

**HIGH COURT OF BOMBAY****Before : M. S. Karnik, J.****Decided on : 22-12-2023**

Bail Application No.1543 and 572 of 2023

**AMIT MADHUKAR BHOGALE AND OTHER - APPLICANT****Vs.****THE STATE OF MAHARASHTRA - RESPONDENT****Sections, Acts, Rules, and Articles Mentioned in Judgment:**

Section 23(1)(a) and 23(2) , 21(7) of MCOCA

Sections 302, 326, 342, 143, 144, 148, 149, 506, 120-B read with 34 of the Indian Penal Code (IPC)

Sections 4, 25 of the Arms Act

Section 31(1)(a), 135 of the Maharashtra Police Act

Section 173(1) and Section 309, 167(2), 437 of the Cr.P.C.

Article 21 of the Constitution of India

**Subject of the Judgment:**

Entitlement to Default Bail under Section 167(2) of the Cr.P.C. in the context of the invocation of the MCOCA after filing the charge-sheet for IPC offences.

**Headnotes:**

Default Bail – Right Under Section 167(2) of Cr.P.C. – Entitlement to default bail if investigation not completed within stipulated period – Invocation of MCOCA after filing charge-sheet for IPC offences does not entail new investigation period – Custody under Section 309 Cr.P.C. continues post-cognizance – Default bail not granted. [Para 1, 10, 14, 22, 28-31]

Investigation – Section 167 and 309 Cr.P.C. – Distinction in applicability – Section 167(2) applies before cognizance, Section 309 post-cognizance – Filing of charge-sheet within statutory period under IPC precludes default bail

under Section 167(2) even after MCOCA invocation – Investigation under MCOCA considered a continuation, not a new investigation. [Para 14, 25, 28]

MCOCA (Maharashtra Control of Organised Crime Act) – Application and Impact – MCOCA invoked post-IPC charge-sheet does not restart investigation period for default bail – MCOCA considered as a continuation of IPC offence investigation – No new period for default bail post-MCOCA invocation. [Para 12, 14, 28]

Cognizance and Sanction – Role in Investigation and Prosecution – Sanction required for court to take cognizance, not for completing investigation – Cognizance of offence under IPC taken, custody under Section 309 Cr.P.C. – Sanction under Section 23(2) MCOCA for Special Court to take cognizance, separate from investigation completion. [Para 29]

Judicial Remand – Sections 167(2) and 309 Cr.P.C. – Different stages of trial and investigation – Remand under Section 167(2) during investigation, under Section 309 post-cognizance – Filed charge-sheet under IPC implies remand under Section 309, not Section 167(2). [Para 25, 30]

Decision – Applications for default bail rejected – Charge-sheet filed within stipulated period for IPC offences – Invocation of MCOCA considered continuation of initial investigation – Applicants not entitled to default bail under Section 167(2) Cr.P.C. [Para 31]

Referred Cases with Citations:

- Aslam Babalal Desai vs. State of Maharashtra, (1992) 4 SCC 272
- Natabar Parida and Ors. v. State of Orissa [1975] CrL. L.J. 1212
- Central Bureau of Investigation v. Anupam J. Kulkarni
- Suresh Kumar Bhikamchand Jain vs. State of Maharashtra and another, (2013) 3 SCC 77
- Judgebir Singh and Ors. vs. National Investigation Agency, CrL. Appeal Nos. 1011/2023 and 1012/2023 decided on 01/05/2023
- Radhey Shyam vs. Kunj Behari and others with State of Rajasthan vs. Kunj Behari @ Kunji and others, 1989 Supp (2) SCC 572
- Tunde Gbaja vs. Central Bureau of Investigation, 2007 (95) DRJ 429
- Dharamvir Singh @ Deepak vs. The State (NCT of Delhi), 2011 (125) DRJ 471

- Ritu Chhabaria vs. Union of India & Ors., W.P. (Crl) NO. 60/2023
- Fakhrey Alam vs. State of Uttar Pradesh, 2021 SCC OnLine SC 532
- State of Maharashtra vs. Bharati Chandmal Varma (Mrs) alias Ayesha Khan, (2002) 2 SCC 121
- Avinash Jain vs. Central Bureau of Investigation, 2023 SCC OnLine Del 2946
- Shekhar Suresh Dagle vs. The State of Maharashtra, through Vartak Nagar Police Station, Thane, Crl. BA No. 734 of 2011 decided on 06/07/2011
- Natabar Parida Bisnu Charan Parida Batakrushna Parida Babaji Parida vs. The State of Orissa, (1975) 2 SCC 220
- Mohamad Ahmed Yasin Mansuri vs. State of Maharashtra, 1994 Mh. L.J. 688
- State through CBI vs. Dawood Ibrahim Kaskar and others, (2000) 10 SCC 438
- Akhalaq Ahmed F. Patel vs. State of Maharashtra, 1998 (2) Mh. L.J. 932
- Indrabahadur Lalbahadur Khatri and ors. vs. The State of Maharashtra, Crl. B.A. No. 1046/2012 decided on 05/09/2012.
- Siddharam Satlingappa Mhetre vs. State of Maharashtra and others, (2011) 1 SCC 694
- Hemalatha Gargya vs. Commissioner of Income Tax, A.P. and another, (2003) 9 SCC 510
- Sun Export Corporation, Bombay vs. Collector of Customs, Bombay and another, (1997) 6 SCC 564
- Union of India and others vs. Jaipal Singh, (2004) 1 SCC 121
- Subhadra Ran Pal Choudhary vs. Sheirly Weigal Nain and others, (2005) 5 SCC 230
- The State of Maharashtra vs. Sachin Dhananjay Kulkarni @ Chingya and others, Crl. Appeal No. 418 of 2023 decided on 19/10/2023
- Suraj Arun Pote vs. State of Maharashtra, 2022 SCC OnLine Bom 6577

Representing Advocates:

- For the applicants: Senior Advocate Shri Raja Thakare and Shri Jha

- For the State: Public Prosecutor Shri Venegavakar

## **ORAL JUDGMENT**

1. These are the applications claiming entitlement to default bail under Section 167(2) of the Code of Criminal Procedure (hereafter 'Cr.P.C.' for short).

2. Before advertng to the facts of the present case, I may at the very outset seek guidance from the decision in **Aslam Babalal Desai vs. State of Maharashtra, (1992) 4 SCC 272** wherein the object and scope of Section 167 of the Cr.P.C. has been authoritatively stated. Paragraph 36 thereunder reads thus:-

'36. In **Natabar Parida and Ors. v. State of Orissa [1975] CrI. L.J. 1212** a two judge Bench, at the earliest considered, the scope of the proviso and held thus:

'..[T]he 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 interstate 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 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 "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.'

