were rejected as not ripen the indefeasible right for default bail due to interim bail is wrong and denied and a total misnomer.

g) In view thereof, admittedly, when the Accused/Respondent are already been enlarged on bail from 04/07/2020 till 03/10/2020 by the Cril. Petn. Nos.5 & 6 of 2021 order of court of Special Judge (PC Act), Imphal-West, the question of again seeking for another order for enlargement on default bail again does not arise and hence, it is not maintainable in law and that too, for the third time.

h) The Accused/Respondent having been already enlarged on bail, the question of applying default bail does not arise, as the question of default bail could have only arisen when the Accused/Respondent were never released on bail during the entire period of Judicial Custody from the time of arrest till the time the said default bail application is moved.

i) The Accused have admitted that they are still in custody not because of the present FIR Case No.19(05) 2020 WGI PS U/S 420/468/471/419/168/20B/34 of I.P.C. & 13 PC Act, 1988 but in respect to another FIR Case No.14(4) 2020 WGI-PS U/s.353/326/307/34-IPC & 25 (1-C) Arms Act which is in the stage of PW Examination in the court of Ld. JMFC, I-W, Manipur.

j) The Accused are presuming that once the bail granted has been cancelled, and thereafter, the bail bonds and release order are cancelled automatically, section 167 Cr.P.C. will again come into play.

This submission of the Accused is a misnomer and against the settled provision of law as the cancellation of bail was done vide order dated 22.09.2020, whereas the release order was issued on 06.07.2020 and hence, as per law the Two Accused persons were on bail from 06.07.2020 till 22.09.2020 and not in custody as per law. Hence, the two Accused person having already availed the bail cannot be now permitted to claim the benefit of section 167 (2) Cr.P.C.

k) In the case of Nishil Vs. The Station House Officer and Anr. (2008 (1) KLJ 39) the Kerala High Court, after relying upon the case of Cril. Petn. Nos.5 & 6 of 2021 Ghorey Singh V. State 1985 (22) All Cri.C.102 of the U.P. High Court, the Hon'ble Kerala High Court held as under, the relevant paras are reproduced as under:

"It is also obvious that once such bail granted to an accused is cancelled, there would be no question of making any further orders under sub-section directing release of an accused on bail on the ground that the police has failed to submit a charge sheet even though the period of ninety days stipulated in the section has expired. Further, Section 167(2) does not in any way inhibit the exercise of powers conferred upon the Court of Sessions and the High Court to direct the release of an accused on bail either at the stage covered by Section 167(2) of the Code or at any other stage.

Of course, the question considered in that case was not exactly identical. But the process of reasoning by the learned Judge Mr. Justice H.N. Seth appears to be in conformity with the process of reasoning which I have sought to accept.

14. I do, in these circumstances, come to the conclusion that an accused is entitled for default bail only once in respect of a crime and in a case where the bail granted to him has been cancelled under Section 439(2) or Section 437(5) of the Cr.P.C, he cannot thereafter claim the benefit of the proviso to Section 167(2)."

l) The Court of Special Judge (PC Act), Imphal-West, allowed and enlarged the Respondent/Accused on bail vide order dated 15.12.2020, contrary to the earlier observations made by the same Court on same sets of facts and in a perverse manner, contrary to settled law and provisions of Criminal Procedure Code. Cril. Petn. Nos.5 & 6 of 2021 [15] The State petitioner questioned the order of bail on the following grounds:

a. The learned Special Judge has failed to correctly consider and appreciate that the 3rd Default Bail Application enlarging the Accused/Respondent by learned Special Judge (PC Act), Imphal- West, has been filed during the pendency of another Bail Application being Cril.Misc.(B) Case No.99 of 2020 in respect of the same FIR referred above of the same Accused/Respondent under the provision of Section 437 (1) 1st proviso of Cr.P.C. It is trite a settled law that an Accused/Respondent cannot be permitted to file a Third Bail Application in respect of the same FIR case and the Accused/Respondent before the same Ld. Special Judge (PC Act), Imphal-West, when another Bail Application is already pending for consideration.

