



**IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH**

**DATED THIS THE 4<sup>TH</sup> DAY OF MARCH, 2025  
BEFORE**

**THE HON'BLE MR. JUSTICE V.SRISHANANDA**

**CRIMINAL REVISION PETITION NO.100051 OF 2025  
(397(CR.PC)/438(BNSS))**

**BETWEEN:**

MOULALI S/O. BABAJAN CHALLAL,  
AGE: 26 YEARS, OCC. COOLIE,  
R/O. VARDI, TQ. HANGAL,  
DIST. HAVERI-581148.

...PETITIONER

(BY SRI ARAVIND D. KULKARNI, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH ADUR POLICE STATION,  
REP. BY STATE PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA,  
HIGH COURT BUILDING, DHARWAD-580011.
2. AKHILABANU W/O. SHABBIR AHMAD MANSOOR,  
AGE: 45 YEARS, OCC. HOUSEHOLD WORK,  
R/O. VARDI, TQ. HANGAL,  
DIST. HAVERI-581148.

...RESPONDENTS

(BY SMT.GIRIJA S. HIREMATH, HCGP FOR R1;  
SRI UMESH P. HAKKARKI, ADVOCATE FOR  
SRI M.V. HIREMATH, ADVOCATE FOR R2)



THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 438 AND UNDER SECTION 442 OF BNSS 2023, SEEKING TO SET ASIDE THE ORDER DATED 01.02.2025 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-I, AT HAVERI IN SPL.S.C.NO.08/2025 AND CONSEQUENTLY ALLOW THE APPLICATION FILED BY THE PETITIONER AND ENLARGE THE PETITIONER ON DEFAULT BAIL IN SPL.S.C.NO.08/2025 PENDING ON THE FILE OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-I, HAVERI, REGISTERED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 376(2)(n), 506 OF IPC AND UNDER SECTIONS 4, 6, 8 AND 12 OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.



THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

**ORAL ORDER**

(PER: THE HON'BLE MR. JUSTICE V.SRISHANANDA)

Heard Sri.Aravind D. Kulkarni, learned counsel for the petitioner, Smt. Girija S. Hiremath, learned High Court Government Pleader for respondent No.1 and Sri.Umesh P.Hakkarki, advocate for Sri.M.V.Hiremath, advocate for respondent No.2-defacto complainant.

2. Petition under Section 397 of Cr.P.C./438 BNSS with the following prayer:-

*a. Set aside the order dated 01.02.2025 passed by the Additional District and Sessions Judge, FTSC-I, At-Haveri in Spl.S.C.No. 08/2025 and consequently allow the application filed by the petitioner and enlarge the petitioner on default bail in Spl.S.C. No.08/2025 pending on the file of Additional District and Sessions Judge, FTSC-I, Haveri, registered for the offences punishable under Section 376(2)(n), 506 of IPC and under Sections 4,6, 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (hereinafter for short 'POCSO Act, 2012') and such other reliefs.*



3. Facts in brief which are utmost necessary for disposal of present petition are as under:

Second respondent filed a complaint on 25.11.2024 alleging that she is residing with her husband Shabbirahmad at Vardi village in Hangal taluk and she is eaking out her livelihood through household work and her husband is a coolie. Complainant is having a son by name Mahamad aslam and four daughters. Her son is also doing the coolie work at Goa and elder daughter Mumtajbegaum got married. Second daughter Khuthejabanu is pursuing her bachelor degree at Gandhipur college, Haveri. Fourth daughter (victim girl) is studying in 9<sup>th</sup> standard and 3<sup>rd</sup> daughter Sadiyakausar is aged 16 years 7 months discontinued her education studying in Urdu school, Naregal up to 10<sup>th</sup> standard.

4. When the matter stood thus, when the victim girl was pursuing her studies at Naregal, accused petitioner said to have developed intimacy with victim girl and pursuant to said intimacy on 18.05.2024 at about 2



p.m. when the victim girl was all alone in the house, the accused visited the house of the complainant and cajoled her and had a forcible sexual intercourse and thereafter gave a life threat. Accused said to had repeated such physical relationship number of times in victim girl becoming the pregnant.

