Before Daya Chaudhary, J.

MASTER BHOLU THROUGH HIS FATHER AND NATURAL GUARDIAN VINOD KUMAR—*Appellant*

versus

CENTRAL BUREAU OF INVESTIGATION—*Respondents*

CRA-S No. 646-SB of 2018 (O&M)

June 06, 2018

Code of Criminal Procedure Code, 1973—S. 167(2)—Juvenile Justice (Care and Protection of Children) Act, 2015—Section 21 Indian Penal Code, 1860—Section 302 Murder by child in conflict with law—Time prescribed for investigation—When maximum sentence that can be imposed is life imprisonment, then whatever be the minimum punishment, time available to investigating agency for purposes of Section 167(2) Cr.P.C., 1973 would be of 90 days—Time period available to investigating agency to complete investigation, in case involving child in conflict with law alleged to have committed offence of murder is 90 days and not 60 days.

Held, that the first issue is considered, it relates to whether the investigating agency is required to file the challan within a period of 60 days or 90 days, in a case wherein murder has been allegedly committed by the child in conflict with law. It has been submitted by learned senior counsel for the appellant that the time period for presentation of challan would be that of 60 days as his case falls within the ambit of Section 167(2) (a)(ii) of the Cr.P.C. It has also been argued by learned senior counsel for the appellant that the investigating agency is required to file complete challan within a period of 90 days. Ordinarily, in a case of murder, the punishment prescribed is either 'death' or 'imprisonment of life'. In such a situation, admittedly, the investigating agency has a time period of 90 days to conclude the investigation – failing which, the accused can claim his right to seek statutory/default bail as per provisions of Section 167(2) Cr.P.C. However, in case a child in conflict with law is facing trial for the offence of murder, he can neither be sentenced to death nor for imprisonment for life without the possibility of release in view of provisions of Section 21 of the Juvenile Justice Act.

(Para 6)

R.S. Rai, Sr. Advocate with Kunal Dawar, Advocate *for the*

appellant.

Sumeet Goel, Standing counsel for CBI.

Anupam Singla, Advocate, for the complainant.

DAYA CHAUDHARY, J.

(1) The present appeal has been filed to challenge impugned order dated 05.02.2018 passed by the Additional Sessions Judge, Gurugram, whereby, the application filed by the appellant under Section 167(2)(a)(ii) Cr.P.C. read with Section 2(33) and 21 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Juvenile Justice Act') for grant of statutory/default bail in case FIR No.RC-8(S)/2017/SCIII/New Delhi dated 22.09.2017 for offence punishable under Section 302 of Indian Penal Code, Section 25 of the Arms Act, 1954, Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act')and Section 75 of the Juvenile Justice Act, 2015 has been dismissed.

(2) Briefly, the facts of the case as made out in the present appeal are that FIR No.250 dated 08.09.2017 was registered at Police Station Bhondsi, District Gurugram, under Section 302 IPC, Section 25 of the Arms Act, Section 12 of the POCSO Act and Section 75 of the Juvenile Justice Act. The State Government issued notification and transferred the investigation of the case to CBI and thereafter, the case was re-registered as FIR No.RC-8(S)/2017/SCIII/New Delhi dated 22.09.2017.

After registration of said FIR in view of notification issued by the State Government, the investigation of the case was conducted by the CBI. The present appellant was arrested by the CBI and was produced before the Juvenile Justice Board on 08.11.2017. Thereafter, an inquiry was conducted by the Juvenile Justice Board and vide order dated 20.12.2017, it was ordered that the appellant could be tried as an adult and transferred the case to the Children Court. Since no Court was specifically designated as Children Court, the case was entrusted to the Court of Additional Sessions Judge, Gurugram to try the present appellant as an adult under the Juvenile Justice Act.

After arrest of the appellant, he was retained in the Observation Home. When the challan was not presented by the CBI within the prescribed period, the appellant moved an application under Section 167(2) Cr.P.C. A report was called from the Criminal Ahlmad, wherein

it was clarified that the challan had been submitted by the CBI on 05.02.2018. The application moved by the appellant under Section 167(2) Cr.P.C. was dismissed vide order dated 05.02.2018, which is subject matter of challenge in the present appeal.

Learned senior counsel for the appellant submits that the period of 60 days had expired on 05.01.2018 and the period of 90 days from the date of arrest had expired on 04.02.2018. The challan was not presented within a period of 60 days and the appellant became entitled for bail as per provisions of Section 167(2) Cr.P.C. Learned senior counsel further submits that while passing impugned order, the lower Court has held that the period of filing challan was 90 days as the appellant was facing trial for offence punishable under Section 302 IPC. The application for grant of bail was moved on 90th day and on that day, only the charge-sheet was submitted and the appellant was not entitled for bail. Learned senior counsel also submits that as per provisions of Section 21 of the Juvenile Justice Act, the period for filing challan was 90 days and not 60 days as in case, the offence is punishable with death penalty and life imprisonment, then the period of presentation of challan is 90 days. Learned senior counsel also submits that as per proviso to Section 167(2) Cr.P.C., it is apparent that total period of 90 days is specified to an offence where offence is punishable with death, imprisonment for life or for a term not less than 10 years. It is also the argument of learned senior counsel that Section 5 Cr.P.C. shows that said section is a saving clause and it provides that nothing in the Court shall affect any special or local law in absence of any specific provision to the contrary but however, as per Section 103 of the Juvenile Justice Act, the procedure as provided under Cr.P.C. is to be followed. It is also the argument of learned senior counsel that punishment, which can be imposed under the Juvenile Justice Act is to be seen for grant of bail under Section 167(2) Cr.P.C. As per Juvenile justice Act, no minimum punishment for any offence committed by a juvenile, has been prescribed and period for filing challan would not be 90 days but it would be 60 days. It has further been submitted by learned senior counsel that the Investigating Agency-CBI has failed to submit the challan upto 05.02.2018, which was the 90th day from the date of production of juvenile i.e., 08.11.2017. The challan was presented on 06.02.2018, which was duly endorsed in the Court Institutional Branch. Meaning thereby, the period of 90 days had expired on 05.02.2018 and the appellant became entitled for bail under Section 167(2) Cr.P.C. Learned senior counsel also submits that the challan was not presented till 3.30 pm on 05.02.2018. At the end,

learned senior counsel submits that the presentation of challan would be considered when it is submitted before the Court not with the Ahlmad. Learned senior counsel for the appellant has relied upon judgments rendered in ***Rakesh Kumar Paul*** *versus* ***State of Assam***[1] and ***Rajeev Chaudhary*** *versus* ***State (NCT) of Delhi***[2] in support of his contentions.