The same view was reiterated in a recent judgment of this Court by another Bench consisting of one of us (Ahmadi, J.) and K.J. Reddy, J. in *Central Bureau of Investigation v. Anupam J. Kulkarni* and it was stated in the context of construing whether the accused would be kept in the police or judicial custody after the expiry of 15 days under Subsection (2) of Section 167 thus: "Now coming to the object and scope of Section 167, it is well settled that it is supplementary to Section 57, It is clear from Section 57 that the investigation should be completed in the first instance within 24 hours, if not the arrested person should be brought by the police before a Magistrate as provided under Sub-section 167. The law does not authorise the police officer to detain and arrest persons for more than 24 hours exclusive of time necessary for the journey from the place of area to the Magistrate court.'

3. The Supreme Court has observed that 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 if the investigation cannot be completed within the period stipulated by Section 167(2) of the Cr.P.C. If the investigation is not completed within the aforesaid period, then even in serious and ghastly types of crimes the accused will be entitled to be released on bail. These observations of the Supreme Court have to be kept in mind. Their Lordships observed that such a law may be '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.

4. It is, therefore, not necessary to set out the prosecution case in detail except for stating some relevant dates. On 4/10/2021, Suraj Mehta @ Nepali was murdered between 2.20 a.m. to 2.30 a.m. On the same date, the First Information Report (FIR) No.588/2021 was registered by Bhandup Police Station under Sections 302, 326, 342, 143, 144, 148, 149, 506, 120-B read with 34 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 4, 25 of the Arms Act read with Section 31(1)(a), 135 of the Maharashtra Police Act. The applicants were arrested. On 26/11/2021 and the charge-sheet was filed in respect of some accused. The charge-sheet in respect of the applicant Amit Bhogale was filed on 23/2/2022. The report/charge-sheet against the applicants was filed within the period stipulated by Section 167 of the Cr.P.C.

5. The prior approval of the Joint Commissioner of Police for invoking Section 23 (1)(a) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOCA', for short) was granted on 23/9/2022. The Special Court added sections of MCOCA in the present FIR on 26/9/2022. The case was transferred by the Sessions Court to MCOCA Court on 1/10/2022. An application was made by the investigating agency seeking custody under Section 21(7) of the MCOCA on 16/11/2022. The application for remand was rejected by the Special Court on 3/12/2022. The appeal challenging the rejection of the remand was filed in this Court on 3/3/2023. The appeal came to be dismissed by this Court on 19/10/2023.

6. In the meantime, the applicants filed application for default bail before the Special Court under Section 167(2) of the Cr.P.C. on 2/1/2023. The bail application/s was rejected on 12/1/2023. The second default bail application was filed on 3/3/2023 which was rejected by the Special Court on 13/4/2023. Hence these bail applications.

**Submissions of learned counsel for the applicants:-**

7. Learned senior advocate Shri Raja Thakare appearing for one of the applicant and Shri Jha appearing for another applicant made the following submissions:-

[A] The accused are arrested for IPC offence and the charge-sheet for IPC offence has been filed within 90 days. The provisions of MCOCA are invoked but the accused are neither arrested nor taken in custody after invocation of MCOCA. Though more than 180 days have passed from the original date of arrest as well as from the invocation of MCOCA, the charge-sheet has not been filed under MCOCA. From the date of committal till the transfer of case to the Special Court under MCOCA, the accused were remanded from time to time by virtue of provisions of Section 309 of the Cr.P.C. There is no specific provision under MCOCA as regards grant of remand by Special Court, till the time the Special Court under MCOCA on receipt of sanction under Section 23(2) of the MCOCA takes cognizance of the offence and hence the detention of the accused in the intervening period could only and only be by virtue of Section 167(2) of the Cr.P.C. The application of provisions of Cr.P.C. are not totally excluded from application to MCOCA cases but they are subject to the modification in the special Act. Section 21(2) of the MCOCA makes it apparent that the provisions of Section 167(2) of the Cr.P.C. are modified to the maximum of 180 days. It has to be borne in mind that Section

173(1) Cr.P.C. envisages that every investigation has to be concluded without unnecessary delay. If the provisions of Section 167 and Section 173(1) Cr.P.C. are not read conjointly in a case under MCOCA, it will lead to an anomaly, that after exhausting the period of 180 days from the original date of arrest if the charge-sheet under MCOCA is not filed it will be violative of Article 21 of Constitution.

[B] The arguments of the prosecution may be that since a charge-sheet under IPC is filed, the provisions of Section 167(2) Cr.P.C. ceased to operate. However, in such an eventuality if there is an inordinate delay in filing chargesheet under MCOCA even if the accused apply for regular bail, the rigours of Section 21(4)(b) MCOCA will be attracted and the investigation can remain pending indefinitely, without any check or supervision by the Special Court. Therefore, by harmonious reading of the provisions of the Cr.P.C. and MCOCA, it will have to be construed that if from the original date of arrest the charge-sheet is not filed under the MCOCA within the statutory period or extended period as per Section 21(2)(b) MCOCA, obviously the detention would be illegal thereby the accused are entitled to bail. The invocation of MCOCA at such a late juncture is demonstrative of the malafides of the investigating agency as it is evident that somehow or the other they want to keep the matter lingering and frustrate the right of liberty to the accused.

[C] MCOCA is a special Act and hence the investigation under MCOCA after filing of charge-sheet in IPC and other related offences and even supplementary charge-sheet after invocation of MCOCA in the instant case would tantamount to an independent investigation and therefore, indefeasible right accrues to an accused under Section 167(2) of Cr.P.C. Once MCOCA is applied by virtue of prior approval granted by the Joint Commissioner of Police under Section 23(1)(a) of MCOCA, it would be imperative for the investigating agency to file a separate charge-sheet/ supplementary charge-sheet under MCOCA and failure thereof would entitle the accused to enforce their indefeasible right for default bail.