5. After receipt of the complaint, Adur Police registered a case in Crime No.183/2024 on 25.11.2024 for the offence punishable under Section 376(2)(n), 506 of IPC and under Sections 4, 6, 8 and 12 of Protection of Children from Sexual Offences Act, 2012. Thereafter, Police thoroughly investigated the matter and filed the charge sheet on 24.01.2025 (date of filing of charge sheet disputed by the petitioner), *interalia*, arresting the accused-petitioner and sending him to judicial custody.

6. An application came to be filed under Section 187 of the BNSS (earlier 167(2) of Cr.P.C.) by the petitioner seeking grant of statutory bail on the ground that the date of filing of charge sheet is beyond the period



of 60 days as is contemplated under Section 193(2) of the BNSS.

7. Learned Special judge heard the parties after entertaining the objections of the prosecution and rejected the application filed by the petitioner. Thereafter, petitioner is before this Court.

8. Sri. Arvind D. Kulkarni, learned counsel for the petitioner, reiterating the grounds urged in the bail petition and contended that as could be seen from Section 193(2) of BNSS, it was incumbent on the part of the investigating agency to complete the investigation within a period of 60 days from the date of receipt of the information (date of complaint) which is on 25.11.2024.

9. He would also contend that order sheet of the trial Court depicts that even as on 28.01.2025, the office note would indicate that the charge sheet was not filed and it is only on 29.01.2025, the charge sheet is received in the office of the learned special judge as could be seen from the certified copy of the concerned registers extracts. Therefore, the date that has been mentioned on the



charge sheet countersigned by learned special judge as 24.01.2025 need not be taken into consideration for the purpose of computing the period for filing the charge sheet and thus sought for allowing the petition.

10. Per contra, learned counsel Sri.Umesh P.Hakkarki, for Sri.M.V.Hiremath and learned High Court Government pleader opposes the grounds urged in the petition by contending that the signature found on the charge sheet by the learned Special Judge stating that 'check and then put up' is dated 24.01.2025. Therefore, the charge sheet is filed in time as is prescribed in the statute. As such the benefit under Section 187 of the BNSS is not available to the petitioner. Thus, they sought for dismissal of the petition.

11. I have heard the parties in detail and perused material available on record meticulously. On such perusal of the material on record, the following admitted time line is extracted.

1) Date of complaint – 25.11.2024



- 2) Date of arrest of the petitioner 26.11.2024
- 3) As per Section 193(2) of the BNSS, 60 days period is available for completing the investigation. Following are the disputed dates.

Filing of Charge Sheet as per prosecution 24.01.2025

As per amendment 29.01.2025

12. For ready reference, Section 193 of the BNSS is extracted hereunder:

**193. Report of police officer on completion of investigation.**—(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) The investigation in relation to an offence under sections 64, 65, 66, 67, 68, 70, 71 of the Bharatiya Nyaya Sanhita, 2023 or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012 shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.

(3) (i) As soon as the investigation is completed, the officer in charge of the police station shall forward, including through electronic communication to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form as the State Government may, by rules provide, 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 the accused has been released on his bond or bail bond;*

*(g) whether the accused has been forwarded in custody under section 190;*

*(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 64, 65, 66, 67, 68, 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023;*

*(i) the sequence of custody in case of electronic device;*

*(ii) the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;*

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

*(4) Where a superior officer of police has been appointed under section 177, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.*

*(5) Whenever it appears from a report forwarded under this section that the accused has been released on his bond or bail bond, the Magistrate shall make such order for the discharge of such bond or bail bond or otherwise as he thinks fit.*



*(6) When such report is in respect of a case to which section 190 applies, the police officer shall forward to the Magistrate along with the report—*

*(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;*

*(b) the statements recorded under section 180 of all the persons whom the prosecution proposes to examine as its witnesses.*