(3) Learned standing counsel for CBI has opposed the submissions made by learned counsel for the appellant and submits that the present appeal is not maintainable as the order was passed by the trial Court under Section 167(2) Cr.P.C. and the appellant has filed the present appeal under Section 101 of the Juvenile Justice Act. The appeal under the Juvenile Justice Act is maintainable only when there is an order passed under the provisions of the said Act but there is no provision of appeal in Cr.P.C. against an order rejecting bail under Section 167(2) Cr.P.C. Learned counsel further submits that the appellant has earlier filed Criminal Revision No.635 of 2018 before this Court to challenge the order passed by the Juvenile Justice Board in an application moved under Rule 10(5) of the Juvenile Justice Model Rules, 2016, which was dismissed. Learned counsel alsosubmits that the contents of the present appeal are contradictory to the stand taken by the appellant in the earlier petition. Learned counsel also submits that the charge-sheet was filed on 05.02.2018, which was within 90 days from the date of first production before the Juvenile Justice Board on 08.11.2017. The case of the appellant falls in the category where period of presentation of challan is 90 days. Learned counsel also submits that the decision on quantum of sentence is to be taken by the Court only after conclusion of the trial. It cannot be interpreted that the Court cannot passthe sentence beyond the period of 10 years. The only condition in Section21 of the Juvenile Justice Act is that death penalty or life imprisonment with possibility of not release of convict cannot be awarded, meaning thereby, the convict cannot be awarded punishment of imprisonment for life but he can be punished for more than 10 years. Learned standing counsel for CBI has also relied upon judgments rendered in ***Ratan Lal Rajak*** *versus* ***State of Chhattisgarh***[3] and ***Chaganti Satyanarayana and others*** *versus* ***State of A.P.***[4] in support of his arguments.

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[1] 2017(3) RCR (Crl.) 996
[2] 2001(2) RCR (Crl.) 754
[3] 2014(40) RCR (Crl.) 779
[4] 1987 (1) RCR (Crl.) 40

(4) Heard arguments of learned counsel for the parties and have also perused the impugned order as well as other documents available onthe file.

(5) In the present appeal, five issues are involved, which are necessary to be considered:

(a) Whether the time-period available to the investigating agency to conclude the investigation in a case of murder, having been committed by a child in conflict with law, would be 60 days or 90 days – failing which, the accused would be entitled for grant of statutory/default bail under Section 167(2) of the Cr.P.C.?

(b) Whether for the purpose of Section 167(2) of the Cr.P.C., the presentation of the challan is required to be before the Court or whether merely filing it before an official of the Court, such as the Ahlmad, would be sufficient for determining the compliance of Section 167(2) of the Cr.P.C.?

(c) Whether in the present case, the challan came to be filed by the investigating agency on 05.02.2018 as claimed by the investigating agency or on 06.02.2018 as is alleged by the present appellant?

(d) Whether the indefeasible right to be released on bail, which accrues to an accused on account of the investigation not having been concluded within the statutory time-period would stand extinguished, if the challan is filed by the investigating agency on the same day on which the application is moved by the accused under Section 167(2) of the Cr.P.C.?

(e) Whether in the facts and circumstances of the present case, any right under Section 167(2) of the Cr.P.C. had accrued to the present appellant so as to entitle him to the relief of statutory/default bail?

(6) As far as, the first issue is considered, it relates to whether the investigating agency is required to file the challan within a period of 60 days or 90 days, in a case wherein murder has been allegedly committed by the child in conflict with law. It has been submitted by learned senior counsel for the appellant that the time period for presentation of challan would be that of 60 days as his case falls within

the ambit of Section 167(2) (a)(ii) of the Cr.P.C. It has also been argued by learned senior counsel forthe appellant that the investigating agency is required to file complete challan within a period of 90 days. Ordinarily, in a case of murder, the punishment prescribed is either 'death' or 'imprisonment of life'. In such a situation, admittedly, the investigating agency has a time period of 90 days to conclude the investigation – failing which, the accused can claim his right to seek statutory/default bail as per provisions of Section 167(2) Cr.P.C. However, in case a child in conflict with law is facing trial for the offence of murder, he can neither be sentenced to death nor for imprisonment for life without the possibility of release in view of provisions of Section 21 of the Juvenile Justice Act. Section 21 of the Juvenile Justice Act is reproduced as under: -

> "21. No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force."

(7) As per said provisions of Section 21 of the Juvenile Justice Act, **a child in conflict with law can neither be sentenced to death nor can be subjected to life imprisonment without the possibility of release. The case of child, who is in conflict with law and facing investigation or trial for the offence of murder is on different footing than that of an adult accused facing an investigation or trial for the same offence. Since no minimum punishment is prescribed to be imposed upon a child, who is in conflict with law, the case of said child in conflict with law would fall within the domain of Section 167(2)(a)(ii) Cr.P.C.** Accordingly, the **period of 60 days is there to conclude the investigation and not 90 days. The relevant part of Section 167 Cr.P.C. is reproduced as under: -**

> "167. Procedure when investigation cannot be completedin twenty-four hours -
>
> (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 the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]"

