KABC010342202025

IN THE COURT OF LXXXI ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-82)

:PRESENT:
Sri Santhosh Gajanan Bhat, B.A.L., LL.B.,
LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases related to former and elected MPs/MLAs in the State of Karnataka)

Dated this the 2nd day of February, 2026

CRL.R.P. NO.676/2025

REVISION PETITIONERS/ ACCUSED:	1.	**Sri.Jagadish.P** S/o Padmanaban.R, Aged about 53 years, Residing at No.303, 3rd Floor, The Canopy Apartments, Babusapalya, Kalyan Nagar, Bengaluru – 560 043. **(Accused No.1)**
	2.	**Sri. K.Kiran** S/o P.C.Krishna, Aged about 34 years, No.2009, Asha Township, Doddagubbi, 14th Cross, Near Brits Club, Bengaluru – 560 077. **(Accused No.2)**

3. **Sri. Vimal Raj. B**
S/o Babu Raj,
Aged about 31 years,
No.10, VMV House,
5th Cross, Old UCO Bank
Road, Vijanapura,
Bengaluru – 560 016.
(Accused No.3)

4. **Sri. Madan.R**
S/o Late. Rajan,
Aged about 28 years,
No.327, Ramaiah Building,
1st Cross, Rammurthynagar,
K.R.Puram,
Bengaluru – 560 036.
(Accused No.7)

(By Sri Suyog Herale, learned counsel for Revision Petitioners)

V/s

RESPONDENT/ COMPLAINANT:

The State of Karnataka,
Through CID,
Represented by SPP,
City Civil Court Building,
Bengaluru – 577 522.

(By Sri Ashok Naik, learned Special Public Prosecutor)

ORDER

This Revision petition is filed under Sec.438 r/w 440 of Bharatiya Nagarika Suraksha Sanhita, 2023 ('BNSS' for short) by the revision petitioners who are accused in Crime No.73/2025 seeking to set-aside the impugned order dated 26.12.2025 passed by the XLII Addl. Chief Metropolitan Magistrate, Bengaluru and consequently allow the application filed under Sec.187(3) of BNSS, 2023 by the petitioners.

2. The parties are addressed to their original ranking as that of the trial court.

3. The present petitioners are arraigned as accused No.1 to 3 and 7 respectively before the trial Court.

4. The genesis of the above case is that a complaint came to be filed on 15.07.2025 wherein the mother of the deceased had lodged a complaint stating that her son was made to death due to assault being

made by some 8 to 10 unknown individuals near their house. On the basis of the written information, initially FIR came to be registered before the Bharathi Nagar Police Station in Crime No.73/2025 for the alleged offences punishable under Sec.103 and 190 of BNS, 2023. At the inception of the case, accused No.2, 3 and 7 mentioned in the FIR were arrested and remanded to custody on 17.07.2025. At that point of time, it was noticed that the accused No.1 Jagadish @ Jagga was not available in the country and had fled. As such, necessary blue corner notice came to be issued against him and subsequently he was deported to India from Srilanka. At Delhi International Airport the accused No.1 was arrested and he was remanded to custody. In the midst of the same, the case came to be transferred to CID for further investigation on 24.07.2025 as per the orders passed by the Inspector General of Police, Karnataka. In the interregnum, the provisions of Sec.3 and Sec.4 of the Karnataka Control of Organized Crimes

Act, 2000 came to be invoked. It is relevant to note that on 14.10.2025, the period of 90 days from the date of remand of accused No.2, 3 and 7 came to be completed and since accused No.1 was remanded to custody on 26.08.2025, his period of detention of 90 days was completed on 23.11.2025. At that juncture, the learned SPP had filed application under Sec.22(2)(b) of KCOCA seeking for extension of investigation period for a further period of 90 days. However, this Court had accepted the application of the learned SPP in part and had granted a further period of 45 days to complete the investigation and to file Report. Thereafter, on 21.11.2025, the learned SPP had filed another application under the provisions of KCOCA for further extension of period of investigation for another 45 days which was allowed in part by this Court by granting another 30 days to file final Report. During the aforesaid period, the accused No.5 had filed a Writ Petition before the Hon'ble High Court of Karnataka in

WP No.31304/2025, seeking to quash the invocation of KCOCA. The Hon'ble High Court by its kind order dated 19.12.2025 had allowed the Writ Petition and had quashed invocation of KCOCA in the instant case. Immediately thereafter the petitioners herein had advanced the case on 22.12.2025 before the learned Magistrate and had filed application under Sec.187(3) of BNSS since no charge-sheet was filed till that point of time. However, at about 05.45 p.m., on the same day the Investigating Agency had filed the Final Report. The trial court after hearing both the parties, had rejected the default bail application filed by the Revision Petitioners.