b. The learned Special Judge has failed to correctly consider and appreciate that an Accused unlike the present Respondent who is continuing in custody pending investigation simplicitor cannot be equated with an Accused like the present Accused/Respondent who had already been granted bail and whose bail has been cancelled. A person who has abused the freedom granted to him, like the Accused/Respondent, must certainly be distinguished from an Accused who has to continue in custody merely because the investigation has not been completed by the Investigator within a period of 90 days, without ever having been granted bail before the expiry of 90 days. The present Accused/Respondent being already granted bail and subsequently cancelled on ground of finding that fraud has been committed, cannot invoke the provision of Section 167(2) Cr.P.C., as per settled law in this regard as held by Kerala High Court in para 14 in the case reported as Nishi! VS The Station Cril. Petn. Nos.5 & 6 of 2021 House Officer and Anr. (2008 (1) KLJ 39).

c. The learned Special Judge has failed to correctly consider and appreciate that the Accused/Respondent was granted interim bail on medical ground and were enlarged by the order of the court of Special Judge (PC Act), Imphal-West for a period of three months from 04.07.2020 till 03.10.2020. Apparently, the Accused/Respondent being already released on bail, albeit on medical ground, the same is in the exercise of power under Chapter and under section 437 (1) or (2) of the Code.

d. The learned Special Judge has failed to correctly consider and appreciate that with regard to the application filed by State seeking cancellation of bail already granted to the Accused under section 439(2) Cr.P.C the said provision and not section 167 empower cancellation of bail already granted on considerations which are valid for cancellation of bail granted under section 437(1) or (2) or section 439(1) of the Code. The exercise of power by this Court for cancellation of bail already granted, on grounds well established in law and such exercise of power under section 437(1) or (2) or Section 439(1) of the Code could never had been made otiose by filing an application under section 167 of the Code, when the said bail already granted was still operational or when bail already granted has been subsequently cancelled, as the said two provision operate in two different field and are not overlapping of each other. This aspect has been clearly observed in the law settled by the Hon'ble Kerala High Court and U.P. High court. The Two accused has already been released on bail by a Judicial Order, the Accused person is not in custody and the benefit of section 167(2) of Cr.P.C. cannot be claimed. The Accused who presumes that once the bail granted has been cancelled, and thereafter, the bail bonds and release order are cancelled, automatically, section 167 Cr.P.C. will Cril. Petn. Nos.5 & 6 of 2021 again come into play. This submission of the Accused being a misnomer and against the settled provision of law, where the cancellation of bail was done vide order dated 22.09.2020, whereas the release order was issued on 06.07.2020 and hence, as per law, the two accused person was on bail from 06.07.2020 till 22.09.2020 and not in custody as per law. Hence, the two accused person having already availed the bail cannot be now permitted to claim the benefit of section 167(2) of C.P.C.

e. The learned Special Judge has failed to correctly consider and appreciate that the State petitioner had legally contended that the Third Default Bail Application filed by the Accused/Respondent is an abuse of the process of the Court, as repeated application under Section 167(2) of Cr.P.C. has been filed on the same ground, despite being already dismissed on its merits by the same court of Special Judge (PC Act), Imphal-West.

f. The learned Special Judge (PC Act), Imphal-West has failed to rightly consider that the accused who has already been granted bail cannot be equated with an accused who has never been released on bail for 90 days pending investigation and filling of charge sheet.

g. The learned Special Judge (PC Act), Imphal-West has committed an error of law in allowing the application filed by the Accused under section 167(2) Cr.P.C. when similar application filed earlier being Cril.Mis.Case No.82 of 2020, have already been rejected by the same court vide order dated 16.09.2020 with the following observation:

"From the above provisions, the benefit of default bail only comes into play when the accused is in custody for more than the statutory period described therein. However, in this case, record shows that this court granted interim bail to both the Cril. Petn. Nos.5 & 6 of 2021 accused person vide order dated 04.07.2020 passed in Cril.Misc.(B) Case No.44 of 2020 and accordingly, on furnishing on their PR bond and surety bonds, this court issued release order on 06.07.2020. Further, an application has been filed praying for cancelling the Interim bail granted to the accused which has been registered as Cril.Misc.Case No.80 of 2020.