[D] Learned senior advocate Shri Raja Thakare and learned counsel Shri Jha relied upon the following decisions in support of their submissions:-

**1. Suresh Kumar Bhikamchand Jain vs. State of Maharashtra and another, (2013) 3 SCC 77** (paragraph - 14, 18)

2. Judgebir Singh and Ors. vs. National Investigation Agency[3] (paragraph - 33, 44, 53, 56)



[3] CrI. Appeal Nos. 1011/2023 and 1012/2023 decided on 01/05/2023

3. **Radhey Shyam vs. Kunj Behari and others with State of Rajasthan vs. Kunj Behari @ Kunji and others, 1989 Supp (2) SCC 572** (paragraph - 8)

4. **Tunde Gbaja vs. Central Bureau of Investigation, 2007 (95) DRJ 429** (paragraph - 19 (sub-para 14, 15 & 16), 20)

5. **Dharamvir Singh @ Deepak vs. The State (NCT of Delhi), 2011 (125) DRJ 471** (paragraph - 13)

6. **Ritu Chhabaria vs. Union of India & Ors.[1]** (paragraph 21)

[1] W.P. (CrI) NO. 60/2023 decided on 26/04/2023

7. **Fakhrey Alam vs. State of Uttar Pradesh, 2021 SCC OnLine SC 532** (paragraph -3, 7, 12, 13, 14, 15)

8. **State of Maharashtra vs. Bharati Chandmal Varma (Mrs) alias Ayesha Khan, (2002) 2 SCC 121** (paragraph - 3, 6, 7,10, 12).

9. **Avinash Jain vs. Central Bureau of Investigation, 2023 SCC OnLine Del 2946** (paragraph - 51)

10. **Shekhar Suresh Dagle vs. The State of Maharashtra, through Vartak Nagar Police Station, Thane[2]** (paragraph -4)

[2] CrI. BA No. 734 of 2011 decided on 06/07/2011

11. **Natabar Parida Bisnu Charan Parida Batakrushna Parida Babaji Parida vs. The State of Orissa, (1975) 2 SCC 220** (paragraph -8)

12. **Mohamad Ahmed Yasin Mansuri vs. State of Maharashtra, 1994 Mh. L.J. 688** (paragraph - 17, 21,26)

13. **State through CBI vs. Dawood Ibrahim Kaskar and others, (2000) 10 SCC 438** (paragraph - 10, 11)

14. **Akhalaq Ahmed F. Patel vs. State of Maharashtra, 1998 (2) Mh. L.J. 932** (paragraph - 2)

15. **Indrabahadur Lalbahadur Khatri and ors. vs. The State of Maharashtra[3]** (paragraph - 14)

[3] CrI. B.A. No. 1046/2012 decided on 05/09/2012.



16. **Siddharam Satlingappa Mhetre vs. State of Maharashtra and others, (2011) 1 SCC 694** (paragraph - 127, 128)

17. **Hemalatha Gargya vs. Commissioner of Income Tax, A.P. and another, (2003) 9 SCC 510** (paragraph - 13)

18. **Sun Export Corporation, Bombay vs. Collector of Customs, Bombay and another, (1997) 6 SCC 564** (paragraph - d)

19. **Union of India and others vs. Jaipal Singh, (2004) 1 SCC 121** (paragraph - B)

20. **Subhadra Ran Pal Choudhary vs. Sheirly Weigal Nain and others, (2005) 5 SCC 230** (paragraph - D)

21. The State of Maharashtra vs. Sachin Dhananjay Kulkarni @ Chingya and others[4]

[4] CrI. Appeal No. 418 of 2023 decided on 19/10/2023

22. **Suraj Arun Pote vs. State of Maharashtra, 2022 SCC OnLine Bom 6577** (paragraph - 17).

#### **Submissions of learned Public Prosecutor:-**

8. Shri Venegavakar, learned Public Prosecutor for the State submitted that having filed the charge-sheet for IPC offence, the applicants cannot claim fundamental/statutory right of default bail as the conditions of Section 167(2) are not satisfied. Invocation of the MCOCA post filing of the charge-sheet in respect of IPC offence is not a new investigation but a continuation of the earlier investigation. The Sessions Court had already taken cognizance and therefore, the custody of the applicants will be governed by Section 309 Cr.P.C. and will not revert back to Section 167 of the Cr.P.C. The application made by the investigating agency for custody under Section 21(7) of the MCOCA is rejected and hence the custody continues to be under Section 309 Cr.P.C.

9. I have heard learned senior advocate Shri Raja Thakare and learned counsel Shri Jha for the applicants as well as learned Public Prosecutor Shri Venegavkar for the State at length.

10. The issue involved is whether the right to claim default bail revives even though the charge-sheet in respect of the IPC offence is filed within the statutory period prescribed by Section 167(2) of the Cr.P.C. only because the

MCOCA is invoked after filing of the charge-sheet. The next question is whether the investigation into the MCOCA offence is a new investigation or continuation of the earlier investigation into the IPC offence.

11. I must immediately set out that this Court in the case of Suraj Arun Pote (supra) had an occasion to consider a similar issue. The facts in Suraj Arun Pote (supra) were somewhat similar to those in the present case. Even in Suraj Arun Pote (supra), MCOCA was invoked after filing of the charge-sheet in respect of the IPC offence. The only distinguishing feature was that pursuant to the application made by the investigating agency for remand under Section 21(7) of the MCOCA, the Special Court had allowed the application and granted remand. In the present case, the application for remand under Section 21(7) of the MCOCA was rejected.

12. I am reproducing the observations of this Court in Suraj Arun Pote (supra), the relevant paragraphs 11 to 17 read thus:

11. I have considered these submissions. The rival submissions are within a narrow compass. Both the learned counsel are referring to the cases of Bharati Varma (supra) and Indrabahadur Khatri (supra) to further their arguments. Therefore it is necessary to refer to the ratio in these two cases. In Bharati Varma's case the accused Bharati was rested on 01/04/2001 for offence punishable u/s 489-A, 489-B, 489- 120-B and 420 of IPC. She was produced before the Magistrate on 2/04/2001. Sanction for application of MCOC Act was granted on 1/04/2001. The investigation was conducted and the chargesheet was filed on 12/07/2001.

12. In that case, the Hon'ble Supreme Court has held that if the investigation into the offence for which the accused was arrested initially had revealed other ramifications associated therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to Section 167(2) would remain unextendable.

13. In other words, the Supreme Court held that in that case the date of first remand i.e. 02/04/2001 was material and the charge-sheet should have been filed within the stipulated period which should be calculated from 02/04/2001. In that case the chargesheet was filed on 2/07/2001 which was beyond the statutory period and the benefit was given to the accused.

14. In the case of Indrabahadur Khatri (supra), the accused were arrested on 17/05/2011, for offences punishable u/s 302 and 341 of PC and the

chargesheet was filed on 12/08/2011. Thereafter on 15/09/2011 prior approval for applying MCOC was granted. The accused therein were re-arrested on the allegations of having committed offence under MCOC Act on 22/09/2011. They made an application for their release u/s 167 of Cr. P.C. contending that the statutory period permitting their maximum detention u/s 167 of Cr. P.C. was over. Reliance was placed on Bharati Varma's case (supra). However, the contention of the accused therein and reliance on Bharati's case were rejected by the learned Single Judge of this Court.