*(7) If the police officer is of opinion that any part of any such statement is not relevant to the subject matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.*

*(8) Subject to the provisions contained in sub-section (7), the police officer investigating the case shall also submit such number of copies of the police report along with other documents duly indexed to the Magistrate for supply to the accused as required under section 230: Provided that supply of report and other documents by electronic communication shall be considered as duly served.*

*(9) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (3) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (8) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (3):*

*Provided that further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be completed within a period of*



*ninety days which may be extended with the permission of the Court.(Old Corresponding Section:Sec.173 of the Code of Criminal Procedure,1973)*

13. For ready reference Section 187 of the BNSS (earlier Section 167 of Cr.P.C.) is extracted hereunder:

**187. Procedure when investigation cannot be completed in twenty-four hours.**—(1) *Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.*

(2) *The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person 74 has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), 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.*

(3) *The Magistrate may authorise the detention of the accused person, 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 sub-section 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 ten years or more;*

*(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 XXXV for the purposes of that Chapter.*

*(4) No Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the audio-video electronic means.*

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

*Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in sub-section (3), the accused shall be detained in custody so long as he does not furnish bail.*

*Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under sub-section (4), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the audio-video electronic means, as the case may be:*

*Provided that in case of a woman under eighteen years of age, the detention shall be authorised to be in*



*the custody of a remand home or recognised social institution:*

*Provided further that no person shall be detained otherwise than in police station under police custody or in prison under judicial custody or a place declared as prison by the Central Government or the State Government.*

*(6) Notwithstanding anything contained in sub-section (1) to sub-section (5), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Magistrate have been conferred, a copy of the entry in the diary hereinafter specified relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this subsection, shall be taken into account in computing the period specified in sub-section (3):*

*Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.*

*(7) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.*



*(8) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.*

*(9) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.*

*(10) Where any order stopping further investigation into an offence has been made under sub-section (9), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (9) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.*

*(Old Corresponding Sections:Sec.167 of Code of Criminal Procedure,1973.)*

14. On conjoint reading of the above provisions, it is incumbent on the part of the investigating agency to file final report within a period of 60 days from the date of receipt of information (complaint) as could be seen from Section 193(2) Cr.P.C.

15. However, whether 60 days period is to be considered as mandatory period or it should be directory is



the question i.e. to be decided in a given case inasmuch as in the case on hand, the charge sheet is filed. However, date of filing of the charge sheet in case on hand is in dispute. While on the charge sheet itself, there is an endorsement by the learned special judge that the charge sheet is received and endorsement reads that 'check and then put up' signed by the learned special judge is dated 24.01.2025.

16. However, order sheet that has been placed on record by the counsel for the petitioner is dated 28.01.2025. The office note says that advocate for the accused filed an advancement application along with the application under Section 187(3) (ii) of the BNSS praying for the case to be taken on today's board. Hence, submitted for orders.

17. Learned Special Judge has made an order on 28.01.2025 which reads as under:

***Special judge order dated 28.01.2025:***

***Adur PS Crime 183/2024***



*Case taken on today's board as per the advancement application filed by Sri UNG adv for Accused.*

*Sri UNG Adv for Accused has filed the aforesaid advancement application along with application U/Sec.187 (3)(ii) of BNSS today at 12.35 in the afternoon.*

*Copy served on Special PP.*

*Special PP prays time to file objections to the aforesaid application.*

*In the mean while, Office is directed to verify and to endorse in the order sheet as to whether the charge sheet is submitted by the IO in this Case or not.*

*Call on for objections of Special PP to the aforesaid application filed U/Sec 187 (3) (ii) of BNSS by 29.01.2025.*

*I/c Addl. District and Sessions  
Judge, FTSC-1, Haveri.*

18. Further, Order sheet dated 29.01.2025 reads as under:

**29.01.2025  
Submission**

**Charge sheet submitted Dt:24.01.2025**

*The PI Hanagal Circle PS has submitted Charge sheet against the accused person in Adur PS Crime No. 183/2024. dated:24.01.2025 for the offences punishable 376(2)(n) and 506 of IPC and the U/s 4, 6, 8 and 12 POCSO Act-2012 along with one set of charge sheet copy is furnished.*