5. Being aggrieved by the same, the petitioners have filed the instant application on the ground that the impugned order passed by the learned Magistrate is not in consonance with the settled principles of law. It is also submitted by the petitioners that as on the date of filing the default bail application, no Final Report was

placed before the trial court and further an indefeasible right came to be created in their favour. It is also submitted that though the Investigating Agency had filed the Final Report on 22.12.2025, the same cannot be considered as defeating the right of the petitioners herein as already an indefeasible right had accrued in their favour. Further it is submitted that it is the settled principles of law that once the accused applies for default bail, the subsequent filing of the charge-sheet cannot defeat the right accrued in favour of the accused person. Further it is submitted that the trial court had erred in relying upon the extension order granted under KCOCA despite its invocation being set-aside by the Hon'ble High Court. It is also submitted that the trial court had misconstrued the scope and object of Sec.187(3) of BNSS 2023 and instead of safeguarding the interest of the persons who were incarcerated, the Court had proceeded to reject the application. Further the petitioners have submitted that they were ready and willing to furnish bail bond, surety and any other conditions that may be imposed by this court and accordingly they have sought for allowing the instant revision petition by setting aside the orders of dismissal passed on their application filed under Sec.187(3) of BNSS, 2023.

6. In order to substantiate their contention, the learned counsel for revision petitioners has filed the following authorities, which are as follows;

> **a) (2021)2 SCC 485 (M.Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence)**
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> **b) (2020)10 SCC 616 (Bikramjit Singh Vs. State of Punjab)**
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> **c) 2024 SCC Online Bom 940 (Dinesh Ganesh Indre and others Vs. State of Maharashtra)**
>
> **d) (2023)6 SCC 484 (Jigar @ Jimmi Praveen Chandra Adatiya Vs. State of Gujrath)**
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> **e) 2021 SCC Online CHH 1974 (Vinay Debey and another Vs. State of Chhattisgarh)**

7. Per contra, the learned SPP has put in his appearance on request and has opposed the revision

petition by arguing that the impugned order passed by the learned trial Judge is apt and correct. It is his submission that at no point of time an indefeasible right had accrued in favour of the petitioners herein and further he has relied upon the judgment of the Hon'ble High Court of Judicature at Bombay reported in **2022 Supreme (Bom) 1917 (Naresh Netram Nagpure Vs. State of Maharashtra)** wherein in a similar situation the Court had ruled that when the period of limitation was being extended by a legal order or in a legal manner, the question of filing a default bail application would not arise on the premises that subsequently the extension of limitation was held to be invalid. By relying upon the aforesaid authority, the learned SPP has requested the Court to reject the impugned revision petition.

8. Heard both parties and perused the records. The points arise that would arise for my consideration is:

1) ***Whether the revision petitioner has made out grounds to set aside the impugned order passed by the learned 42nd ACJM Court at Bengaluru in Crime No.73/2025 dated 22.12.2025 by allowing the application seeking for default bail?***

2) What order?

9. My answer to the above points is as follows:

Point No.1: ***In the Negative;***

Point No.2: As per final order

for the following:

REASONS

10. **POINT No.1:** Shorn of unnecessary details, the brief fact which can be adumbrated at this juncture is that the criminal law was set into motion on the basis of the written information filed by the mother of the deceased on 15.07.2025, wherein she has submitted that her son Shivaprakash @ Biklu Shiva was done to death by some unknown assailants and had further suspected the role of 5 persons who were arraigned as

accused No.1 to 5. Thereafter, accused No.1 to 4 were arrested along with accused No.6 to 19 and during the midst of the same, the provisions of KCOCA, 2000 came to be invoked since it was permitted by the competent authorities. The Investigating Agency had filed necessary application seeking to extend the period of limitation from 90 days to an additional period of 90 days. However, this Court by a detailed order had granted them additional 45 days to complete the investigation. The said order was challenged before the Hon'ble High Court of Karnataka, wherein the Hon'ble High Court by its kind order had upheld the grant of additional 45 days to complete the investigation. Thereafter one more application came to be filed by the Investigating Officer through the SPP seeking for further period of 45 days. However, at that juncture, the Court had granted the Investigating Officer a period of 30 days which would come to an end on 27.12.2025. During the interregnum, the invocation of KCOCA was challenged before the Hon'ble High Court of Karnataka in WP No.31304/2025 by accused No.5. The Hon'ble High Court of Karnataka was pleased to allow the Writ Petition by quashing the invocation of KCOCA itself by its kind order dated 19.12.2025.