15. The observations made in the case of Khatri (supra) are squarely applicable to the present case. It was observed thus "the real question was whether after the filing of the charge-sheet, merely because further investigation was undertaken, the arrested person would be treated or taken as being under detention by virtue of section 167 of Cr. P.C.; and therefore entitled to claim release on bail on expiry of the maximum limit for detention, laid down in clause (a) of first proviso to section 167 (2)". The Court went on to observe that the answer had to be 'no'. Sub-section 8 of section 173 specifically permits further investigation even after it has been completed by filing of a charge-sheet. It was further observed that when the accused were in custody by virtue of a remand under section 209 of the Code, the re-arrest was rather superfluous.

16. The case of Bharati Varma (supra) was also considered and it was observed that reliance placed on that decision was misconceived in the facts in Khatri's case.

17. In the present case also the facts are very similar to Indrabahadur Khatri's case (supra) and not to Bharati Varma's case (supra). In Bharati Varma's case, the charge-sheet for the first time was filed beyond statutory period from the date of first remand. However, in the present case the first charge-sheet was filed on 05/08/2021 and the date of first remand was 20/05/2021. The main offence at that point of time was section 307 of IPC. The charge-sheet was filed within the period of 90 days. The reason for enacting section 167 of Cr. P.C. and setting outer limit was to ensure that the investigation was carried out diligently and within the statutory period. Therefore outer limit was specified. In the present case the investigation was completed within the period of 90 days. Only subsequently after the further investigation was carried out, the provisions of MCOC Act were applied. Those provisions could be applied to a registered offence for which the investigation could be going on. During investigation if further material is found then the provisions of

MCOCA can be applied; which was done in the present case. Therefore it cannot be said that the investigation was not completed within the statutory period of 90 days for offences under IPC though subsequently provisions of MCOCA Act were applied. The Applicant was in custody pursuant to valid remand orders. The investigation carried from that point onwards was only the further investigation. It was not a new investigation. Because the investigation under the MCOCA Act was continuation of the earlier investigation for IPC offence. Only subsequently the provisions of MCOCA Act were invoked because the material under the MCOCA Act was found against the Applicant. Therefore crucial aspect in this case is whether the investigation under MCOCA was completely new investigation and therefore whether the charge-sheet should have been filed within 180 days from the date of first arrest i.e. 20/05/2021 This question in this case does not arise because the charge-sheet was already filed on 05/08/2021. The charge - sheet filed on 19/01/2022 can only be described as a supplementary charge-sheet. The earlier chargesheet and remand orders cannot be wiped out from the record. The cognizance was taken of the earlier charge-sheet and thereafter the case was committed to the Court of Sessions. Therefore the Magistrate Court and the Sessions Court had rightly remanded the Applicant under the provisions of Cr. P.C. In Bharati Verma's case (supra) the first charge-sheet itself was filed beyond the statutory period. Therefore facts in that case are not applicable to the present facts; whereas Khatri's case (supra) is based on similar facts. Therefore I am following the view expressed in the case of Indrabahadur Khatri (supra). No case for granting any relief under section 167 of Cr. P.C. is made out by the Applicant. Hence the application is rejected.'

13. The observations in Suraj Arun Pote (supra) and Indrabahadur Lalbahadur Khatri (supra) are squarely applicable in the present case and should have been a ground enough for me to reject these applications. The present case is on a better footing as the application for custody under Section 21(7) of MCOCA was rejected which was not so in Suraj Arun Pote (supra).

14. Learned senior advocate Shri Thakare and learned counsel Shri Jha meticulously took me through the relevant provisions of Section 167 of the Cr.P.C. and those of MCOCA. The persuasive submissions made by the learned counsel did make my task difficult as several decisions of the Supreme Court were relied upon to urge that the issue needs to be revisited.

It is submitted that provisions of Section 21 of the MCOCA provided for modification of application of certain provisions of the code. Sub-section 2 of Section 21 reads as under:

'(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section (2), -

(a) the references to ' fifteen days ', and ' sixty days ', wherever they occur, shall be construed as references to ' thirty days ' and ' ninety days', respectively;

(b) after the proviso, the following proviso shall be inserted, namely:-

'Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend he said period upto one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days.'

According to the learned counsel, if the charge-sheet is not filed within the extended period provided by sub-section 2 of Section 21 of the MCOCA, right accrues in favour of the applicants to claim the default bail. The concern expressed by the learned senior advocate is that there may be a deliberate delay in invoking provisions of the MCOCA by the investigating agency, to defeat the statutory right of the applicants to claim the default bail. The submission is that as the investigation into the MCOCA takes time, the investigating agency may file the charge-sheet in the IPC offence within the period prescribed by Section 167(2) so that the statutory right to claim default bail comes to an end and thereafter invoke MCOCA. This would enable the investigating agency to file the charge-sheet at their sweet will thereby virtually circumventing the fundamental right of the accused to claim default bail. It is submitted that the applicants are literally pushed to a situation where they will be required to apply for regular bail before the Special Court by satisfying the twin conditions of Section 21(4)(b) of the MCOCA making it difficult to obtain bail. The submission, therefore, is that even if the cognizance has been taken by the Sessions Court pursuant to the filing of the charge-sheet for the IPC offence upon the approval being granted under Section 21(1)(a) of the MCOCA the same will have to be regarded as an independent investigation and therefore, the statutory right under Section 167(2) will revive.

15. To deal with these submissions, it is material to note some of the relevant provisions of Cr.P.C. as well as MCOCA. Section 2(h) of the Cr.P.C. defines investigation, which includes all the proceedings under Cr.P.C. for the collection of evidence conducted by police. Section 2(g) defines enquiry, which means every enquiry other than a trial conducted under Cr.P.C. by a magistrate or Court. Thereafter comes trial, which though has not been defined anywhere in the Code, it commences after framing of the charge. So far as sessions triable cases are concerned, the framing of charge would be under Section 228 of the Cr.P.C and framing of charge under the warrant triable cases would be under Section 240 of the Cr.P.C.