As the accused people have already been released on interim bail, they are not in custody in connection with the present case and the section 167 of Cr.P.C. is not applicable to them. Detention of the accused persons in other cases cannot be brought within the ambit of this case. It is worth mentioning here that this court has no power to extend/modify the statutory period provided U/s 167(2) Cr.P.C. In the premises, the prayer of the accused persons to avail the benefit of section 167(2) Cr.P.C. cannot be entertained and is thus turned down. The application is thus rejected and disposed of."

h) The Ld. Special Judge (PC Act), Imphal-West having already rejected the earlier application filed under section 167(2) Cr.P.C., the filing of the same application with no fresh ground is totally contrary to settled law, as Hon'ble Court below had already clearly held that:

"When the accused are already enlarged on bail, the question of applying default bail does not arise".



[16] Therefore the State petitioner being aggrieved by the said illegal and perverse order dated 15.12.2020 has humbly sought to seek for cancellation of the order of bail before this Hon'ble Court.

Cril. Petn. Nos.5 & 6 of 2021 [17] Having perused the law laid down by the Hon'ble Apex Court on the scope of the power to be exercised in the matter of cancellation of bails, it is necessary to examine whether the order passed by the Lower Court granting bail is perverse and suffers from infirmities which has resulted in the miscarriage of justice. The learned Advocate appearing for the respondent orally supported the findings of the learned trial court and sought dismissal of the Petition.

[18] I have bestowed my anxious considerations to the submissions made by Mr. M. Rarry, the Ld. Addl. Advocate General for the petitioner and Mr. S. Jibon, the Ld. Counsel for the respondent and perused the available records. [19] The interesting question is raised in this application, that the Accused are presuming that once the bail granted has been cancelled, and thereafter, the bail bonds and release order are cancelled automatically, whether section 167(2) Cr.P.C will again come into play.

[20] I shall first consider the legal question whether the accused in the given circumstances is entitled for default bail under the proviso to Section 167(2) Cr.P.C after grant of bail under section 439 of Cr.P.C. The scheme of the Criminal Procedure Code 1973 in so far as it relates to detention pending investigation has got to be considered.

[21] There is divergence of judicial opinion on this aspect, which I will be referring to shortly. I have the Judgments of Full Benches of different High Cril. Petn. Nos.5 & 6 of 2021 Courts, offering diametrically opposite views, on the applicability of the provisions of Section 167(2) of the Code of Criminal Procedure, to a person concerned in an offence punishable under the provisions of the PC Act 1988 and NDPS Act.

[22] For proper appreciation of the controversy, it would be proper to refer to the provisions of Sections 167(2) and 439(2) of Cr.P.C.

(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) the Magistrate may authorise the detention of the accused person, otherwise than in 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 Cril. Petn. Nos.5 & 6 of 2021 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 of the accused in custody of the police 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.

[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 authorising 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.] [23] From a perusal of the above, it would be crystal clear that no Magistrate shall authorise the detention of the accused person in custody for a total period exceeding 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. The law further provides that if the challan is not filed then on the expiry Cril. Petn. Nos.5 & 6 of 2021 of the said period 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. Chapter XXXIII contains the provisions as to bails and bail bonds.

[24] Section 439 falls within Chapter XXXIII. Section 439(1) refers to the special powers of the High Court or the Court of Session regarding bail. Sub-section 2 of Section 439 Cr.P.C. says that a High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody. A Fair reading of Section 167(2) and Section 439(2) would clearly bring out the intention of the legislature. A person released under Section 167 (2) would be deemed to have been released under Section 439 and High Court or Court of Session may direct that any person who has been released on bail be arrested and commit him to custody. Section 439(2) from its very language would come into operation after the bail is granted and not at the time when grant of bail is an issue under consideration before the Court. Section 167(2) and Section 439(2) have been subject matter of judicial scrutiny numbers of times. Though the issue is not res-integra but I feel it is my duty to tell to the Lower Courts that judicial obsession or the fear

should not weigh in their way while deciding the bail applications.