11. As such, now the question has arisen that whether the accused are entitled for default bail. The records indicates that the orders of the Hon'ble High Court of Karnataka were brought in the notice of this court on 19.12.2025 itself and immediately on that day it was submitted by the accused that they would intend to file necessary default bail application. However, the records indicate that the case papers came to be transmitted to the learned 42^{nd} ACJM Court at Bengaluru, since this Court had lost jurisdiction as the provisions of KCOCA was set-aside. The aforesaid orders were passed on 22.12.2025 and on the same day at about 12.00 p.m., the revision petitioners had filed

necessary default bail application. It is also relevant to note that on the same day itself at about 05.15 p.m., the Investigating Officer had submitted Final Report by invoking various provisions of BNS, 2023 and also under Sec.25(1B) (b) of Indian Arms Act, 1959.

12. With these aforesaid aspects, now the Court is required to ascertain whether the right to default bail had accrued on the accused persons on 19.12.2025 itself i.e., on the date on which the Hon'ble High Court by its kind order in WP No.31304/2025 had set-aside the invocation of KCOCA.

13. There cannot be any qualms with respect to the settled principles of law which has been laid down by the Hon'ble Apex Court in various authorities wherein the provision of Sec.167(2) pertaining to default bail has been dealt with. More particularly, in the judgment relied upon by the learned counsel for the

revision petitioners in M.Ravindran's case mentioned supra, it has been held as follows;

> ***22.4. Quite recently, in Bikramjit Singh v. State of Punjab [Bikramjit Singh v. State of Punjab, (2020) 10 SCC 616 : (2021) 1 SCC (Cri) 85], dealing with similar question which arose in an application for default bail under the UAPA, a three-Judge Bench of this Court, after considering the various judgments on the point, observed thus : (SCC p. 652, para 36)***
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> ***"36. A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge-sheet is filed, the right to default bail becomes complete. It is of no moment that the criminal court in question either does not dispose of such application before the charge-sheet is filed or disposes of such application wrongly before such charge-sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted."***
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> ***This decision in Bikramjit Singh [Bikramjit Singh v. State of***

Punjab, (2020) 10 SCC 616 : (2021) 1 SCC (Cri) 85] ensures that the rigorous powers conferred under special statutes for curtailing liberty of the accused are not exercised in an arbitrary manner.

24.1. It is clear that in the case on hand, the State/the investigating agency has, in order to defeat the indefeasible right of the accused to be released on bail, filed an additional complaint before the court concerned subsequent to the conclusion of the arguments of the appellant on the bail application. If such a practice is allowed, the right under Section 167(2) would be rendered nugatory as the investigating officers could drag their heels till the time the accused exercises his right and conveniently file an additional complaint including the name of the accused as soon as the application for bail is taken up for disposal. Such complaint may be on flimsy grounds or motivated merely to keep the accused detained in custody, though we refrain from commenting on the merits of the additional complaint in the present case. Irrespective of the seriousness of the offence and the reliability of the evidence available, filing additional complaints merely to circumvent the application for default bail is, in our view, an improper strategy. Hence, in our considered opinion, the High Court was not justified in setting aside the judgment

and order of the trial court releasing the accused on default bail.

25.1. Once the accused files an application for bail under the proviso to Section 167(2) he is deemed to have "availed of" or enforced his right to be released on default bail, accruing after expiry of the stipulated time-limit for investigation. Thus, if the accused applies for bail under Section 167(2) CrPC read with Section 36-A(4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the court must release him on bail forthwith without any unnecessary delay after getting necessary information from the Public Prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigating agency.

25.2. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the charge-sheet or a report seeking extension of time by the prosecution before the court; or filing of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher court.

25.3. However, where the accused fails to apply for default bail when the right

> ***accrues to him, and subsequently a charge-sheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.***
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> ***25.4. Notwithstanding the order of default bail passed by the court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the court, his continued detention in custody is valid.***

14. Further, in the judgment of the Hon'ble Apex Court reported in (2020)10 SCC 616 (Bikramjit Singh Vs. State of Punjab) mentioned supra, it is held as follows;

> ***27. The second vexed question which arises on the facts of this case is the question of grant of default bail. It has already been seen that once the maximum period for investigation of***

an offence is over, under the first proviso (a) to Section 167(2), the accused shall be released on bail, this being an indefeasible right granted by the Code. The extent of this indefeasible right has been the subject-matter of a number of judgments. A beginning may be made with the judgment in Hitendra Vishnu Thakur v. State of Maharashtra [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] , which spoke of "default bail" under the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "TADA") read with Section 167 of the Code as follows: (SCC pp. 625-28, paras 19-21)

"19. Section 20(4) of TADA makes Section 167CrPC applicable in relation to case involving an offence punishable under TADA, subject to the modifications specified therein. ... while clause (b) provided that reference in sub-section (2) of Section 167 to "15 days", "90 days" and "60 days" wherever they occur shall be construed as reference to "60 days", "one year" and "one year" respectively. This section was amended in 1993 by Amendment Act 43 of 1993 with effect from 22-5-1993 and the period of "one year" and "one year" in clause (b) was reduced to "180 days" and "180 days" respectively, by modification of sub-section (2) of Section 167. After clause