16. The submission of the learned senior advocate Shri Thakare is that during the investigation, that is before filing of the charge-sheet, the power to authorize detention is under Section 167 of the Cr.P.C. Since the cognizance of offence under MCOCA is directly taken by the Special Court, there are no committal proceedings. According to him, the power to authorise the custody would spring from Section 309 (2) of the Cr.P.C. Under the MCOCA the investigation cannot be conducted by an officer below the rank of Deputy Superintendent of Police in view of the non-obstante clause provided under Section 23(1)(b) of the MCOCA. It is submitted that, therefore, the investigation culminating into filing of the charge-sheet under the penal law, cannot be said to be investigation under the MCOCA. Learned senior advocate was at pains to point out that once prior approval under Section 23(1) of the MCOCA is obtained, in view of Section 6 of the MCOCA, the jurisdiction of a magistrate or for that matter even the Sessions Judge is ousted. It is submitted that in such eventuality it cannot be that the custody of the accused would be governed by Section 309(2) of the Cr.P.C. because according to the learned senior advocate, the MCOCA Special Court cannot take cognizance unless there is a sanction under Section 23(2) of the MCOCA and the power under Section 309(2) of the Cr.P.C. can be exercised only after the Court takes cognizance, therefore, the detention cannot be said to be under Section 309(2) of the Cr.P.C.

17. Learned senior advocate urged that two provisions which have to be kept in mind are Section 173(1) and Section 309 (1) of the Cr.P.C. Section 173(1) of the Cr.P.C. lays down that every investigation has to be completed without unnecessary delay, similarly Section 309 (1) also contemplates that every enquiry or trial, the proceeding shall be held expeditiously. Learned senior advocate submitted that in the present case, the trial cannot proceed as there



is no valid sanction under Section 23(2) of the MCOCA and therefore, there is a gross violation of the

fundamental rights under Article 21 of the Constitution of India and therefore, accused has right to be granted bail.

18. It is the submission that once the investigating agency starts an investigation into the offence under the MCOCA upon obtaining prior approval, the custody under Section 309 will have to be read as one in respect of the offence under the IPC, whereas the custody for the purpose of the investigation under the MCOCA will have to be regarded as one under Section 167 and hence the applicants are entitled to the facility of default bail if the investigation is not completed within the period prescribed under sub-section (2) of Section 21 of the MCOCA. Learned counsel for the applicants went to the extent of submitting that even if MCOCA is invoked after the filing of the charge-sheet in respect of IPC offence, nonetheless it is the first date of remand as held in *Bharti Chandmal Varma's case* (supra) will have to be regarded for the purpose of entitling the applicants for default bail. Learned counsel relied heavily on the decision in *Fakhrey Alam* (supra).

19. I find it significant to notice the facts in *Fakhrey Alam* (supra). The FIR was registered under Sections 420, 467, 468, 471 and 120-B of the IPC, Sections 3, 25 and 30 the Arms Act and Section 18 of the Unlawful Activities (Prevention) Act, 1967 (hereafter 'UAPA' for short). The appellant therein was arrested on 08/03/2017. Learned Magistrate Court granted a total of 180 days to the police for filing the charge-sheet. The police filed charge-sheet on 04/09/2017 under the IPC offence except under the UAPA as it was mandatory to obtain prosecution sanction from the State Government which had not been forthcoming till the date of filing of the charge-sheet. Thereafter, a second charge-sheet was filed after obtaining sanction from the State Government on 05/10/2017. The application for default bail was filed under Section 167(2) of the Cr.P.C. two days prior to the charge-sheet having been filed under the UAPA. The case set up by the appellant was that the charge-sheet had been filed after 180 days and thus, he was entitled to default bail. The magistrate Court, however, opined that what was stated to be a second charge-sheet was really a supplementary charge-sheet and thus default bail cannot be admissible. The view of the Magistrate Court was given its imprimatur by the High Court. It was urged before the Supreme Court that the second charge-sheet is really a supplementary charge-sheet as there is no restriction on the number of supplementary charge-sheets which can be filed



but there will be only one charge-sheet in view of the decision of the Supreme Court in the case of Vinay Tyagi Vs. Irshad Ali @ Deepak. The observations of the Supreme Court while deciding the issue are contained in paragraph Nos. 12 to 16. The same read thus:

'12. On the second aspect we cannot lose sight of the fact that what was envisaged by the Legislature was that the investigation should be completed in 24 hours but practically that was never found feasible. It is in these circumstances that Section 167 of the Cr. P.C. provided for time period within which the investigation should be completed, depending upon the nature of offences. Since, liberty is a Constitutional right, time periods were specified in the default of which the accused will have a right to default bail, a valuable right.

13. If we look at the scenario in the present case in that conspectus, the charge sheet under the provisions of law as originally filed on 04.09.2017 were required to be filed within 90 days but was actually filed within 180 days. This was on the premise of the charge under Section 18 of the UAPA Act. However, no charge sheet was filed even within 180 days under the UAPA Act, but post filing of the application for default bail, it was filed after 211 days. Thus, undoubtedly the period of 180 days to file the charge sheet qua UAPA Act had elapsed. We do not think that the State can take advantage of the fact that in one case there is one charge sheet and supplementary charge sheets are used to extend the time period in this manner by seeking to file the supplementary charge sheet qua the offences under the UAPA Act even beyond the period specified under Section 167 of the Cr. P.C. beyond which default bail will be admissible, i.e., the period of 180 days. That period having expired and the charge sheet not having been filed qua those offences (albeit a supplementary charge sheet), we are of the view the appellant would be entitled to default bail in the aforesaid facts and circumstances.

14. We need only emphasize what is already observed in Bikramjit Singh case (supra) that default bail under first proviso of Section 167 (2) of the Cr. P.C. is a fundamental right and not merely a statutory right as it is, a procedure established by law under Article 21 of the Constitution. Thus a fundamental right is granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) of the Cr. P.C. are fulfilled.

15. In fact in the majority judgment of this Court it has been held that an oral application for grant of default bail would suffice [See. Rakesh Kumar Paul v.

State of Assam]. The consequences of the UAPA Act are drastic in punishment and in that context, it has been held not to be a mere statutory right but part of the procedure established by law under Article 21 of the Constitution of India.

16. We are thus of the view that the impugned order(s) are liable to be set aside. The appellant is entitled to default bail under Section 167 (2) of the Cr. P.C. in the given facts of the case on the terms and conditions to the satisfaction of the trial Court.'