*The charge sheet and police papers are checked and verified and as per list submitted by 10.*

*Original FIR/Complainant, PF. 164 Statement and Panchanama are kept along with this file.*

*Material objects seized in this case are not produced.*

*There are 35 witnesses cited for prosecution in this case.*

*Accused is in JC.*

*Name of the accused is:*

*A.1 Moulali s/o Babajan Challal*

*Occu: Driver*

*Age: 39 yrs R/o: Vardi Village*

*Tq: Hanagal Dist: Haveri.*

*Hence submitted for orders.*

***P/Clerk***

***Sheristedar***

*I have perused the charge sheet, information furnished, FIR issued, statements recorded and material documents enclosed and also produced on record.*

*Based on my perusal of the above said records, there are grounds to proceed with the case by taking cognizance of the following offenses. Hence, I proceed to pass the following:-*

**ORDER**

*Cognizance of offense punishable under Sections 376(2)(n) and 506 of IPC and the offenses punishable under Sections 4, 6, 8 and*



*12 of POCSO Act, 2012 has been taken against  
the person by name:-*

*A.1 Moulali S/o Babajan Challal*

*Occu: Driver Age: 39 yrs*

*R/o: Vardi Village*

*Tq: Hanagal Dist: Haveri,"*

19. To substantiate that as on 28.01.2025 there was no filing of the charge sheet, certified copy of the registers maintained in the office of Special Judge are also furnished where under in respect of case on hand, it is seen that Special case No.8/2025 is registered on 29.01.2025.

20. In other words, it is the argument of the counsel for the petitioner that after the 61<sup>st</sup> day, petitioner enjoys indefeasible right of getting the statutory bail as is contemplated under Section 187(3)(ii) of the BNSS.

21. In support of his arguments, Sri.Aravind Kulkarni placed on record the judgment of Constitution Bench of the Hon'ble Apex Court in the case of ***Udaya Mohanlal Acharya Vs. State of Maharashtra*** reported in ***2001(5) SCC 453***. Relevant portion of the said judgment is culled out hereunder for ready reference.



*" 5. Before examining the correctness of the rival submissions and finding out as to when the right accrues to the accused for being released on bail under the proviso to sub-section (2) of Section 167 and when that right gets extinguished, it will be appropriate to notice the very scheme of the Code. Under Section 56 of the Code of Criminal Procedure it is the bounden duty of the police officer arresting a person to produce him before a Magistrate having jurisdiction without unnecessary delay. Under Section 57 of the Code there is an embargo on the police officer to detain in custody a person arrested beyond 24 hours excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate. The object behind the aforesaid two provisions which are required to be read together is that the accused should be brought before a Magistrate without much delay and that the Magistrate will have succint of the matter within 24 hours. The aforesaid provision in fact is in consonance with the constitutional mandate engrafted under Article 22(2). The continuance of detention for the purpose of investigation beyond 24 hours has to be authorised by the Magistrate from time to time and without such special order from the Magistrate the detention may be illegal. Under the Criminal Procedure Code of 1878 a Magistrate was not entitled to allow detention of an accused in custody for a term exceeding 15 days on the whole. It was also found that the investigation could not ordinarily be completed within 15 days. The Law Commission, therefore, suggested that an accused could be denied to remain in custody for more than 60 days which got engrafted in Section 167 of the present Code (Criminal Procedure Code, 1973). The legislature, however, felt that a drastic change was called for to alter the tardy pace of investigation and, therefore, by the Criminal Procedure Code (Amendment) Act, 1978 (Act 45 of 1978), proviso (a) to sub-section (2) of Section 167 has been added. Under the amended provision, therefore a Magistrate is empowered to*