(8) On perusal of Section 167(2) of the Code as reproduced above, it is clear that the time period granted to investigating agency to conclude the investigation in a case where the matter relates to an offence punishable with death, with imprisonment of life or with imprisonment for a term of not less than 10 years would be that of 90 days; whereas the time period granted to investigating agency in any other case would be that of 60 days – failing which, an indefeasible right to seek statutory/default bail is accrued to the accused. It has been argued by learned counsel for the appellant that investigation in the case relates to an offence, which is not punishable with death and there is no minimum sentence prescribed – the present appellant became entitled to be released on statutory/default bail in case, the investigation is not concluded within a period of 60 days. It has also been argued that it is for the investigating agency to claim that it had a period of90 days to present challan, it will have to show that the minimum sentence, which ought to be awarded is either death or the life imprisonment or of an imprisonment for a term of not less than 10 years. As per case of the investigating agency, the trial Court after conclusion of the trial can

either award imprisonment for life or imprisonment for a term more than 10 years, the investigating agency is having 90 days to conclude the investigation and not 60 days. It is also relevant to mention here that both the parties have placed reliance upon the decision rendered by Hon'ble the Apex Court in ***Rakesh Kumar Paul*** *versus* ***State of Assam***[5]. However, paragraph Nos.25 and 27 of said judgment are relevant, which are reproduced as under: -

> "While it is true that merely because a minimum sentence is provided for in the statute it does not mean that only the minimum sentence is imposable. Equally, there is also nothing to suggest that only the maximum sentence is imposable. Either punishment can be imposed and even something in between. Where does one strike a balance? It was held that it is eventually for the court to decide what sentence should be imposed given the range available. Undoubtedly, the Legislature can bind the sentencing court by laying down the minimum sentence (not less than) and it can also lay down the maximum sentence. If the minimum is laid down, the sentencing judge has no option but to give a sentence "not less than" that sentence provided for. Therefore, the words "not less than" occurring in Clause to proviso (a) of Section 167(2) of the Cr.P.C. (and in other provisions) must be given their natural and obvious meaning which is to say, not below a minimum threshold and in the case of Section 167 of the Cr.P.C. these words must relate to an offence punishable with a minimum of 10 years imprisonment.
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> 27. It is true that an offence punishable with a sentence of death or imprisonment for life or imprisonment for a term that may extend to 10 years is a serious offence entailing intensive and perhaps extensive investigation. It would therefore appear that given the seriousness of the offence, the extended period of 90 days should be available to the investigating officer in such cases. In other words, the period of investigation should be relatable to the gravity of the offence – understandably so. This could be contrasted with an offence where the maximum punishment under the IPC or any other penal statute is (say) 7 years, the offence

[5] 2017(3) RCR (Crl.) 996

> being not serious or grave enough to warrant an extended period of 90 days of investigation. This is certainly a possible view and indeed the Cr.P.C. makes a distinction in the period of investigation for the purposes of 'default bail' depending on the gravity of the offence. Nevertheless, to avoid any uncertainty or ambiguity in interpretation, the law was enacted with two compartments. Offences punishable with imprisonment of not less than ten years have been kept in one compartment equating them with offences punishable with death or imprisonment for life. This category of offences undoubtedly calls for deeper investigation since the minimum punishment is pretty stiff. All other offences have been placed in a separate compartment, since they provide for a lesser minimum sentence, even though the maximum punishment could be more than ten years imprisonment. While such offences might also require deeper investigation (since the maximum is quite high) they have been kept in a different compartment because of the lower minimum imposable by the sentencing court, and thereby reducing the period of incarceration during investigations which must be concluded expeditiously. The cut-off, whether one likes it or not, is based on the wisdom of the Legislature and must be respected."

(9) Learned senior counsel for the appellant while placing reliance upon said paragraphs, submits that the Legislature has divided Section 167(2) Cr.P.C. into two distinct categories. It has been argued that theinvestigating agency would have a period of 90 days to conclude the investigation in a case where the minimum sentence is either death, life imprisonment or a sentence of imprisonment for a period of more than 10 years. It has also been argued that only in those cases where the minimum sentence is of imprisonment for more than 10 years or life imprisonment orof death, the investigating agency is afforded a period of 90 days to conclude the investigation. Meaning thereby, where neither the sentence of death nor life imprisonment is there like the present one, the accused would be entitled to be released on default bail if the challan is not presented/filed within a period of 60 days.

(10) In the present case, a perusal of judgment of Hon'ble the Apex Court in ***Rakesh Kumar Paul's*** *case (supra)* would reveal that the said judgment was rendered by a three-Judge Bench, wherein three

separate judgments have been rendered by each of the Hon'ble Judge. Learned counsel for the appellant has placed reliance on the judgment of Justice Madan B. Lokur whereas learned counsel for CBI has placed reliance upon the judgment rendered by Justice Prafulla C. Pant and Justice Deepak Gupta to submit that such a reasoning, as being convassed by the present appellant was not accepted by other two Judges and therefore, as per decision of majority, the time period available to the investigating agency, in a case where the maximum sentence can be imposed of life imprisonment, even if no minimum sentence is prescribed – would be that of 90 days. In this regard, reliance has been placed on paragraph No.71 of the decision rendered by Justice Prafulla C. Pant, which is reproduced as under: -

> " 71. From the above analogy, I am of the opinion that the intention of the legislature was that if an offence was punishable with imprisonment upto ten years, then it falls within the provision of Section 167(2)(a)(i) of the Code, and the permissible period for investigation is ninety days. The intention of the Legislature in extending the permissible time period from sixty days to ninety days for investigation is to include the offences in which sentence awardable is at least ten years or more. Therefore, as discussed above, though the expression "not less than ten years" used in Section 167(2)(a)(i) of the Code has created some ambiguity, the real intention of the legislature seems to include all such offences wherein an imprisonment which may extend to ten years is an awardable sentence. In other words, for offences wherein the punishment may extend to ten years imprisonment, the permissible period for filing charge sheet shall be ninety days, and only after the period of ninety days, the accused shall be entitled to bail on default for non-filing of the charge-sheet. (In the present case, admittedly the charge sheet is filed within ninety days). I may further add that, since the expression "not less than ten years" has caused ambiguity in interpretation, the best course for the legislature would be to clear its intention by using the appropriate words."