(b) of sub-section (4) of Section 20 of TADA, another clause (bb) was inserted which reads:

'20. (4)(bb) in sub-section (2), after the proviso, the following proviso shall be inserted, namely:

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

20. ... Sub-section (2) of Section 167 of the Code lays down that the Magistrate to whom the accused is forwarded may authorise his detention in such custody, as he may think fit, for a term specified in that section. The proviso to sub-section (2) fixes the outer limit within which the investigation must be completed and in case the same is not completed within the said prescribed period, the accused would acquire a right to seek to be released on bail and if he is prepared to and does furnish bail, the Magistrate shall release him on bail and such release shall be deemed to be grant of bail under Chapter XXXIII of the Code of Criminal Procedure. ...Section 167 read with Section 20(4) of TADA, thus, strictly speaking is not a provision for

"grant of bail" but deals with the maximum period during which a person accused of an offence may be kept in custody and detention to enable the investigating agency to complete the investigation and file the charge-sheet, if necessary, in the court. The proviso to Section 167(2) of the Code read with Section 20(4)(b) of TADA, therefore, creates an indefeasible right in an accused person on account of the "default" by the investigating agency in the completion of the investigation within the maximum period prescribed or extended, as the case may be, to seek an order for his release on bail. It is for this reason that an order for release on bail under proviso (a) of Section 167(2) of the Code read with Section 20(4) of TADA is generally termed as an "order-on-default" as it is granted on account of the default of the prosecution to complete the investigation and file the challan within the prescribed period. As a consequence of the amendment, an accused after the expiry of 180 days from the date of his arrest becomes entitled to bail irrespective of the nature of the offence with which he is charged where the prosecution fails to put up challan against him on completion of the investigation. With the amendment of clause (b) of sub-section (4) of Section 20 read with the proviso to sub-section (2) of Section

167CrPC an indefeasible right to be enlarged on bail accrues in favour of the accused if the police fails to complete the investigation and put up a challan against him in accordance with law under Section 173CrPC. An obligation, in such a case, is cast upon the court, when after the expiry of the maximum period during which an accused could be kept in custody, to decline the police request for further remand except in cases governed by clause (bb) of Section 20(4). There is yet another obligation also which is cast on the court and that is to inform the accused of his right of being released on bail and enable him to make an application in that behalf. (Hussainara Khatoon case [Hussainara Khatoon (4) v. State of Bihar, (1980) 1 SCC 98 : 1980 SCC (Cri) 40]). This legal position has been very ably stated in Aslam Babalal Desai v. State of Maharashtra [Aslam Babalal Desai v. State of Maharashtra, (1992) 4 SCC 272 : 1992 SCC (Cri) 870] where speaking for the majority, Ahmadi, J. referred with approval to the law laid down in Rajnikant Jivanlal v. Narcotics Control Bureau [Rajnikant Jivanlal v. Narcotics Control Bureau, (1989) 3 SCC 532 : 1989 SCC (Cri) 612] wherein it was held that: (SCC p. 288, para 9)

'9. ...“13. ... The right to bail under Section 167(2) proviso (a) thereto is absolute. It is a legislative command and not court's discretion. If the

investigating agency fails to file charge-sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. But at that stage, merits of the case are not to be examined. Not at all. In fact, the Magistrate has no power to remand a person beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds." (SCC p. 536, para 13)'

21. Thus, we find that once the period for filing the charge-sheet has expired and either no extension under clause (bb) has been granted by the Designated Court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under sub-section (4) of Section 20TADA read with Section 167 of the Code and the Designated Court shall release him on bail, if the accused seeks to be so released and furnishes the requisite bail. We are not impressed with the argument of the learned counsel for the appellant that on the expiry of the period during which investigation is required to be completed under Section 20(4)TADA read with Section 167 of the Code, the court must release the accused on bail on its own motion even without any application from an accused person on his offering to furnish bail.

In our opinion an accused is required to make an application if he wishes to be released on bail on account of the "default" of the investigating/ prosecuting agency and once such an application is made, the court should issue a notice to the Public Prosecutor who may either show that the prosecution has obtained the order for extension for completion of investigation from the court under clause (bb) or that the challan has been filed in the Designated Court before the expiry of the prescribed period or even that the prescribed period has actually not expired and thus resist the grant of bail on the alleged ground of "default". The issuance of notice would avoid the possibility of an accused obtaining an order of bail under the "default" clause by either deliberately or inadvertently concealing certain facts and would avoid multiplicity of proceedings. It would, therefore, serve the ends of justice if both sides are heard on a petition for grant of bail on account of the prosecution's "default". ... No other condition like the gravity of the case, seriousness of the offence or character of the offender, etc. can weigh with the court at that stage to refuse the grant of bail to an accused under sub-section (4) of Section 20TADA on account of the "default" of the prosecution."