*authorise detention of the accused in custody, pending investigation for an aggregate period of 90 days in cases where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for not less than 10 years or more and in other cases the period of 60 days has been kept. The extended period of 90 days was brought into the Criminal Procedure Code by an amendment as it was found that in several cases of serious nature it was not possible to conclude the investigation. This provision of Section 167 is in fact supplementary to Section 57, in consonance with the principle that the accused is entitled to demand that justice is not delayed. The object of requiring the accused to be produced before a Magistrate is to enable the Magistrate to see that remand is necessary and also to enable the accused to make a representation which he may wish to make. The power under Section 167 is given to detain a person in custody while the police goes on with the investigation and before the Magistrate starts the enquiry. Section 167, therefore, is the provision which authorises the Magistrate permitting detention of an accused in custody and prescribing the maximum period for which such detention could be ordered. Having prescribed the maximum period, as stated above, what would be the consequences thereafter has been indicated in the proviso to sub-section (2) of Section 167. The proviso is unambiguous and clear and stipulates that the accused shall be released on bail if he is prepared to and does furnish the bail which has been termed by judicial pronouncement to be "compulsive bail" and such bail would be deemed to be a bail under Chapter 33. The right of an accused to be released on bail after expiry of the maximum period of detention provided under Section 167 can be denied only when an accused does not furnish bail, as is apparent from Explanation I to the said section. The proviso to sub-section (2) of Section 167 is a beneficial provision for curing the mischief of indefinitely prolonging the investigation and*



*thereby affecting the liberty of a citizen. Section 167 occurs in Chapter 12 dealing with the powers of the police to investigate in a criminal offence which starts with lodging of information in cognizable cases under Section 154, and ultimately culminating in submission of a report on completion of investigation under Section 173. Soon after completion of investigation the officer-in-charge of the police station has to forward to the Magistrate, empowered to take cognizance of the offence, a report in the prescribed form and once such report is filed before the Magistrate which is commonly termed as "challan" then the custody of the accused is no longer required to be dealt with under Section 167 of the Code, but under Section 209. On submission of the challan under Section 173 in a case instituted on a police report or otherwise, when it appears to the Magistrate that the offence is exclusively triable by the Court of Session, the moment the accused is brought before the Magistrate or he himself appears then the Magistrate commits the case to the Court of Session and subject to the provisions of the Code relating to bail, remand the accused to custody until such commitment has been made. The procedure for commitment to the Court of Session as provided in Section 209 of the present Code is radically different from the commitment proceedings under the 1898 Code. No enquiry is contemplated by the Magistrate under the present scheme. All that the Magistrate is required to do is to grant copies, prepare the records, notify the Public Prosecutor and formally commit the case to the Court of Session. Section 209(b) provides that the Magistrate shall remand the accused to custody subject to the provisions of the Code relating to bail, necessarily, therefore, subject to the provisions in Sections 436, 437 and 439. Thus, under clause (b) of Section 209 the committing Magistrate has the power to remand the accused to custody during and until the conclusion of the trial, subject to the provisions relating to bail. When the committing Magistrate passes an order*



*of commitment and the accused, at the stage is found to be on bail, the committing Magistrate has the power to cancel the bail and commit him to custody, if he considers it necessary to do so. But such a cancellation would be in accordance with sub-section (5) of Section 437 of the Code and there must be proper grounds for cancellation and not that the Magistrate would cancel the bail ipso facto on a challan being filed and the accused being produced for the purpose of passing an order of committal. Any order a Magistrate passes under Section 209(b) to remand an accused to custody would also obviously be subject to the provisions of the Code relating to bail. In a case where the committing Magistrate while passing an order of committal remands the accused to custody in exercise of power under Section 209(b), the power of the learned Sessions Judge under sub-section (2) of Section 309 is not whittled down in any manner at any time after commencement of trial, but ordinarily if the committing Magistrate has already passed an order remanding the accused to custody while passing an order of commitment no further order is required to be passed by the Sessions Judge in exercise of power under sub-section (2) of Section 309. Bearing in mind the aforesaid scheme in the Code of Criminal Procedure we would now examine the point in issue.*