[25] In the matter of Hussainara Khatoon v. State of Bihar, (AIR 1979 SC Cril. Petn. Nos.5 & 6 of 2021 1377), the Hon'ble Supreme Court observed that when an undertrial prisoner is produced before a Magistrate and he has been in detention for 90 days or 60 days, as the case may be, the Magistrate must, before making an order of further remand to judicial custody, point out to the undertrial prisoner that he is entitled to be released on bail. The Hon'ble Supreme Court went on saying that the State Government must also provide at its own cost a lawyer to the undertrial prisoner with a view to enable him to apply for bail in exercise of his right under proviso (a) to Sub-section (2) of Section 167 and the Magistrate must take care to see that the right of the undertrial prisoner to the assistance of a lawyer provided at State costs is secured to him. [26] It cannot be denied after more than 50 years of the independence that it is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the State. The Hon'ble Supreme Court in the matter of Hussainara Khatoon (Supra) was of considered opinion that not only the accused is required to be informed of his right but it is the duty of the Magistrate to inform him and to see that proper legal assistance is provided to the accused. [27] A Judge cannot be a silent spectator nor can have a platonic approach. A Judge is under an oath to decide without fear and favour. Once he is afraid of the public criticism then he is not discharging his duties judicially. Cril. Petn. Nos.5 & 6 of 2021 [28] In the matter of State of U.P. v. Laxmi Brahman, (AIR 1983 SC 439), the Hon'ble Supreme Court observed that on the expiry of the period from the date of the arrest of the accused, his further detention does not become ipso facto illegal or void, but if the charge-sheet is not submitted within the prescribed period, then notwithstanding anything to the contrary in Section 437(1), the accused would be entitled to an order for being released on bail if he is prepared to and does furnish bail.

[29] In the matter of Chaganti Satyanarayana v. State of Andhra Pradesh, (AIR 1986 SC 2130), while considering the provisions of Section 167(2) proviso (a) Section 57 and Section 309, the Hon'ble Supreme Court observed that the period of 90 days envisaged by proviso (a) begins to run from date of order or remand and not from earlier date when accused was arrested. [30] A similar view was taken by the Hon'ble Supreme Court in the matter of C.B.I. Special Investigation Cell-I v. Anupam J. Kulkarni, (AIR 1992 SC 1768). The Hon'ble Supreme Court observed that remand of accused to police custody can be for 15 days only and thereafter further remand during the total period of 90 days or 60 days can only be judicial remand. The Court further observed that if the investigation is not completed within the period of 90 days or 60 days then the accused has to be released on bail as provided under the proviso to Section 167(2) of Cr.P.C. The Hon'ble Supreme Court observed that the period of 90 days or 60 days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by Cril. Petn. Nos.5 & 6 of 2021 police. The Hon'ble Supreme Court observed that order for release on bail may however be cancelled under Section 437(5) or Section 439(2). Referring to the grounds for cancellation of bail, the Hon'ble Supreme Court observed as under :

"Generally the grounds for cancellation of bail broadly, are, interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to

evade the course of justice, or abuse of the liberty granted to him. The due administration of justice may be interfered with by intimidating or suborning witnesses, by interfering with investigation, by creating or causing disappearance of evidence etc.. The course of justice may be evaded or attempted to be evaded by leaving the country or going underground or otherwise placing himself beyond the reach of the sureties. He may abuse the liberty granted to him by indulging in similar or other unlawful acts. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days, after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case, one would expect very strong grounds indeed."

[31] This judgment is not an authority to say that the Court while considering an application under Section 167(2) of the Cr.P.C is entitled to see whether on a Subsequent application the bail granted under Section 167(2) is likely to be cancelled or not. If that course is adopted it would create a legal problem. The grant of bail under Section 167(2) on default of the prosecution is mandatory Cril. Petn. Nos.5 & 6 of 2021 but cancellation of the bail under Section 437(5) or 439(2) depends upon the exercise of the discretion. In no case under Section 439(2) could be read with Section 167(2). Section 439(2) would come into operation only after the bail is granted to an accused either under Section 167(2) or Section 439(1). It would be fallacy of law to say that on the bail application of the prosecution as the bail can be cancelled, bail should not be granted. The Hon'ble Supreme Court has clearly observed that grounds for cancellation of bail are different such as interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him. The bail granted under Section 167(2) is liable to be cancelled if the Court comes to the conclusion that it was necessary to again arrest the accused and commit him to custody but for such a procedure one would accept strong grounds.