(emphasis in original)

29. The question as to whether default bail can be granted once a charge-sheet is filed was authoritatively dealt with in a decision of a three-Judge Bench of this Court in Uday Mohanlal Acharya v. State of Maharashtra [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] . The majority judgment of G.B. Pattanaik, J. reviewed the decisions of this Court and in particular the enigmatic expression "if already not availed of" in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] . The Court then held: (Uday Mohanlal Acharya case [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] , SCC pp. 469-70 & 472-74, para 13)

"13. … 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 [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 [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] . ... In the aforesaid premises, we are of the considered opinion that an accused must be held to have availed of his right flowing from the legislative mandate engrafted in the proviso to sub-section (2) of Section 167 of the Code if he has filed an application after the expiry of the stipulated period alleging that no challan has been filed and he is prepared to offer

the bail that is ordered, and it is found as a fact that no challan has been filed within the period prescribed from the date of the arrest of the accused. In our view, such interpretation would subserve the purpose and the object for which the provision in question was brought on to the statute-book. In such a case, therefore, even if the application for consideration of an order of being released on bail is posted before the court after some length of time, or even if the Magistrate refuses the application erroneously and the accused moves the higher forum for getting a formal order of being released on bail in enforcement of his indefeasible right, then filing of challan at that stage will not take away the right of the accused. Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be 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 up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a 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 in proviso to sub-section (2) of Section 167 excepting the contingency indicated in Explanation I, namely, if the accused does not furnish the bail. ... 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 off chance of the 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 a challan within the specified period and the interest of the society, at large, in lawfully preventing an accused from being released on bail on account of inaction on the part of the prosecuting agency. On the aforesaid premises, we would record our conclusions as follows:

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3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right 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 period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

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6. The expression "if not already availed of" used by this Court in Sanjay Dutt case [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in para (a) of the proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same."

(emphasis supplied)

33. In a fairly recent judgment reported as Rakesh Kumar Paul v. State of Assam [Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC

67 : (2018) 1 SCC (Cri) 401] , a three-Judge Bench of this Court referred to the earlier decisions of this Court and went one step further. It was held by the majority judgment of Madan B. Lokur, J. and Deepak Gupta, J. that even an oral application for grant of default bail would suffice, and so long as such application is made before the charge-sheet is filed by the police, default bail must be granted. This was stated in Lokur, J.'s judgment as follows: (SCC pp. 98-99 & 101-102, paras 37-41, 45-47 & 49)

"37. This Court had occasion to review the entire case law on the subject in Union of India v. Nirala Yadav [Union of India v. Nirala Yadav, (2014) 9 SCC 457 : (2014) 5 SCC (Cri) 212] . In that decision, reference was made to Uday Mohanlal Acharya v. State of Maharashtra [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] and the conclusions arrived at in that decision. We are concerned with Conclusion (3) which reads as follows: (Nirala Yadav case [Union of India v. Nirala Yadav, (2014) 9 SCC 457 : (2014) 5 SCC (Cri) 212] , SCC p. 472, para 24)

'24. ..."13. (3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right 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 period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate." (Uday Mohanlal case [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] , SCC p. 473, para 13)'

38. This Court also dealt with the decision rendered in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] and noted that the principle laid down by the Constitution Bench is to the effect that if the charge-sheet is not filed and the right for "default bail" has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge-sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.

39. This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to Mohd. Iqbal Madar Sheikh v. State of Maharashtra [Mohd. Iqbal Madar

Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] wherein it was observed that some courts keep the application for "default bail" pending for some days so that in the meantime a charge-sheet is submitted. While such a practice both on the part of the prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for "default bail" during the interregnum when the statutory period for filing the charge-sheet or challan expires and the submission of the charge-sheet or challan in court.

Procedure for obtaining default bail

40. In the present case, it was also argued by the learned counsel for the State that the petitioner did not apply for "default bail" on or after 4-1-2017 till 24-1-2017 on which date his indefeasible right got extinguished on the filing of the charge-sheet. Strictly speaking, this is correct since the petitioner applied for regular bail on 11-1-2017 in the Gauhati High Court — he made no specific application for grant of "default bail". However, the application for regular bail filed by the accused on 11-1-2017 did advert to the statutory period for filing a charge-sheet having expired and that perhaps no charge-sheet had in fact being filed. In any event, this issue was argued by

the learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court [Rakesh Kumar Paul v. State of Assam, 2017 SCC OnLine Gau 573] did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the petitioner did not make any application for default bail — such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for "default bail" or an oral application for "default bail" is of no consequence. The court concerned must deal with such an application by considering the statutory requirements, namely, whether the statutory period for filing a charge-sheet or challan has expired, whether the charge-sheet or challan has been filed and whether the accused is prepared to and does furnish bail.