(11) On perusal of abovesaid paragraph, it is apparent that it has been categorically held that the intention of the Legislature in extending the permissible time period from 60 days to 90 days for completing the investigation is to include the offences for which, the sentence

awardable isat least 10 years or more – but it has been held that in case of an offence for which, the punishment may extend to ten years, the permissible period for filing the challan shall be 90 days. It is apparent that in case where the Court can award more than ten years of imprisonment, the time period available to the investigating agency would be that of 90 days. Similarly, reliance has been placed by learned counsel for CBI upon the judgment rendered by Justice Deepak Gupta, who while interpreting Section 167(2) Cr.P.C. has held as under: -

> "89. We are only concerned with interpretation of the phrase for a term of not less than ten years' occurring in Section 167(2)(a)(i), which provides a period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than 10 years.
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> 90. In my considered view, without indulging in any semantic gymnastics, the meaning of this provision is absolutely clear. It envisages three types of offences:
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> (a) Offences which are punishable with death;
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> (b) Offences which are punishable with imprisonment for life;
>
> (c) Offences which are punishable with a term not less than 10 years.
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> 91. In my view the language of the statute is clear and unambiguous. Out of the three categories of offences, we need to deal only with that category of offences where the punishment prescribed is not less than 10 years. If an offence is punishable with death then whatever be the minimum punishment, the period of investigation permissible would be 90 days. Similarly, if the offence is punishable with life imprisonment, even if the minimum sentence provided is less than 10 years, the period of detention before 'default bail' is available would be 90 days.
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> 92. Keeping in view the legislative history of Section 167, it is clear that the legislature was carving out the more serious offences and giving the investigating agency another 30 days to complete the investigation before the accused became entitled to grant of 'default bail'. It

categorizes these offences in the three classes:

I. First category comprises of those offences where the maximum punishment was death.

II. Second category comprises of those offences wherethe maximum punishment is life imprisonment.

III. The third category comprises of those offences which are punishable with a term not less than 10 years."

(12) It is apparent from the judgment rendered by Justice Deepak Gupta wherein it has been categorically held that if the offence is punishable with death – then whatever be the minimum punishment, the period of investigation permissible would be 90 days. Similarly, it has been held that in case, the offence is punishable with life imprisonment but the minimum sentence provided is less than 10 years, the period of detention before statutory/default bail would be 90 days. Thus, in a case wherein the accused can be sentenced to undergo life imprisonment, even if there is no minimum sentence prescribed – the period available to the investigating agency to conclude the investigation would be 90 days.

(13) In the present case, the bare perusal of Section 21 of the Juvenile Justice Act would reveal that any sentence other than 'death' and 'life imprisonment without the possibility of release' can be imposed upon a child in conflict with law. It is apposite to mention herein that with the passage of time, two types of life imprisonment have been recognized by our Courts, which may be awarded to an accused. In this regard, reference may be made to the decision of a Constitution Bench of Hon'ble the Apex Court in the case of ***Union of India*** *versus* ***V. Sriharan***[6], wherein it has been held that imprisonment for life, in terms of Section 53 read with Section 45 IPC, means imprisonment for the rest of the life of the convict. However, it has also been held that a convict, who has been awarded life imprisonment, would have the right to claim remission etc., as provided under Article 72 and 61 of the Constitution of India, as the case may be. Further, Hon'ble Constitution Bench confirmed the view that the Courts can, in certain cases, create a special category of sentence – where, instead of 'death', they can impose a punishment of imprisonment for life – but, put the same beyond the application of the provisions of 'remission'.

[6] 2016(1) RCR (Crl.) 234

Thus, in certain cases, it is open for the Courts to grant life sentence to a convict but take away his right to seek remissionetc., and thereby ruling out any possibility of release. It is such a category of 'life imprisonment' without the possibility of release that has been excluded in the case of a child in conflict with law, by virtue of Section 21 of the Juvenile Justice Act. However, a sentence of life imprisonment simpliciter can always be imposed upon a child in conflict with law. In such circumstances, when the maximum sentence, which can be imposed upon a child in conflict with law, is life imprisonment – then the time period available to the investigating agency to conclude the investigation would be that of 90 days. **It is submitted that the majority view on this point, which can be culled out from the judgment rendered by Justice Prafulla** C. Pant and Justice Deepak Gupta would be conclusive to the extent that when the maximum sentence that can be imposed is life imprisonment – then, notwithstanding the fact that there is no minimum sentence prescribed – the time period available to the investigating agency for purposes of Section 167(2) Cr.P.C. would be that of 90 days.

(14) In view of the above discussion, it is apparent that the answerto the first question to issue framed as (a) above, is that the time period available to the investigating agency to complete the investigation, in the case involving a child in conflict with law, who is alleged to have committed the offence of murder, would be that of 90 days and not 60 days.

(15) During course of final hearing, a lot of arguments were addressed as to when exactly did the challan in the present case came to be filed. It was urged by the investigating agency that it had presented the challan on 05.02.2018 itself, by putting up the challan before the Ahlmad of the Court. *Per contra*, it was urged that the requirement of Section 167(2) of the Cr.P.C. is to present the challan before the Court; and that presenting it before any functionary of the Court, such as the Ahlmad, would not be a compliance of Section 167(2) Cr.P.C. It is submitted that the said controversy is no longer *res integra* and has already been answered by this Court in ***Gurcharan Singh @ Mintu*** *versus* ***State of Haryana***[7] and the relevant portion of the said judgment is reproduced as under: -

> "7.The first question which requires consideration before this Court is as to whether presentation of challan before

[7] 2016(1) Law Herald 679

the Ahlmad of the Court is legal presentation or not? Section 173(2) Cr.P.C. provides as under:-

173. Report of police officer on completion of investigation- (1) 66.

(2) (i) As soon as it is completed, the officer in charge ofthe police station shall forward to a GOPAL KRISHAN 2016.02.11 15:11 I attest to the accuracy and authenticity of this document High Court Chandigarh Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating--

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under Section 170

(i) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given.