**13.** *In State of M.P. v. Rustam [1995 Supp (3) SCC 221 : 1995 SCC (Cri) 830] this Court set aside the order of the High Court where the High Court had released the accused on bail, charge-sheet not having been filed within the period stipulated in Section 167(2) of the Code of Criminal Procedure, as by the time the High Court entertained the bail application, challan had already been filed, this Court had observed that the court is required to examine the availability of the right to compulsive bail on the date it is considering the question of bail and not barely on*



*the date of presentation of the petition for bail. This Court came to the conclusion: (SCC p. 223, para 4)*

*"On the dates when the High Court entertained the petition for bail and granted it to the accused-respondents, undeniably the challan stood filed in court, and then the right as such was not available."*

*A conspectus of the aforesaid decisions of this Court unequivocally indicates that an indefeasible right accrues to the accused on the failure of the prosecution to file the challan within the period specified under sub-section (2) of Section 167 and right can be availed of by the accused if he is prepared to offer the bail and abide by the terms and conditions of the bail, necessarily, therefore, an order of the court has to be passed. It is also further clear that that indefeasible right does not survive or remain enforceable on the challan being filed, if already not availed of, as has been held by the Constitution Bench in Sanjay Dutt case [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] . The crucial question that arises for consideration, therefore, is what is the true meaning of the expression "if already not availed of"? Does it mean that an accused files an application for bail and offers his willingness for being released on bail or does it mean that a bail order must be passed, the accused must furnish the bail and get him released on bail? In our considered opinion it would be more in consonance with the legislative mandate to hold that an accused must be held to have availed of his indefeasible right, the moment he files an application for being released on bail and offers to abide by the terms and conditions of bail. To interpret the expression "availed of" to mean actually being released on bail after furnishing the necessary bail required would cause great injustice to the accused and would defeat the very purpose of the proviso to*



*Section 167(2) of the Criminal Procedure Code and further would make an illegal custody to be legal, inasmuch as after the expiry of the stipulated period the Magistrate had no further jurisdiction to remand and such custody of the accused is without any valid order of remand. That apart, when an accused files an application for bail indicating his right to be released as no challan had been filed within the specified period, there is no discretion left in the Magistrate and the only thing he is required to find out is whether the specified period under the statute has elapsed or not, and whether a challan has been filed or not. If the expression "availed of" is interpreted to mean that the accused must factually be released on bail, then in a given case where the Magistrate illegally refuses to pass an order notwithstanding the maximum period stipulated in Section 167 had expired, and yet no challan had been filed then the accused could only move to the higher forum and while the matter remains pending in the higher forum for consideration, if the prosecution files a charge-sheet then also the so-called right accruing to the accused because of inaction on the part of the investigating agency would get frustrated. Since the legislature has given its mandate it would be the bounden duty of the court to enforce the same and it would not be in the interest of justice to negate the same by interpreting the expression "if not availed of" in a manner which is capable of being abused by the prosecution. A two-Judge Bench decision of this Court in State of M.P. v. Rustam [1995 Supp (3) SCC 221 : 1995 SCC (Cri) 830] setting aside the order of grant of bail by the High Court on a conclusion that on the date of the order the prosecution had already submitted a police report and, therefore, the right stood extinguished, in our considered opinion, does not express the correct position in law of the expression "if already not availed*



*of”, used by the Constitution Bench in Sanjay Dutt [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] . We would be failing in our duty if we do not notice the decisions mentioned by the Constitution Bench in Sanjay Dutt case [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] which decisions according to the learned counsel, appearing for the State, clinch the issue. In Makhan Singh Tarsikka v. State of Punjab [1951 SCC 1140 : AIR 1952 SC 27 : 1952 Cri LJ 321 : 1952 SCR 368] an order of detention had been assailed in a petition filed under Article 32, on the ground that the period of detention could not be indicated in the initial order itself, as under the provisions of the Preventive Detention Act, 1950, it is only when the Advisory Board reports that there is sufficient cause for detention, the appropriate Government may confirm the detention order and continue the detention of the detenu for such period, as it thinks fit. On a construction of the relevant provisions of the Preventive Detention Act, as it stood then, this Court accepted the contention and came to hold that the fixing of the period of detention in the initial order was contrary to the scheme of the Act and could not be sustained. We fail to understand as to how this decision is of any assistance for arriving at a just conclusion on the issue, which we are faced with in the present case.*