41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus

and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court.

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Application of the law to the petitioner

45. On 11-1-2017 Rakesh Kumar Paul v. State of Assam [Rakesh Kumar Paul v. State of Assam, 2017 SCC OnLine Gau 573] when the High Court dismissed the application for bail filed by the petitioner, he had an indefeasible right to the grant of "default bail" since the statutory period of 60 days for filing a charge-sheet had expired, no charge-sheet or challan had been filed against him (it was filed only on 24-1-2017) and the petitioner had orally applied for "default bail". Under these circumstances, the only course open to the High Court on 11-1-2017 was to enquire from the petitioner whether he was prepared to furnish bail and if so then to grant him "default bail" on reasonable conditions. Unfortunately, this was completely overlooked by the High Court.

15. In the aforesaid authorities, it has been specifically held that immediately on the completion of the stipulated period, the accused gets an indefeasible right which is held as an integral part of the

fundamental right to personal liberty under Article 21 of the Constitution of India.

16. The facts and circumstances of the case are also required to be looked into. Admittedly, in the above case, all the revision petitioners were not arrested on the same day. However, their date of arrest and remanding them to custody was different and in fact the learned counsel for the revision petitioner has prepared a chart and has filed the same before the court which is extracted and reads as follows;

Accused	**Date of Arrest**	**Date of remand**
A-1 Jagadish	25.08.2025	26.08.2025
A-2 Kiran	16.07.2025	17.07.2025
A-3 Vimal Raju	16.07.2025	17.07.2025
A-4 Anil Kumar	10.11.2025	10.11.2025
A-6 Pradeep	16.07.2025	17.07.2025
A-7 Madan	16.07.2025	17.07.2025
A-8 Samuel	16.07.2025	17.07.2025
A-9 Arun Kumar	20.07.2025	20.07.2025

A-10 Naveen Kumar	20.07.2025	20.07.2025
A-11 Auto Shiva	22.07.2025	23.07.2025
A-12 Manoj	22.07.2025	23.07.2025
A-13 Prasad	22.07.2025	23.07.2025
A-14 Narasimha Murthy	22.07.2025	23.07.2025
A-16 Sudarshan	22.07.2025	23.07.2025
A-17 Avinash	22.07.2025	23.07.2025
A-18 Patrik	24.07.2025	25.07.2025

17. When the aforesaid aspect is considered, the question which crops up is can different dates be considered for calculating the period of remand for the purpose of default bail. It is settled law that the date of first remand is required to be considered. Even otherwise, this Court by its order dated 17.10.2025 had extended the time for completion of investigation by 45 days which was challenged before the Hon'ble High Court of Karnataka in Crl.Petition No.15186/2025 which was rejected on 28.11.2025. The order of extension had attained finality and thereafter another

extension was sought wherein this Court had granted a further period of 30 days which was subsisting 27.12.2025. The trial court has considered in detail about the various facets of the provision of Sec.167(2) of Cr.P.C., which is akin to the provisions of Sec.187(3) of Cr.P.C. In the judgment which is relied upon by the committal court reported in **(2001)5 SCC 453 (Uday Mohanlal Acharya Vs. State of Maharashtra)**, the aforesaid aspects are discussed as below:

> ***B.N. Agrawal, J. (partly dissenting)— I have perused the judgment of my learned brother Pattanaik, J., for whom I have the highest regard and while agreeing with him with respect to Conclusions 1 to 5, I find myself unable to agree on Conclusion 6, enumerated hereunder, upon which alone decision of this appeal is dependent, and observations and direction connected therewith: (para 13 above)***
>
> ***"The expression 'if not already availed of' used by this Court in Sanjay Dutt v. State through CBI (II) [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other***

> ***words, on expiry of the period specified in para (a) of the proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same."***

18. When the judgment of the Hon'ble Apex Court is carefully appreciated, it would indicate that if the default bail application and also the final report are filed on the same day, the court is required to consider the question of accruing of indefeasible right vis-à-vis that of filing of the final report on the same day. However, in order to better appreciate the aforesaid aspects, the authority which has been relied upon by the learned SPP is required to be considered. In the judgment reported in ***Naresh Netram Nagpure Vs. State of Maharashtra***, it has been discussed as below:

16] A question remains, whether or not refusal of sanction by the A.D.G.P. under the provisions of the MCOC Act by itself will invalidate the grant of extension of period up to 180 days and would automatically reduce the judicial custody remand to it's original period of 90 days, especially when the extension had been granted under a judicial order, not challenged by the petitioners. It is to be noted the investigation for an offence and cognizance of the offence under the provisions of MOCC Act are governed by Section 23 of the MCOC Act, which are reproduced here.

"23. Cognizance of, and investigation into, an offence - (1) Notwithstanding anything contained in the Code, - Section
(a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;
(b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.
(2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police."