8. It is clear that the challan is to be presented before the Magistrate and not before the Ahlmad. The challan was presented at 4.45 PM i.e. after the Court hours. If the Magistrate was not available, then challan could have been presented at the residence of the Illaqa Magistrate or before the Duty Magistrate. It is to be noted that it is not disputed that 11.11.2015 and 12.11.2015 were holidays being second Saturday and Sunday. The order of the Magistrate shows that when the application under Section 167(2) Cr.P.C. was moved and only when the Magistrate

called for the report from the Ahlmad, the Ahlmad brought to the notice of the Court that challan was presented before him at 4.45 PM on 10.11.2015. Original file has also been called for, which also bears the same fact. In fact, the Ahlmad gave the receipt to the investigating officer regarding receipt of challan on 10.11.2015 at 4.45 PM.

11. Therefore, if the challan papers are left with the Ahlmad, it is not proper presentation of the final report under Section 173(2) Cr.P.C. before the Magistrate.

Therefore, the date of presentation of challan is to be taken as 13.11.2015.

23. It being so, it has to be held that for the purpose of computing the period of 90 days, 15.8.2015, when he was first time produced before the Magistrate and remanded to custody is to be included. If it is so included, the period of90 days will elapse on 12.11.2015. Since, this Court has held that filing of papers before the Ahlmad is not the presentation of challan before the Magistrate under Section 173(2) Cr.P.C., therefore, the challan is deemed to have been presented on 13.11.2015 when the period of 90 days had already elapsed."

(16) From the aforesaid, it is clear that the controversy was settled by this Court by observing that if the challan is left with the Ahlmad – the same is not to be construed as proper presentation of the final report, as envisaged under Section 173(2) Cr.P.C. it was categorically held that mere presentation of the challan papers before the Ahlmad would not be enough for the purposes of compliance of Section 167(2) Cr.P.C. It is apposite to mention here that non-filing of the challan within the stipulated period of time gives birth to an indefeasible right to the accused to be released on statutory/default bail. If the contention of the respondent is to be accepted, that the mere presentation of the challan before the Ahlmad would be sufficient for the purposes of determining the compliance of Section 167(2) Cr.P.C. - the same may lead to a situation wherein the indefeasible right of the accused can be frustrated by indulgence in ante-timing or ante-dating by the Ahlmad or any other official in collusion or in connivance with the investigating agency. Similarly, in serious offences, prejudice can be caused to the investigating agency if the Ahlmad or any other person connives with the accused and shows a wrong date or time at which the challan was presented, so as to facilitate the release of the accused on

statutory/default bail. In such a situation, the only plausible interpretation of Section 167(2) of the Code of Criminal Procedure ought to be that the challan has to be presented before the Court and the Court alone; and merely leaving it with the Ahlmad or any other functionary would not satisfy the compliance of Section 167(2) Cr.P.C.

(17) In view of the above discussion, the answer to the second question to issue framed as (b) above, is that in order to determine as to whether the challan has been presented well within the stipulated time period – the date on which the same is presented before the Court would be relevant and not the date on which the same may have been presented before the Ahlmad.

(18) In the present case, a controversy has arisen as to date on which the challan came to be filed before the Court. It is not in dispute that the application under Section 167(2) Cr.P.C. was moved by the present appellant on 05.02.2018 at 10.00 am, as is reflected from the *zimni* order passed by the Court, which is reproduced as under: -

> "Present: Sh. SS Gulia, PP for the State.
>
> Sh.Vishal Gupta and Sh. Sandeep Aneja,Advocates, counsel for accused.
>
> File taken up on account of moving of bail application under Section 167(2)(a)(ii) Cr.P.C. read with Section 2(33) and 21 of the Juvenile Justice (Care andProtection of Children) Act, 2015. Let copy of the application be supplied to the PP/CBI and matter to come up on consideration on the application. In the meantime, office to report qua filing of challan. On the request oflearned counsel for the applicant, it is hereby certified that application in hand is moved at 10.00 a.m. sharp.
>
> Sd/-
>
> (J.S. Kundu)
> Additional Sessions Judge, Gurugram
> Date of order 05.02.2018"

(19) That the bare perusal of the record would reveal that on the same day i.e., 05.02.2018 – another order came to be passed wherein the Court observed that the Ahlmad has clarified that the challan has beenpresented by the CBI today itself i.e., on 05.02.2018. The said second order passed on 05.02.2018 is reproduced as under for

the purpose of ready reference: -

> "Present: Sh.Vishal Gupta and Sh. Sandeep Aneja, Advocates, counsel for applicant-Juvenile.
>
> Sh. Sushil Tekriwal, Advocate, counselfor complainant.
>
> (Investigating Officer Ajay Kumar Bassi, DSP, CBI) (Complainant Varun Chandra Thakur present in person).
>
> Criminal Ahlmad by making report has clarified that challan has been submitted by the CBI today itself i.e., on 05.02.2018. The arguments on bail application heard. Vide my separate order of even date, bail application is dismissed. Matter to come up on 12.02.2018, the date already fixed, for supplying copy of challan.
>
> Sd/-
> (J.S. Kundu)
> Additional Sessions Judge, Gurugram Date of order 05.02.2018"

(20) That it has been argued on behalf of the present appellant that the said order does not indicate the correct picture. The appellant has urged so by adverting to various documents and has sought to indicate that the challan had actually been filed on 06.02.2018. It was, therefore, urged that the actual date of filing of the challan would be 06.02.2018 and not 05.02.2018, as has been stated by the Ahlmad in its report before the Court and as observed by the Court. It is submitted that in the present case where there is a categoric Judicial Order that the challan has been presented before the Court on 05.02.2018 itself – it is neither possible nor permissible for this Court to launch an inquiry as to whether the order correctly records the sequence of events or not. It is humbly submitted that this Court is topresume that the Judicial Order in question correctly recorded the sequence of events, in view of the presumption of law envisaged under Section 114, Illustration (e) of the Indian Evidence Act, 1872. Section 114 of the Evidence Act is reproduced as under: -