[32] The judgment of the Hon'ble Supreme Court in the matter of Rajnikant v. Intelligence Officer, Narcotic Control Bureau, New Delhi, (AIR 1990 SC 71) held that if the investigation reveals that the accused has committed a serious offence and charge-sheet is filed, the bail granted to the accused under proviso (a) to Section 167(2) could be cancelled. The Hon'ble Supreme Court observed that once an accused is released on bail under Section 167(2) he cannot be taken back in custody merely on the filing of a charge-sheet but there must exist special reasons for so doing besides the fact that the charge-sheet reveals the commission of a non-bailable crime. The Hon'ble Supreme Cril. Petn. Nos.5 & 6 of 2021 Court considering the liberty of an individual observed as under :-

"Even where two views are possible, this being a matter belonging to the field of criminal justice involving the liberty of an individual, the provision must be construed strictly in favour of individual liberty since even the law expects early completion of the investigation. The delay in completion of the investigation can be on pain of the accused being released on bail. The prosecution cannot be allowed to trifle with individual liberty if it does not take its task seriously and does not

complete it within the time allowed by law. It would also result in avoidable difficulty to the accused if the latter is asked to secure a surety and a few days later be placed behind the bars at the sweet will of the prosecution on production of a charge-sheet. We are, therefore, of the view that unless there are strong grounds for cancellation of the bail, the bail once granted cannot be cancelled on mere production of the charge-sheet. The view we are taking is consistent with this Court's view in the case of Bashir and Raghubir (AIR 1978 SC 55) and (AIR 1987 SC 149) (supra) but if any ambiguity has arisen on account of certain observations in Rajnikant's case (AIR 1990 SC 71) our endeavour is to clear the same and set the controversy at rest."

[33] A fair reading of the judgment of the Hon'ble Supreme Court would make it clear that the "indefeasible right" of the accused to be released on bail in default of completion of the investigation and filing of the challan within the time allowed, is a right which ensures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. From the judgment of the Hon'ble Supreme Court, it would clearly appear that from the time of default till Cril. Petn. Nos.5 & 6 of 2021 the filing of the challan, the right of the accused is indefeasible. None has an authority either under the law or because of the obsession that the accused cannot be released on bail. Once the Hon'ble Supreme Court had said that the right of the accused is indefeasible then none observance of the order of the Supreme Court and non-following the ratio of the judgment of the Supreme Court would perilously border contempt of the lawful authority of the Supreme Court.

[34] From the above judgments of the Hon'ble Supreme Court, it would clearly appear that irrespective of the nature of the offence or the provisions of law for violation of which the accused has been arrested if the challan/charge- sheet is not filed within the period prescribed i.e. 60 days or 90 days, the accused would have a right to be released on bail. Once the bail is granted to an accused under Section 167(2) of the Cr.P.C on simply filing of the challan the accused cannot be taken back in custody. The law mandates that once an accused is released under Section 167(2) he would be deemed to have been released under provisions of Chapter XXXIII of the Cr.P.C. Such an accused can be taken back in custody if an application under Section 437(5) or 439(2) is filed, For cancellation of the bail, the Court is required to see not only the allegations but will have to keep in mind the observations made by the Hon'ble Supreme Court. None has an authority to say that because accused has committed a ghastly crime and as the bail granted to him is likely to be cancelled under Section 437(5) or 439(2), bail under Section 167(2) should not Cril. Petn. Nos.5 & 6 of 2021 be granted. For following the provisions of law if the accused is required to go to the jail then violation of Section 167(2) would open the lock of the jail and lapses on the part of the prosecution/investigation agency would pave his path for his coming out.

[35] A judicial order cannot put lock on the jail gates if the accused is entitled to be released because of the lapses or default of the prosecution. The following principles appear to be very evident and are not disputed.

(1) Efforts must be made by the Investigating Officer to complete the investigation within 24 hours as fixed by Section 57. (2) If such completion is not possible and there are grounds for believing that

the accusation/information is well founded the officer must forthwith forward the accused to the nearest judicial Magistrate with a copy of the relevant entries.

(3) The Magistrate, who receives such information, may authorise the detention of the accused for a maximum period of 15 days whether or not he has jurisdiction to try the case.

(4) Such detention during the initial period of 15 days may be either in judicial custody or in police custody in the discretion of the learned Magistrate. Magistrate having no jurisdiction must forward the accused to the Magistrate having jurisdiction on completion of 15 days of remand if there be reasonable grounds.