17] It is worthy to note here that the power to extend the period to complete the investigation up to 180 days is exercised under Section 167(2) of

Cr.P.C. by invocation of provisions made under Section 21 of the MCOC Act and whereas power to grant or refuse sanction to prosecute has it's source in Section 23 of the MCOC Act. Former power is exercised by the Court and latter power by a Police Officer. Objects of both kinds of powers are different. Custody extension is done for, inter alia, ensuring effective and speedy investigation, without any hindrance, while sanction is necessary to enable the Special Court to take cognizance of an offence under the MCOC Act, which is disclosed by the charge-sheet. In other words, former power exists for facilitating the investigation, while the latter power is to facilitate trial of the accused. Thus, both these powers operate in different fields. After considering the magnitude of the investigation required in a particular case, the Special Judge enables in depth investigation by extending custody period, and whereas, there is an embargo created by Section 23(2) of the MCOC Act on the cognizance taking by the Special Court without previous sanction of the A.D.G.P. The purpose of incorporating such embargo is to provide double filter before roping in anybody under the stringent provisions of law. 18] Thus, extending further time of 90 days for completing the investigation by the Special Judge is one thing and giving sanction by the A.D.G.P. is a different thing. Once, the Special Court after giving reasons has extended the period of investigation up to 180 days, the refusal of sanction will not take away the extended period of 90 days granted by the Special Court or even curtail the extended period

granted by the Special Court. The detention here was authorized by a legal order of the Court under Section 21(2)(b) of the MCOC Act, after considering the material then available with police and with reasoned order and it was never challenged and, therefore, it became a final order. The detention of the petitioners after 90 days thus can not be said to be unauthorized detention.

19] Further, it is not the case of the petitioners that the prosecution acted in a mala fide manner and with intent to detain the petitioners, invoked the provisions of the MCOC Act. Rather, the record shows that the prosecution started investigation after approval from the A.D.G.P. and got extension of time through reasoned order passed by the Special Court and, therefore, the prosecution cannot be blamed.

20] For the aforesaid reasons, we do not find force in the argument of the learned Senior Counsel for the petitioners that in the wake of refusal of sanction by the A.D.G.P., the authorized period of detention would reduce to 90 days and any further detention would be unauthorized. Thus, the period for completing the investigation here would have expired only on completion of 180 days i.e. on 23/08/2022 and not before that.

21] The issue can be examined from a different angle. If we assume for the sake of argument that the effect of the order refusing sanction to prosecute the accused as amounting to not

disclosing of any offence under the MCOC Act, the further consequence thereof would, at the most, be that the custody extension order will cease to have any effect at the end of the day on which sanction is refused and till that day, the extension order would have to be held as valid. Even from this view point, the petitioners are not entitled to be released on default bail as the essential condition required for accrual of indefeasible right under Section 167(2) of Cr.P.C. to the petitioners is not fulfilled. This can be seen from the facts available on record, which show that charge-sheet has been filed on 22/08/2022 and on the same day, the application under Section 167(2) of Cr.P.C. was moved by the petitioners. Of course, it is the contention of the learned Counsel for the petitioners that the application of the petitioners was filed about 30 minutes before the charge- sheet was filed and, therefore, their application was first in point of time and as such there was an accrual of right of default bail to the petitioners. The argument, in our view, is really not relevant for deciding the controversy involved in the petition. The reason being that, the day on which sanction was refused by the authority, would have to be considered to be the day on which the extended period of custody expired and, therefore, the right to seek default bail would arise on the immediate next day. It also means that when sanction is refused, as for example on Monday, this day of Monday would be the last day on which extended period of custody would come to an end, though in normal circumstances it would have

> ***expired later, and therefore, the Investigating Officer would have to take care that he files the final report on that day or otherwise he risks the grant of default bail to the accused. This is because of the fact that the provisions made under Section 167(2) of Cr.P.C. speak not in terms of hours, minutes and seconds, but only in terms of number of days completed. For the purpose of ascertaining as to when the period of authorized custody comes to an end, it is only the number of completed days, which is relevant and not the time at which the event having the effect of rendering the custody as unauthorized took place.***
> ***22] If we examine the issue from the above alternative, which we have proposed only by way of assumption and for the sake of argument, still the petitioners cannot be said to be fulfilling the essential requirement of Section 167(2) of Cr.P.C. in order to avail of right of default bail. The application under Section 167(2) of Cr.P.C. was filed by them on 22/08/2022 and that was the day when the sanction to prosecute the petitioners was refused. It was thus the day which became the last day of their authorized custody, which was otherwise extended up to 23/08/2022. Therefore, the right to avail of default bail in terms of Section 167(2) of Cr.P.C. really arose in their favour only after 23/08/2022.***