20. Relying on Fakhrey Alam (supra) the submissions advanced by the learned counsel for the applicants undoubtedly sounded attractive. I must confess that to some extent I was swayed by the submissions of learned counsel for the applicants. The counter by Shri Venegavkar, learned Public Prosecutor changed my mind. In my opinion, the decision in Fakhrey Alam (supra) is distinguishable on facts. In Fakhrey Alam, the offence under Section 18 of the UAPA was added along with other sections of IPC at the time of the registration of the FIR. It is in this scenario that the Chief Judicial Magistrate granted total 180 days to the police for filing the charge-sheet on the premise of the charge under Section 18 of the UAPA Act. Though the charge-sheet was filed on 4/9/2017 for the IPC offence within 180 days, however, the charge-sheet under UAPA was not filed within 180 days. This extended period of 180 days for filing of the charge-sheet was on account of the charge under Section 18 of UAPA. Since the charge-sheet was not filed within 180 days under UAPA, but was filed post filing of the application for default bail, the Supreme Court observed that undoubtedly, the period of 180 days to file the charge-sheet qua UAPA had elapsed and hence held the accused therein to the benefit of default bail. Such are not the facts in the present case.

21. In the present case, the charge-sheet was already filed within 90 days as the FIR initially was registered only under the provisions of the IPC. The MCOCA was invoked after filing of the charge-sheet. It is observed in **Bikramjit Singh vs. State of Punjab, (2020) 10 SCC 616** that default bail under first proviso of Section 167 (2) of the Cr.P.C. is a fundamental right and not merely a statutory right as it is, a procedure established by law under Article 21 of the Constitution. A fundamental right is granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) of the Cr.P.C. are fulfilled. In my view, in the present case, as the charge-sheet was already filed within a period of 90 days, the condition of the

first proviso to Section 167(2) of the Cr.P.C. cannot be said to be fulfilled, therefore, the applicants are not entitled for default bail. If the subsequent invocation of MCOCA cannot have a effect of extending the time period under Section 167(2) of the Cr.P.C. it will have to be construed that the applicants cannot claim an entitlement for default bail after the charge-sheet is filed for the IPC offence.

22. Let me elaborate whether the right under Section 167(2) of the Cr.P.C. will revive upon grant of prior approval under the MCOCA after filing of the charge-sheet in the IPC offence. At this juncture, it would be necessary to refer to the observations of the Supreme Court in the case of State of Maharashtra vs. Bharati Chandmal Varma (supra). It was the contention of the State as can be seen in paragraph 3 that the period of 90 days envisaged in Section 167(2) of the Code should be reckoned from the date when the police started investigation into the offences under the MCOCA. The accused thereunder was arrested on 1/4/2001 and was produced before the Magistrate's Court on 2/4/2001. During the investigation the police discovered that organized crimes under the MCOCA had also been committed. The sanction was granted on 21/4/2001 and thenceforth investigation was conducted into the offences under the MCOCA also. Finally the charge-sheet was laid on 12/7/2001. The accused moved for bail principally on the ground that the charge-sheet was not laid within 90 days. The question before the Supreme Court was whether the period of 90 days should be reckoned from 2/4/2001 as prayed by the accused or it should be reckoned from 21/4/2001 (the date when the investigation was conducted into the offences under the MCOCA) as was the contention of the Public Prosecutor. Paragraphs 10,11 and 12 which answers the question involved in State of Maharashtra vs. Bharati Chandmal Varma (supra) need to be reproduced which read thus: -

'10. Dealing with the first limb of the contention, learned counsel elaborated it by reference to Section 23(1) of the MCOCA Act, which contains an embargo that:

"23. (1) Notwithstanding anything contained in the Code,-

(a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;"

Hence it was submitted that investigation was impermissible until the approval has been accorded and its corollary is that the period for completion of investigation could be counted only from the date when investigation could legally be commenced.

11. For the application of the proviso to Section 167(2) of the Code there is no necessity to consider when the investigation could legally have commenced. That proviso is intended only for keeping an arrested person under detention for the purpose of investigation and the legislature has provided a maximum period for such detention. On the expiry of the said period the further custody becomes unauthorized and hence it is mandated that the arrested person shall be released on bail if he is prepared to and does furnish bail. It may be a different position if the same accused was found to have been involved in some other offence disconnected from the offence for which he was arrested. In such an eventuality the officer investigating such second offence can exercise the power of arresting him in connection with the second case. But if the investigation into the offence for which he was arrested initially had revealed other ramifications associated therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to Section 167(2) would remain unextendable.

12. We are, therefore, unable to agree with the contention of the learned counsel for the State of Maharashtra that a new period of 90 days would commence from the date when approval was accorded under Section 23 of the MCOC Act for initiating investigation for any offence under the said Act. In the present case, the accused would be entitled to bail, not on the merits of the case, but on account of the default of the investigating agency to complete the investigation within 90 days from the date of the first remand of the respondent.'

23. Thus, as can be seen from the observations of the Supreme Court, for the application of the proviso to Section 167(2) of the Code there is no necessity to consider when the investigation could legally have commenced. That proviso is intended only for keeping an arrested person under detention for the purpose of investigation and the legislature has provided a maximum period for such detention. On the expiry of the said period the further custody becomes unauthorized and hence it is mandated that the arrested person shall be released on bail if he is prepared to and does furnish bail. It has been clearly observed that it may be a different position if the same accused was

found to have been involved in some other offence disconnected from the offence for which he was arrested. Their Lordships held that in such an eventuality the officer investigating such second offence can exercise the power of arresting him in connection with the second case. But if the investigation into the offence for which he was arrested initially had revealed other ramifications associated therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to Section 167(2) would remain unextendable. It is in these circumstances that Their Lordships did not agree with the contention of the prosecution that a new period of 90 days would commence from the date when approval was accorded under Section 23 of the MCOCA for initiating investigation for any offence under the said Act and in these facts held that, the accused would be entitled to bail, not on the merits of the case, but on account of the default of the investigating agency to complete the investigation within 90 days from the date of the first remand of the respondent.

24. In the present case, assuming that the MCOCA were to be invoked within the period prescribed by Section 167(2) of the Cr.P.C., but on account of the default of the investigation agency to complete the investigation within 90 days from the date of the first remand of the applicant or within the extended period if granted, the applicants in such eventuality undoubtedly would be entitled to default bail. Such is not the present case. Furthermore, merely because the approval was accorded under Section 23 of the MCOCA after filing of the charge-sheet would not enable the applicants to contend that the applicants are found to have been involved in some other offences disconnected from the offence for which they were arrested as the investigation into the offences which they were arrested initially had revealed other ramifications associated therewith and hence, further investigation upon obtaining prior approval would continue to relate to the same arrest. In such a scenario the period envisaged in the proviso to Section 167(2) would remain unextendable.