> "114. Court may presume existence of certain facts. —The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

> xxx xxx xxx
>
> (e) The judicial and official acts have been regularly performed.
>
> xxx xxx xxx"

(21) A bare perusal of Section 114, Illustration (e) of the Evidence Act would reveal that there is a presumption in law that judicial acts are regularly performed. Thus, merely on the asking of the appellant or by adverting to some document, it cannot be urged that the challan was actually presented on 06.02.2018 and that a wrong report has been given by the Ahlmad and that the order also incorrectly records the date and time of the presentation of the challan, since there is presumption that the official act done by the Ahlmad is factually correct and similarly, the judicial order passed by the learned Judge recording that the challan was indeed presented on 05.02.2018 is also correct.

(22) Even in the grounds of appeal presented by the present appellant, it has been admitted by the appellant himself that the challan was filed on 05.02.2018 at 3.00 PM. The relevant averment made in the grounds of appeal is reproduced as under: -

> "11. That on the same day Ld. Children Court/ASJ Gurugram issued notice upon the application for defaultbail and sought report qua filing of the challan for the same day, which is evidence from order Annexure P-. Thereafter, challan was filed at 03.00 pm on 05.02.2018 and after hearing the arguments, the application for default bail was declined. The Ld. Judge while declining the application U/s 167(2) Cr.P.C. did not consider, the question as to the sentence under Indian Penal Code which cannot be imposed would be considered for the purpose of determination of period of 60/90 days."

(23) Even otherwise, the matter is also one of sound public policy that a Judicial Order cannot be disputed, as has been held by Hon'ble the Apex Court in ***State of Maharashtra*** *versus* ***Ramdas Shriniwas Nayak & Another***[8]**,** wherein it was held as under:-

> "4.....We are afraid that we cannot launch into an inquiry

[8] 1982 AIR (SC) 1249

> as to what transpired in the High Court. It is simply not done. Public Policy bars us Judicial decorum restrains us. Matters of Judicial record are unquestionable. They arenot open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". (Per Lord Atkinson in Somasundaran v. Subramanian, AIR 1926 PC 136). We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted bystatements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. "

(24) In view of the presumption under the provisions of the Evidence Act, as well as in view of the law enunciated by Hon'ble the Apex Court – it will have to be held that the order whereby it has been recorded that the challan has been presented on 05.02.2018 correctly records thesequence of events.

(25) In view of the above discussion, the answer to the third question to issue framed as (c) above, is that, for the purposes of determining the applicability of Section 167(2) Cr.P.C. to the present case – the challan will have to be construed as having been submitted on 05.02.2018.

(26) In the present case, the bare perusal of the record would reveal that the application under Section 167(2) Cr.P.C. was moved on 05.02.2018 at 10.00 am sharp. It is not in dispute that it is only thereafter that the challan was presented by the CBI. It has been urged on behalf of the investigating agency that if the application is moved and on the same day the challan is also filed – the right of appellant to be released on statutory/default bail would automatically extinguish. This reasoning hasalso been accepted by the trial Court in the present case wherein it has placed reliance on the judgment of the Chhattisgarh High Court in case ***Ratan Lal Razak*** *versus* ***State of Chhattisgarh***[9] wherein it was held that in the event that the application

[9] 2014 (40) RCR (Crl.) 779

and the challan are filed simultaneously on the same day – the benefit of statutory/default bail cannot be extended to the accused. The bare perusal of the said judgment rendered by the Chhattisgarh High Court would reveal that while arriving at the aforesaid conclusion, the Court had relied extensively on the judgment of ***Pragyna Singh Thakur*** *versus* ***State of Maharashtra***[10] wherein it was held that if during the pendency of theapplication under Section 167(2) Cr.P.C., the challan is filed by the investigating agency, the same would disentitle the accused to the relief of statutory/default bail. In the present case, to answer the controversy at hand, it would be imperative to embark upon a series of judgments which have been rendered by Hon'ble the Apex Court, which have a direct bearing onthe question being considered by this Court. The first decision, which has a direct bearing on the aforesaid question, would be that rendered in the case of ***Uday Mohanlal Acharya*** *versus* ***State of Maharashtra***[11], wherein a three-Judge Bench of Hon'ble the Apex Court observed that on the expiry of the period of 90 days or 60 days, as the case may be, an indefeasible right accrues to the accused for being released on statutory/default bail. It has been held that the application under Section 167 (2) Cr.P.C. filed by the accused for the enforcement of his indefeasible right – cannot be frustrated by the subsequent presentation of the challan by the investigating agency. The relevant portion of said judgment is reproduced as under: -

> "12. .... Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can be only in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody upto a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of challan by the Investigating Agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution. There is no provision in the Criminal Procedure Code authorising detention of an accused in custody after the expiry of the period indicated

[10] 2010 (1) RCR (Crl.) 302
[11] 2001(2) RCR (Crl.) 452

in the proviso to sub-section (2) of Section 167 excepting the contingency indicated in Explanation I, namely, if the accused does not furnish the bail. It is in this sense it can be stated that if after expiry of period, an application for being released on bail is filed, and the accused offers to furnish the bail, and thereby avails of his indefeasible right and then an order of bail is passed on certain terms and conditions but the accused fails to furnish the bail, and at that point of time a challan is filed then possibly it can be said that the right of the accused stood extinguished. But so long as the accused files an application and indicates in the application to offer bail on being released by appropriate orders of the Court then the right of the accused on being released on bail cannot be frustrated on the oft chance of Magistrate not being available and the matter not being moved, or that the Magistrate erroneously refuses to pass an order and the matter is moved to the higher forum and a challan is filed in interregnum. This is the only way how a balance can be struck between the so-called indefeasible right of the accused on failure on the part of the prosecution to file challan within the specified period and the interest of the society, at large, in lawfully preventing an accused for being released on bail on account of inaction on the part of the prosecuting agency."