.....  
*With the aforesaid interpretation of the expression “availed of” if the charge-sheet is filed subsequent to the availing of the indefeasible right by the accused then that right would not stand frustrated or extinguished, necessarily therefore, if an accused entitled to be released on bail by application of the proviso to sub-section (2) of Section 167, makes the application before the Magistrate, but the Magistrate erroneously refuses the same and rejects the application and then the accused moves the higher*



*forum and while the matter remains pending before the higher forum for consideration a charge-sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby, and on the other hand, the accused has to be released on bail. Such an accused, who thus is entitled to be released on bail in enforcement of his indefeasible right will, however, have to be produced before the Magistrate on a charge-sheet being filed in accordance with Section 209 and the Magistrate must deal with him in the matter of remand to custody subject to the provisions of the Code relating to bail and subject to the provisions of cancellation of bail, already granted in accordance with the law laid down by this Court in the case of Mohd. Iqbal v. State of Maharashtra [(1996) 1 SCC 722: 1996 SCC (Cri) 202 ".*

22. Sri.Aravind Kulkarni also placed on record the judgment of the Hon'ble Apex Court in the case of **Central Bureau of Investigation Vs. Anupam J. Kulkarni** reported in **(1992) 3 SCC 141** and invited the attention of this Court to paragraph No.9 and the same is extracted hereunder for ready reference.

*"9. At this juncture we want to make another aspect clear namely the computation of period of remand. The proviso to Section 167(2) clearly lays down that the total period of detention should not exceed ninety days in cases where the investigation relates to serious offences mentioned therein and sixty days in other cases and if by that time cognizance is not taken on the expiry of the said periods the accused shall be released on*



*bail as mentioned therein. In Chaganti Satyanarayana case [(1986) 3 SCC 141 : 1986 SCC (Cri) 321] it was held that "It, therefore, stands to reason that the total period of 90 days or 60 days can begin to run from the date of order of remand". Therefore the first period of detention should be computed from the date of order of remand. Section 167(2-A) which has been introduced for pragmatic reasons states that if an arrested person is produced before an Executive Magistrate for remand the said Magistrate may authorise the detention of the accused not exceeding seven days in aggregate. It further provides that the period of remand by the Executive Magistrate should also be taken into account for computing the period specified in the proviso i.e. aggregate periods of ninety days or sixty days. Since the Executive Magistrate is empowered to order detention only for seven days in such custody as he thinks fit, he should therefore either release the accused or transmit him to the nearest Judicial Magistrate together with the entries in the diary before the expiry of seven days. The section also lays down that the Judicial Magistrate who is competent to make further orders of detention, for the purposes of computing the period of detention has to take into consideration the period of detention ordered by the Executive Magistrate. Therefore on a combined reading of Sections 167(2) and (2-A) it emerges that the Judicial Magistrate to whom the Executive Magistrate has forwarded the arrested accused can order detention in such custody namely police custody or judicial custody under Section 167(2) for the rest of the first fifteen days after deducting the period of detention ordered by the Executive Magistrate. The detention thereafter could only be in judicial custody. Likewise the remand under Section 309 CrPC can be only to judicial custody in*



*terms mentioned therein. This has been concluded by this Court and the language of the section also is clear. Section 309 comes into operation after taking cognizance and not during the period of investigation and the remand under this provision can only be to judicial custody and there cannot be any controversy about the same. (vide Natabar Parida v. State of Orissa [(1975) 2 SCC 220 : 1975 SCC (Cri) 484].)*

23. Per contra, it is the argument of Smt.Girija Hiremath and Sri.Umesh P. Hakkaraki for Sri.M.E.Hiremath that the endorsement made by the learned Special Judge on the charge sheet that it has been presented to the Court and endorsement made on the charge sheet would represent that the investigation officer has filed the charge sheet to the Special Judge on 24.01.2025 itself.