(5) Beyond the period of 15 days, there cannot be any remand to police custody.

(6) Thereafter, if the Magistrate having jurisdiction is satisfied that Cril. Petn. Nos.5 & 6 of 2021 adequate grounds exist for doing so, the Magistrate may authorise the detention of the accused otherwise than in police custody for a period of 15 days at a time.

(7) Such detention cannot exceed the total period of 90 days or 60 days as the case may be.

(8) If within the said period of 90 days or 60 days the final report is not filed, the accused has an indefeasible right to be released from custody. (9) Thereafter he can be remanded to custody by the Magistrate only if he is not in a position to offer bail.

(10) When the accused is so released under the proviso to Section 167(2) of the Cr.P.C it shall be deemed that such release is under Chapter 33 of the Code.

(11) Such bail is also liable to be cancelled under Section 437(5) or Section 439(2) of the Cr.P.C as the case may be.

(12) If the final report was filed after 60 or 90 days as the case may be and the accused has not availed such indefeasible right to be released on bail before the final report is filed, he cannot claim such right to be released on bail.

[36] Now the question before me is that, an accused already released on bail and subsequently his bail was cancelled can be let off for bail under section 167 (2) of Cr.P.C ?

[37] Now, the State filed these applications under Section 437(5) of the Code of Criminal Procedure for cancellation of the bail on various grounds. Section 437(5) reads that "Any Court which has released a person on bail under Sub- Cril. Petn. Nos.5 & 6 of 2021 section (1) or Sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody". [38] There is no force in the contention of the learned counsel for the respondent that when a person is ordered to be released on bail under Section 167(2) of the Code of Criminal Procedure, the petitioner is not competent to file an application for cancellation. When once it is specifically mentioned that any order passed under Section 167(2) of the Criminal Procedure Code,

is deemed to be an order passed under Chapter XXXIII, then naturally the Investigating Agency is entitled to invoke the provisions under Section 437(5) of the Code of Criminal Procedure.

[39] In *State (Delhi Admn.) v. Sanjay Gandhi*, 1978 SCC (Cri) 223 : 1978 Cri LJ 952, wherein the Hon'ble Supreme Court observed that "the power to take back in custody an accused who has been enlarged to bail has to be exercised with care and circumspection. But the power, though of an extraordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused in interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the Courts to be silent spectators to the subversion of the judicial process".

[40] In *Dolat Ram v. State of Haryana*, 1995 SCC (Cri) 237 the Hon'ble Cril. Petn. Nos.5 & 6 of 2021 Supreme Court observed that bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. A Full Bench decision of the Orissa High Court in *Bijayaketan Mohanty v. State of Orissa*, 1982 Cri LJ 1954, wherein it is observed that re-committal can be ordered also if the Court finds that the accused is involved in tampering of evidence or that the accused being at large would not be in the interests of justice. The order of release on bail made under the proviso to Section 167(2) should have been permitted to be worked out and then only the question of cancellation of the bail should have come for consideration. Reliance was also placed upon *Raghubir Singh v. State of Bihar*, 1986 SCC (Cri) 511 : 1987 Cri LJ 157, wherein it is observed that "An order for release on bail made under the proviso to Section 167(2) is not defeated by lapse of time, the filing of the charge sheet or by remand to custody under Section 309(2). There is no limit of time within which the bond may be executed after the order for release on bail is made. Sections 441 and 442 are in the nature of provisions for the execution of orders for the release on bail of accused persons. The accused persons are not to be deprived of the benefit of the order for release on bail in their favour because of their inability to furnish bail straightaway. Therefore, an order for release under the proviso to Section 167(2) is also subject to the provisions of Sections 437(5) and 439(2) and may be extinguished by an order under either of these provisions. When an accused person is granted bail, Cril. Petn. Nos.5 & 6 of 2021 whether under the proviso to Section 167(2) or under the provisions of Chapter XXXIII the only way the bail may be cancelled is to proceed under Section 437(5) or Section 439(2). Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in 60 days, after the defect is cured by the filing of a chargesheet, the prosecution may seek to have the bail cancelled on the ground that there, are reasonable grounds to believe that the accused has committed a non- bailable offence and that it is necessary to arrest him and commit him to custody".