(27) It was, thus, observed that once an indefeasible right accrues to the accused, the same cannot be frustrated by a subsequent action of the investigating agency in filing the final report. However, a discordant note was struck in the case of ***Pragyna Singh Thakur*** *(supra),* wherein a two- Judge Bench of Hon'ble the Apex Court has held that if an application for statutory/default bail is filed and during the pendency of the same – the challan is filed, the said right to be released on statutory/default bail would stand extinguished and the accused can then be released only on merits and not by default. It is the aforesaid decision, which is the foundation of the judgment rendered by the Chhattisgarh High Court, to hold that if the application and the challan were filed on the same date, the right of accused to be released under Section 167(2) Cr.P.C. would stand extinguished. It is further submitted that the judgment in case of ***Pragyna Singh Thakur*** *(supra)* itself came to be reconsidered by Hon'ble the Apex Court in the case of ***Union of India through C.B.I.*** *versus* ***Nirala Yadav @ Raja Ram***

Yadav @ Deepak Yadav[12] wherein it was observed that the judgment in case of ***Pragyna Singh Thakur*** *(supra)* runs contrary to the decision of the Larger Bench in the case of ***Uday Mohanlal Acharya*** *(supra)*; and held that the view taken in the case of ***Pragyna Singh Thakur*** *(supra)* does not state the correct principle of law.

(28) It is, therefore, apparent that the law, as on date, is that once the accused moves an application under Section 167(2) Cr.P.C., the same cannot be frustrated by filing the challan at a later stage, during the pendency of such application. The view taken by the Chhattisgarh High Court may no longer be good in law, since the same was rendered while heavily relying upon the judgment in the case of ***Pragyna Singh Thakur*** *(supra)* – which, in turn, has been over-ruled by a specific decision rendered by Hon'ble the Apex Court in the case of ***Union of India through*** *(supra)*.

(29) Moreover, what would be relevant while adjudicating the application under Section 167(2) Cr.P.C. would be the time at which the application was moved and the time at which the challan has been presented, in the event that the same were filed on the same date. In this regard, it has been held by a number of High Courts of our country that even if both the application under Section 167(2) Cr.P.C. and the challan are presented on the same day – the accused will be entitled to be released if the application was entertained prior in time. The said view has been taken by the various High Courts in the following cases:-

> (i) The Hon'ble Karnataka High Court in the case of ***Gousemohiddin*** *versus* ***State (Karnataka), 2004(2) RCR (Criminal) 179*** has held that if the charge-sheet and the bail application under Section 167(2) of the Cr.P.C. are filed on the same day; but, if the charge-sheet is filed subsequent in time to the bail application – the right of the accused under Section 167(2) of the Cr.P.C. would not stand extinguished. The reasoning given by the Karnataka High Court is as under: -
>
> "7. The reason for successive decisions of the Supreme Court describing the right of an accused tobe released on bail under Section 167(2) of the Cr.P.C. as indefeasible is because that right is mandatory in nature and no option is

[12] 2014 (3) RCR (Crl.) 534

left to the Court but to release the accused on bail if he offers and furnishes bail. In the Constitution personal liberty is recognised as a valuable right which can be deprived of only in accordance and in conformity with the provisions of law. The power of the Magistrate to authorise the detention of the accused in custody otherwise than in police custody under Clause (a) of the proviso to Section 167(2) of the Cr.P.C., comes to an end on the expiry of the period prescribed therein. Consequently a right accrues in favour of the accused for being released on bail and that right continues to subsist until the Investigating agency files the charge sheet. Therefore, the right which accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the prescribed period gets extinguished only if the charge sheet is filed beforethe accused avails of the right under Section 167(2) of Cr.P.C. When an application for bail is filed by an accused for enforcement of his indefeasible right and he is prepared to offer bail on being directed, before the charge sheet is filed, then the accused has availed of his indefeasible right even though the Court is yet to determine his application for bail. Therefore, where the charge sheet is filed on the same day, if it is subsequent in time to the application for bail, the indefeasible right available to the accused does not get extinguished."

(ii) That a similar factual matrix arose before the Gujarat High Court in the case of ***Alamkhan Umarkhan Jatmalek Jenjari Tal, Dashada Dist, Surendranagar*** *versus* ***State of Gujarat, 2015 (46) RCR (Criminal) 801*** wherein the application for statutory/default bail was moved under Section 167(2) of the Cr.P.C. on 10.11.2014 at 10.30 AM. However, on the same date, i.e., on 10.11.2014, the charge-sheet also came to be filed, *albeit* at 4.00 PM in the evening. The High Court of Gujarat, after adverting to the decision of Hon'ble the Supreme Court in the case of **Union of India through C.B.I.** *versus* **Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav (supra)**, held that the subsequent filing of the challan, even if on the same day, but at a later time, i.e., at 4:00 PM – would not extinguish the right of the accused to be released on statutory/default

bail. The relevant portion of the said judgment is reproduced as under: -

"14. As the period of limitation is 90 days expired on 09.11.2014, on the very next date i.e., on 10.11.2014 at 10:35 a.m. in the morning, the applicants filed an application. However, no orders were passed on the same immediately by the concerned Court and ultimately, at 4:00 O' clock in the evening, the charge-sheet came to be filed. In my view, although no orders were passed on the said application, yet,the accused persons did exercise their right of being released on bail by filing the application early in the morning at 10:35 a.m., as even at that point of time their detention could be said to be unlawful. In my view, the subsequent filing of the charge-sheet at 4 O' clock in the evening would not save the situation. I may reiterate the observations made by the Supreme Court in the case of Union of India through C.B.I. vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav (supra) that the procrastination frustrates the legislative mandate. A Court cannot act to extinguish the right of an accused if the law so confers on him. The law has to prevail. In Uday Mohanlal (supra), the word used by the Supreme Court is "forthwith'.The plain dictionary meaning of the word "forthwith" means immediately. If that be so, then the Court concerned owed a duty to pass the necessary order immediately, more particularly when the bail application contained an endorsement put by the Superintendent that upto 10:35 in the morning the charge-sheet was not filed. The Court should haveimmediately called upon the Public Prosecutor, however, instead of doing so, it erroneously issued notice and fixed the hearing on the next day i.e., on 11.11.2014."