25. The case of the respondent is further fortified by the observations made by the Supreme Court in **Pradeep Ram vs. State of Jharkhand and another (2019) 7 SCC 326**. The observations assume relevance as in the present case after the filing of the charge-sheet in respect of the IPC offence, the Sessions Court had taken cognizance and therefore, the custody of the applicants would be governed by Section 309 of the Cr.P.C. and not by

Section 167. In Pradeep Ram (supra), the issue which called an answer was as to whether for remanding the accused thereunder, Section 167(2) Cr.P.C. could have been resorted to by the Special Judge or remand could have been done only under Section 309(2) Cr.P.C. The following observations in paragraphs 54 to 60 are relevant, which read thus:-

'54. The issue to be answered in the present case is as to whether for remanding the appellant-accused, Section 167(2) CrPC could have been resorted to by the Special Judge or remand could have been done only under Section 309(2) CrPC. This Court had occasion to consider the provisions of Section 167 and Section 309 CrPC in large number of cases. In the old Code, there was a provision, namely, Section 344 which was akin to Section 309 of the present Code. Section 167 of the Code of Criminal Procedure, 1973, corresponds to Section 167 of the old Code. This Court had occasion to consider Section 167 and Section 344 of the old Code in Gouri Shankar Jha v. State of Bihar<sup>26</sup>. This Court in para 12 laid down the following: (SCC pp. 569-70)

"12. Thus, Section 167 operates at a stage when a person is arrested and either an investigation has started or is yet to start, but is such that it cannot be completed within 24 hours. Section 344, on the other hand, shows that investigation has already begun and sufficient evidence has been obtained raising a suspicion that the accused person may have committed the offence and further evidence may be obtained, to enable the police to do which, a remand to jail custody is necessary."

55. This Court in CBI v. Anupam J. Kulkarni<sup>27</sup>, had occasion to consider Section 309 CrPC. This Court held that Section 309 comes into operation after taking cognizance and not during the period of investigation. Remand order under this provision (Section 309) can only be with judicial custody.

56. We may refer to a three-Judge Bench judgment of this Court in State v. Dawood Ibrahim Kaskar<sup>28</sup>. In the above case, the Government of India, with the consent of the Government of Maharashtra, issued a notification entrusting further investigation in the above cases to Delhi Special Police Establishment (CBI). CBI filed applications before the Designated Court praying for issuance of non-bailable warrants of arrests against several accused and the applications were rejected by the Designated Court relying on a Bombay High Court judgment in Mohd. Ahmed Yasin Mansuri v. State of Maharashtra. In para 6 of the judgment, this Court has noticed the judgment



of the Bombay High Court in Mohd. Ahmed Yasin Mansuri v. State of Maharashtra and observations made by the Bombay High Court. The Bombay High Court has observed in the said case that in the Code, no power is conferred for police custody after cognizance of an offence is taken.

57. The observations made by the High Court as quoted in para 6 of the judgment were not approved by this Court. This Court also noticed the provisions of Sections 167 and 309 CrPC. In paras 10 and 11, the following has been laid down: (Dawood Ibrahim Kaskar case 28, SCC pp. 445-46, paras 10-11)

"10. In keeping with the provisions of Section 173(8) and the abovequoted observations, it has now to be seen whether Section 309(2) of the Code stands in the way of a court, which has taken cognizance of an offence, to authorise the detention of a person, who is subsequently brought before it by the police under arrest during further investigation, in police custody in exercise of its power under Section 167 of the Code. Section 309 relates to the power of the Court to postpone the commencement of or adjournment of any inquiry or trial and sub-section (2) thereof reads as follows:

309. (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:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:'

11. ... Since, however, even after cognizance is taken of an offence the police has a power to investigate into it further, which can be exercised only in accordance with Chapter XII, we see no reason whatsoever why the provisions of Section 167 thereof would not apply to a person who comes to be later arrested by the police in course of such investigation. If Section 309(2) is to be interpreted as has been interpreted by the Bombay High Court in Mansuri 29 to mean that after the Court takes cognizance of an offence it cannot exercise its power of detention in police custody under Section 167 of the Code, the Investigating Agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it can on production of sufficient materials, convince the Court that his detention in its



(police) custody was essential for that purpose. We are, therefore, of the opinion that the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation."

58. This Court clearly held that Section 309(2) does not refer to an accused, who is subsequently arrested in course of further investigation. This Court in para 11, as noted above, clearly held that even after cognizance is taken of an offence the police has a power to investigate into it further and there is no reason why the provisions of Section 167 thereof would not apply to a person who comes to be later arrested by the police in course of such investigation.

59. In above three-Judge Bench judgment the accused was subsequently arrested during investigation after cognizance was taken. The three-Judge Bench explained the words "accused if in custody" to relate to an accused who was before the court when cognizance was taken or when inquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation. There cannot be any dispute to the above proposition laid down by this Court but the above judgment does not help the appellant in facts of the present case. In the present case as noticed above, the accused was before the court when cognizance was taken or when inquiry or trial was being held in respect of him. In the facts of the present case as noted above, the accused was produced in the court of Special Judge on 25-6-2018, he was produced under production warrant from jail custody. The accused was thus very well in custody on the date when he was produced in the court. Thus, this was not a case that the accused was subsequently arrested during the investigation and was produced before the court. The accused was arrested on 11-1-2016 immediately after lodging of the FIR and was granted bail on 10 - 3 - 2016. Thus, in view of the law as laid down by this Court in *State v. Dawood Ibrahim Kaskar*<sup>28</sup>, the appellant was in custody and the court could have remanded him in exercise of jurisdiction under Section 309(2) and the present was not a case where Section 167(2) could have been resorted to.

60. A two-Judge Bench judgment in *Dinesh Dalmia v. CBI*, is relevant for the present case where this Court had occasion to interpret sub-section (2) of Section 167 CrPC vis-a-vis sub-section (2) of Section 309 CrPC. In para 29, this Court laid down: (SCC p. 782)

"29. The power of a court to direct remand of an accused either in terms of sub-section (2) of Section 167 of the Code or sub-section (2) of Section 309 thereof will depend on the stages of the trial. Whereas sub-section (2) of Section 167 of the Code would be attracted in a case where cognizance has not been taken, sub-section (2) of Section 309 of the Code would be attracted only after cognizance has been taken."

Further, in my opinion, the observations of the Supreme Court in paragraphs 61 and 62 clinches the issue involved in the present case. Paragraphs 61 and 62 read thus:-

'61. After referring to Anupam J. Kulkarni<sup>27</sup> and Dawood Ibrahim<sup>28</sup>, this Court laid down the following in para 39: (Dinesh Dalmia case, SCC p. 784)

"39. The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of Section 173 of the Code."