[41] In *B.S. Rawat v. Leidomann Heinrich*, 1991 Cri LJ 552 (Bombay), wherein it is observed that "Moreover, the language used in Sub-section (2) of Section 439 of the Cr.P.C. as very clear and explicit. When it uses the expression "any person who has been released on bail", it would mean that the accused is not only granted bail but has availed of the same and is released from his jail custody. It is only then that this Court can direct a person to be arrested and committed to custody as

provided in Section 439(2) of the Cr.P.C. In fact, no question of his re-arrest or re-committal to custody can arise unless the Accused is actually released on bail granted to him continues to be in custody and no question of his arrest and committed to custody can therefore arise. The application for cancellation of bail of the accused before his release on bail would thus be premature".

[42] The order for release on bail may however be cancelled under Section Cril. Petn. Nos.5 & 6 of 2021 437(5) or Section 439(2). Generally the grounds for cancellation of bail, broadly, are, interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him. The due administration of justice may be interfered with by intimidating or suborning witnesses, by interfering with investigation, by creating or causing disappearance of evidence etc. The course of justice may be evaded or attempted to be evaded by leaving the country or going underground or otherwise placing himself beyond the reach of the sureties. He may abuse the liberty granted to him by indulging in similar or other unlawful acts. There cannot be inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail. [43] In the State v. Sanjay Gandhi the Hon'ble Supreme Court was hearing an appeal by Special Leave against the High Court's order dismissing an application for cancellation of bail during the committal proceedings of case in which charge sheet was submitted under Sections 409, 435 and 201 read with 120B of IPC. The Hon'ble Supreme Court allowed the appeal partly cancelling the bail of certain period. It observed at page 957 (of Cri LJ):

"The rejection of bail when bail is applied for is one thing, cancellation of bail already granted is quite another. It is easier to reject a bail application in non bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if by reason of Cril. Petn. Nos.5 & 6 of 2021 supervening circumstances it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial".

[44] In the judgment reported in Cal LT 1 997 (1) HC 302; The State of W.B. v. Nebulal Shaw a Division Bench of Calcutta High Court held that the following facts amongst others are relevant for deciding the question of cancellation of bail:

- (i) The person on bail commits similar offence or any other heinous offence during the period of bail.
- (ii) The accused has misused the privilege of bail.
- (iii) The Lower Court granting bail has exercised its judicial power wrongly.

[45] The Hon'ble Supreme Court in Bhagirath Singh Judeja v. State of Gujarat, AIR 1984 SC 372 (1984 Cri LJ 160), had the occasion to consider the question as to what are all the relevant considerations for purposes of cancellation of bail. In this case the Ld. Sessions Judge had granted bail and this order was set aside by the High Court. Dealing with the facts and circumstances of the



case, it was held that it was not a case for interference with the discretionary order of Sessions Court granting bail and while discussing the principles, it was observed as under:

"Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. It is now well settled by a catena of decisions of the Supreme Court that the power to grant bail is not be Cril. Petn. Nos.5 & 6 of 2021 exercised as if the punishment before trial is being imposed. The only material consideration in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence by the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence."

[46] The Hon'ble Supreme Court also held that in an application for cancellation of bail it is not necessary for the prosecution to prove every incidental matter by a mathematical certainty or even beyond a reasonable doubt. If the prosecution wants to prove that the accused has abused his liberty and that there is a reasonable apprehension that he will interfere with the course of justice, all that is necessary for the prosecution to do so in order to succeed for cancellation of bail is to prove that fact by the test of preponderance of probabilities. It has also held that the power to cancel bail has to be exercised with care and circumspection and that such, power, though of an extraordinary nature, is meant to be exercised in appropriate cases.

[47] The next question which arises is in what circumstances, the High Court can cancel the bail granted by the Sessions Judge to an accused person. In other words it is to be seen whether the bail granted can be cancelled on any Cril. Petn. Nos.5 & 6 of 2021 of the grounds on which the bail can be cancelled, or the bail granted can also be cancelled where it is found that the Sessions Judge has not acted in a proper manner in granting bail to the accused.