(iii) That a similar view has already been taken by the Jharkhand High Court in the case of ***Deepak Mandal @ Deepu Mandal @ Chhotu*** *versus* ***State of Jharkhand, 2015 (18) RCR (Criminal) 433*** as well as by the Madhya Pradesh High Court in the case of ***Ganesh Prasad*** *versus* ***State of M.P., 2001 (4) RCR (Criminal) 669***.

(30) In view of the above discussion, the answer to the fourth question to issue framed as (d) above, is that in the event that the

application under Section 167(2) of the Cr.P.C. as well as the challan, both are filed on the same day – it will have to be seen as to whether the application was filed prior in time to the challan. If it is found that the application was indeed filed prior in time, even if on the same day – the indefeasible right of the accused to be released on statutory/default bail would remain intact.

(31) Lastly, the question, which eventually arose for the consideration of this Court is as to whether, in the present case, the periodof 90 days had lapsed at the point in time when the application underSection 167(2) Cr.P.C. was moved so as to entitle the present appellant to be released on statutory/default bail. It has not been disputed by either of the parties i.e., the appellant as well as the investigating agency that the accused was arrested on 07.11.2017 and was produced before the Juvenile Justice Board by the CBI on 08.11.2017. In this regard, the categoric averment to this effect has been made in paragraph No.5 of the present appeal, which is reproduced as under: -

> "5. That after the re-registration of the case by the CBI, the petitioner was arrested on 07.11.2017 and was produced before the Juvenile Justice Board by CBI on 08.11.2017and since then is in custody/observation home."

(32) Similarly, even in the affidavit filed on behalf of the CBI, it has been admitted by the CBI that the child in conflict with law was arrested on 07.11.2017 and was produced before the Juvenile Justice Board on 08.11.2017. It has been admitted that on 08.11.2017, the accused was remanded to Police custody for three days from 08.11.2017 to 11.11.2017. The relevant averments to this extent are made by the CBI in paragraph Nos.3 and 6 of the affidavit, which are reproduced as under: -

> "3. On 07.11.2017, CBI came to the conclusion that there was enough evidence to substantiate the involvement of Bholu petitioner (imaginary name given by the Ld. Trial Court), a 11th standard student of Vidyalaya, in the commission of murder of 7 years old Prince in the boys' washroom in Vidyalaya on 08.09.2017 by slitting the throat of the child with a knife. Hence, the juvenile in conflict with law was apprehended on 07.11.2017 for committing a heinous offence after explaining the grounds of apprehension and the charges levelled against him to his father Shri Vinod Kumar Raghav. The apprehension was

effected in presence of his father, Welfare Police Officer of PS Lodhi Colony, New Delhi, Welfare Officer of CBI and two independent witnesses.

6. That Bholu was produced in the Ld. Juvenile Justice Board, Gurugram on 08.11.2017 and application was moved for his police custody. The Ld. Juvenile Justice Board, District Courts, Gurugram considering the significance of the case that it is a very sensational case and falls into the purview of heinous offence wherein a 7 years old child was brutally murdered inside the boy's toilet at the ground floor of Vidyalaya granted 3 days police custody of Bholu from 08.11.2017 to 11.11.2017 with specific instructions that Bholu has to be examined between 10:00 AM to 06:00 PM and he has to be placed at Seva Kutir, Kingsway Camp, New Delhi for the said 3 days. The Ld. Juvenile Justice Board, Gurugram, Haryana also directed Ms. Gyamwati, Ld. Member, Juvenile Justice Board, Gurugram to remain present with the juvenile at the time of interrogation of Bholu by CBI during the period of police custody."

(33) It has, thus, emerged on the record that the accused was arrested on 07.11.2017 and was produced before the Juvenile Justice Board on 08.11.2017 – wherefrom, he was then sent for three days' police remand. It has also emerged on the record that as per the orders passed by the Court below, to the effect that the challan in question came to be filed on 05.02.2018. Thus, the short question, which has to be considered is whether the accused remained in custody for a period of 90 days or not. As per the law enunciated by Hon'ble the Apex Court in case of ***Ravi Parkash Singh @ Arvind Singh*** *versus* ***State of Bihar***[13] – while computing the period of 90 days, the day on which the accused was remanded to the judicial custody has to be excluded. Reliance was placed on earlier decisions in the case of ***Chaganti Satyanarayana & others*** *versus* ***State of A.P.***[14] and in the case of ***State of M.P.*** *versus* ***Rustam & Others***[15] to conclude that the period of 90 days has to be computed from the date of remanding of the accused and not from the date of arrest. It was further held that the day on which the

[13] 2015 (2) RCR (Crl.) 89
[14] 1987 (1) RCR (Crl.) 40
[15] 1995 SCC (Crl.) 830

accused was remanded to the judicial custody should be excluded while the date on which the challan has been filed should be included.

(34) In view of the above discussion, the answer to the last question to issue framed as (e) above, is that no indefeasible right accrued to the present appellant under Section 167(2) Cr.P.C. and that the appellant was not entitled to be released on statutory/default bail.

(35) In view of the facts and law position as discussed above, it is apparent that the appellant is not entitled to be released on statutory/default bail as no indefeasible right has accrued to him under Section 167(2) Cr.P.C. and the present appeal being devoid of any merit is, hereby, dismissed.

Dr. Payel Mehta