24. The endorsement would also make it clear that the office was directed to verify the charge sheet papers to the effect that compliance has been made in the final report in terms of the Section 193 of BNSS (Section 173 of Cr.P.C.).

25. It is also their argument that when once the investigation officer has filed the charge sheet within the



period of 60 days, the right to seek for statutory bail extinguishes and therefore, sought for dismissal of the petition.

26. In the light of the above disputed fact of date of filing of the charge sheet, this Court bestowed it's best attention to the material placed on record. As could be seen from the endorsement made by the learned Special Judge on charge sheet, charge sheet is received by the learned Special Judge and he has made an endorsement 'check and then put up', the said endorsement is dated 24.01.2025.

27. After the charge sheet is filed, the power to remand exists in the Court till the ministerial act of verification of the charge sheet papers are carried out and till the date of taking of the cognizance is under Section 346 of the BNSS (Section 309 of Cr.P.C.).

28. In other words, power to remand in the interregnum of filing of the charge sheet and actual date of taking the cognizance is inherent in the trial Court.



29. View of this Court in this regard is supported by the judgement of Hon'ble Apex Court in the case of **Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and another** reported in **(2013) 1 S.C.R 1037**. Relevant paragraphs of the said decision are culled out hereunder for ready reference:

*1.2. The scheme of the Cr.P.C. is that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. Once cognizance is taken, the power to remand shifts to the provisions of s.309 Cr.P.C., under which the trial court is empowered to postpone or adjourn proceedings and, for the said purpose, to extend the period of detention from time to time. However, the provisions of s.309 Cr.P.C. have no application to the facts of the instant case. [para 15 and 18] [1047-G-H; 1048-B; 1052-A]*

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*Cr.P.C. have no application to the facts of the instant case. [para 15 and 18] [1047-G-H; 1048-B; 1052-A]*

30. Applying the principles of law enunciated in the aforesaid judgments of the Hon'ble Apex Court relied on by the parties as referred supra, there cannot be any iota of doubt in the principles enunciated by the Hon'ble Apex Court in the case of **Udaya Mohanlal Acharya** and **Anupam J. Kulkarni** supra, that accused enjoys indefeasible right to seek for grant of statutory bail if there is no filing of the charge sheet within the prescribed period. It is also to be noted that filing of Charge Sheet subsequently would not take away the right already accrued.

31. As already observed supra, filing of the charge sheet as is contemplated under Section 193(2) of Cr.P.C. could be treated as mandatory even in case where the accused is not arrested is to be discussed in an appropriate case.

32. For the purpose of disposing of the present case, since the accused-petitioner is arrested on the very



next day on 26.11.2024, filing of the charge sheet on 24.01.2025 is well within the ambit of Section 193(2) of the BNSS in the case on hand which is sufficient compliance of the said provision.

33. It is needless to emphasise that once the charge sheet is filed ticking of the clock with regarding to statutory right which is carved out in the Statute would automatically stop. As could be seen from the material on records, in the charge sheet dated 24.01.2025 and actual cognizance has been taken on 29.01.2025 as referred supra and thereafter necessary endorsements has been carried out in the relevant registers wherein, the pending FIR is culminated in filing a charge sheet and a special case came to be registered.

34. In view of the principles of law enunciated in the case of **Suresh Kumar Bhikamchand Jain** supra, this Court is of the considered opinion that rejection of the petitioner seeking grant of statutory bail is justified though not the order of the learned Special Judge is not happily worded.



35. In view of the foregoing discussion, following order is passed:

**ORDER**

Petition is merit less, and is hereby dismissed. However, dismissal of the present petition would not come in the way of petitioner seeking regular bail in accordance with law.

**SD/-  
(V.SRISHANANDA)  
JUDGE**

HMB  
CT:PA  
LIST NO.: 2 SL NO.: 1