[48] The power of the High Court to grant bail is not very much different from that of Sessions Judge as the same provision, namely Section 439, Cr.P.C. confers power on them to grant bail. However inherent powers have been vested in the High Court under Section 482, Cr.P.C to pass such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of the court or otherwise to secure the ends of justice. Hence if Section 439(2), Cr.P.C cannot be said to be available in a given case powers can be exercised by this Court under Section 482 Cr.P.C. [49] In this case all the relevant decisions have been taken into consideration and the principles on which bail can be granted have also been considered in the earlier order of dismissal. Thereafter the bail was again considered for the third time u/s.167(2) of Cr.P.C. if the Sessions Judge grants bail erroneously or illegally or arbitrarily without considering the relevant factors then the High Court cannot feel helpless in setting aside the order of the Sessions Court. The High Court under Section 439(2), Cr.P.C or under Section 482, Cr.P.C has jurisdiction to quash and set aside any arbitrary or illegal orders passed by the subordinate courts. A number of circumstances were

considered which had not been properly considered by the Sessions Court while granting bail and the order granting bail was cancelled. Cril. Petn. Nos.5 & 6 of 2021 [50] Now it is to be seen whether in the facts and circumstances of the present case the Sessions Judge has rightly granted bail to the accused and whether bail granted should be cancelled.

[51] First of all, I shall refer to the order of the Sessions Judge. The factors considered by the Learned Sessions Judge are that other co-accused in this case had been released on bail either by the Sessions Court or by the High Court under Section 439, Cr.P.C.

[52] The Default Bail Application enlarging the Accused/Respondent by the Ld. Special Judge has been filed during the pendency of another Bail Application being Cril.Misc.(B) Case No.99 of 2020 in respect of the same FIR referred above of the same Accused/Respondent under the provision of Section 437 (1) 1st Proviso of Cr.P.C. It is settled law that an Accused/Respondent cannot be permitted to file a second Bail Application in respect of the same FIR case and the same Accused/Respondent before the same Court of the Ld. Special Judge (PC Act), Imphal-West, when the earlier bail Application being Cril.Misc.(B) Case No.99 of 2020 was still pending for Consideration. It is pertinent to mention that the same Accused/Respondent has filed a bail application bearing Bail Application No.12 of 2020 before the this Court and the same was dismissed as another regular Bail Application was still pending being filed earlier on 02.11.2020 before the Ld. Special Judge (PC Act), Imphal-West. An Accused who is continuing to be in custody pending investigation simplicitor cannot be equated with an accused like the present Cril. Petn. Nos.5 & 6 of 2021 Accused/Respondent who had already been granted bail and whose bail had been cancelled.

[53] The Accused/Respondent was granted interim bail on medical ground and enlarged by the order of the Lower Court for a period of three months from 04.07.2020 till 03.10.2020. Apparently, the Accused/Respondent being already released on bail, albeit on medical ground, the same is in the exercise of power under section 437 (1) or (2) of the Code.

[54] The Third Default Bail Application filed by the Accused/Respondent is an abuse of the process of the Court, as repeated application under Section 167(2) of Cr.P.C has been filed on the same ground, despite being already dismissed on its merits by the Lower Court. The learned Special Judge (PC Act), Imphal-West has committed an error of law in allowing the application filed by the Accused under section 167(2) Cr.P.C when similar application filed earlier being Cril.Mis.Case No.82 of 2020, have already been rejected by the same court vide order dated 16.09.2020.

[55] Therefore, the petition filed by the State for cancellation of bail is liable to be allowed both on the grounds of illegality of the order passed by the Sessions Court and the conduct of the Accused subsequent to their release after bail was granted.

[56] Therefore, I am of the opinion that the Court below was no right in releasing the accused on default bail U/S 167(2) of Cr.P.C. The orders passed Cril. Petn. Nos.5 & 6 of 2021 by the Learned Sessions Judge granting bail can be termed as perverse.

[57] In the result,

a) both the Cril. P. Nos.5 and 6 of 2021 are allowed;

b) the petitioner/State is directed to re-arrest th

respondents/accused in both the cases and to remand into the Judicial custody;

c) the Respondent/Accused in both the cases are given liberty to approach the Court below for regular bail on merits if so they advised.

JUDGE FR/NFR

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2021.03.26 Rother 16:16:44 +05'30' Cril. Petn. Nos.5 & 6 of 2021