62. The learned counsel for the appellant has relied on a two-Judge Bench judgment of this Court in Mithabhai Pashabhai Patel v. State of Gujarat<sup>13</sup>. In para 17, this Court made the following observations: (SCC p. 338)

"17. The power of remand in terms of the aforementioned provision is to be exercised when investigation is not complete. Once the chargesheet is filed and cognizance of the offence is taken, the court cannot exercise its power under sub-section (2) of Section 167 of the Code. Its power of remand can then be exercised in terms of sub-section (2) of Section 309 which reads as under:

**'309. Power to postpone or adjourn proceedings.-(1)**

(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."

26. Their Lordships have clearly observed in paragraph 61 quoted above that only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of Section 173 of the Code. It has been observed that the power of remand in terms of the aforementioned provision is to be exercised when investigation is not complete. Once the charge-sheet is filed and cognizance of the offence is taken, the court cannot exercise its power under sub-section (2) of Section 167 of the Code. Its power of remand can then be exercised in terms of sub-section (2) of Section 309.

27. I may now refer to the decision of the Supreme Court in Judgebir Singh (supra). The issue involved was whether the accused was entitled to seek default bail under Section 167(2) of the Code on the ground that although the charge sheet might have been filed within the statutory time period as prescribed in law yet the charge-sheet sans a valid order of sanction passed by a competent authority is no chargesheet in the eye of law and cognizance of the charge-sheet is necessary to prevent the accused from seeking default bail. In paragraphs 44, 53, 56, 63 the Supreme Court observed thus:-

'44. Once a final report has been filed with all the documents on which the prosecution proposes to rely, the investigation shall be deemed to have been completed. After completing investigation and submitting a final report to the Court, the investigating officer can send a copy of the final report along with the evidence collected and other materials to the sanctioning authority to enable the sanctioning authority to apply his mind to accord sanction. According sanction is the duty of the sanctioning authority who is not connected with the investigation at all. In case the sanctioning authority takes some time to accord sanction, that does not vitiate the final report filed investigating agency before the Court. Section 173 of the Code of Criminal Procedure does not speak about the sanction order at all. Section 167 of the Code of Criminal Procedure also speaks only about investigation and not about cognizance by the Magistrate. Therefore, once a final report has been filed, that is the proof of completion of investigation and if final report is filed within the period of 180 days or 90 days or 60 days from the initial date of remand of Accused

concerned, he cannot claim that a right has accrued to him to be released on bail for want of filing of sanction order.

53. It is, therefore, very much necessary that the evidence collected by the investigating agency in the form of chargesheet is thoroughly looked into and thereafter, the recommendations are made. The investigating agency gets full 180 days to complete the investigation and file its report before the competent court in accordance with Section 173(2) of the Code of Criminal Procedure. If we accept the argument canvassed on behalf of the Appellants, it comes to this that the investigating agency may have to adjust the period of investigation in such a manner that within the period of 180 days, the sanction is also obtained and placed before the court. We find this argument absolutely unpalatable.

56. It is clear from the decision of this Court in Suresh Kumar Bhikamchand Jain (supra) that filing of a chargesheet is sufficient compliance with the provisions of Section 167 of the Code of Criminal Procedure and that an Accused cannot demand release on default bail Under Section 167(2) of the Code of Criminal Procedure on ground that cognizance has not been taken before the expiry of the statutory time period. The Accused continues to be in the custody of the Magistrate till such time cognizance is taken by the court trying the offence, which assumes custody of the Accused for the purpose of remand after cognizance is taken.

63. Thus, we answer Issue No. 1 holding that filing of a chargesheet is sufficient compliance with the provisions of Section 167 of the Code of Criminal Procedure and that an Accused cannot claim any indefeasible right of being released on statutory/default bail Under Section 167(2) of the Code of Criminal Procedure on the ground that cognizance has not been taken before the expiry of the statutory time period to file the chargesheet. We once again, reiterate what this Court said in Suresh Kumar Bhikamchand Jain (supra) that grant on sanction is nowhere contemplated under Section 167 of the Code of Criminal Procedure.'

28. In the light of what is observed by the Supreme Court, I do not find any force in the submission of learned counsel for the applicants that on the grant of prior approval under Section 23(1) of the MCOCA the investigation to be carried out is a new investigation. I am in respectful agreement with the observations of His Lordship Kotwal, J. in Suraj Arun Pote (supra) that the investigation carried from the point of prior approval was not a new

investigation but only a further investigation. The investigation under the MCOCA was continuation of the earlier investigation for IPC offence. The provisions of MCOCA were invoked because the material under the MCOCA was found against the Applicant. The charge-sheet in the present case was already filed under IPC offence on 1/1/2022 in respect of some accused and on 23/2/2022 in respect of the other accused. The cognizance of the charge-sheet was taken and therefore, the case was committed to the Court of Sessions. The application made by the investigation agency seeking custody under Section 21(7) of the MCOCA was rejected. The MCOCA was not invoked at the time of registration of the offence under IPC. The right to claim default bail under Section 167(2) of the Cr.P.C. will not revive as the invocation of the provisions of the MCOCA was not a new investigation but a continuation of the earlier investigation for IPC offence.

29. I do not find any force in the submission of learned senior advocate that upon invocation of the MCOCA till the sanction is obtained under Section 23(2) of the MCOCA, the nature of custody will change from Section 309 of the Cr.P.C. to Section 167(2) of the Cr.P.C. The previous sanction contemplated by sub-section (2) of Section 23 is for the Special Court to take cognizance. This submission of learned senior advocate need not detain me any longer in view of the observations in paragraph 43 of the Supreme Court in the case of Judgebir Singh (supra). It has been held that taking cognizance is entirely different from completing the investigation. Sanction is required only to enable the Court to take cognizance of the offence. To complete the investigation and file a final report is a duty of the investigating agency, but taking cognizance of the offence is the power of the Court. If the investigation is concluded within the prescribed period, no right accrues to the accused concerned to be released on bail under the proviso to Section 167(2) of the Cr.P.C. The submission is, therefore, without merit.

30. I do not find any substance in the submissions of the learned counsel for the applicants that they will be left remediless if the charge-sheet in respect of the offence under the MCOCA is not filed expeditiously. Such contention cannot be the scope of these applications. The applicants can always avail remedies available in law to redress their grievance as well as apply for regular bail.

31. The applications, therefore, are rejected.

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