19. The authority on which it is relied upon by the prosecution consists of the facts which are quite

similar to the case on hand. Even in that case, the provisions of MCOC were invoked which is very much akin to KCOCA dealing with organized crimes. In that case also the period of limitation was to be extended and furthermore it was extended to a period of 180 days. Then in that case, the sanction was to be accorded by the ADGP, which was subsequently denied. The Division Bench of the Hon'ble High Court of Judicature at Mumbai had specifically held that the refusal of sanction by ADGP for invoking the Special enactment will not make the period of detention as unauthorized. It has been specifically held in that judgment that the period of completing the investigation would have expired only on the completion of 180 days which was the extended period for completing the investigation. Even in the case on hand, the facts are quite similar wherein at the initial stage this court had extended the period for completion of investigation by 45 days and the same was confirmed by the Hon'ble

High Court of Karnataka. Later on, this court had extended the period of limitation by another 30 days for completing the investigation which would mean that the investigation was required to be completed on or before 28.12.2025. In the aforesaid judgment, the Hon'ble High Court has clearly held that the earlier order of extension which was passed by a legal order cannot be extinguished by refusal to grant sanction for invoking the special enactment. Even in the case on hand, the same is applicable since the last date to file the final report was 27.12.2025. However, on 19.12.2025 it was submitted that the provision of KCOCA was quashed by the kind orders of the Hon'ble High Court of Karnataka and on that day no default bail application was filed as there was no clarity that whether the KCOCA was quashed against the petitioner therein or against all the accused persons. The certified copy which is obtained and furnished in the court immediately on the next working day i.e., on 22.12.2025, would indicate that invocation of KCOCA in the crime itself was quashed. As such, as on 19.12.2025, the invoking KCOCA was quashed. At the same time, the period for filing the final report was extended by an order passed by this court which was not challenged and hence it had attained finality. As such, the final report was to be filed on 28.12.2025. The records indicate that the final report was filed on 22.12.2025 at about 05.15 p.m., and on the very same day at 12.00 p.m., the default bail application was also filed. In the aforesaid authority, it has been discussed that for the purpose of ascertaining as to when the period of authorized custody comes to an end, it has to be construed on the basis of number of completed days and not the time at which the default bail application was filed. In other words, if the default application and also the final report are placed on the same day, the court is required to apply its mind and consider whether an indefeasible right had accrued in favour of the accused persons. Even in the case on hand, on the date of filing the default bail application itself, the final report was also filed. The learned counsel for the revision petitioner has relied upon the judgment of the Hon'ble High Court of Bombay reported in **2024 SCC Online BOM 940 (Dinesh Ganesh Indre and Others Vs. State of Maharashtra)**, wherein it has been held by relying upon as follows;

> ***41. The answer to the question cannot be premised on the legality of the order extending the period of detention. Refusal to grant sanction to prosecute will not relate back to render the order of the Special Court extending the time for investigation illegal. Therefore, the detention beyond the period of 90 days pursuant, to the lawful order passed by the Special Court, cannot be said to be illegal or unauthorized. However, once the competent authority refuses to grant sanction for prosecution, the justification for continued detention by invoking the provisions contained in Section 21(2) of the Act, 1999 may become incongruous. It is in this context, the observations of the Division Bench that the extended period comes to an end on the day the competent authority refuses to grant sanction under Section 23(2) of the Act, 1999 appear pertinent and determinative.***

> ***42. Secondly, as noted above, the question has to be decided keeping in view the enunciation by the Supreme Court that Section 167(2) of the Code is the subset of overarching fundamental right guaranteed under Article 21 of the Constitution of India. The determination should be informed by the spirit of imperativeness of upholding the fundamental right to life and personal liberty under Article 21.***

20. Though in the aforesaid judgment, discussions are made with respect to the findings rendered by the Division Bench of the Bombay High Court, it is relevant to note the factual aspect of the case are in par with the facts discussed in the Division Bench of the Mumbai High Court.

21. Though in the aforesaid authority, the Hon'ble Single Judge has negated to some extent about the findings of the Division Bench, in my humble opinion, the law of precedent requires to follow the findings of the Division Bench. Even otherwise it is relevant to note that the kind orders of the Hon'ble High

Court of Karnataka, came to be passed on 19.12.2025. Immediately thereafter, on 22.12.2025, the default bail application was moved in the morning session and by the time the learned committal Judge applied mind on the default bail application, the final report was also filed before the court. As such, the contention of the revision petitioners is not correct. Under the circumstances, the findings rendered by the trial court is apt and correct and accordingly the point for consideration is answered in the **negative**.

22. **Point No.2**: In view of my findings on point No.1, I proceed to pass the following:

ORDER

The Criminal Revision Petition filed by the Revision Petitioners under Sec.438 r/w 440 of BNSS, 2023 is hereby dismissed.

The order passed by the learned XLII Addl. Chief Metropolitan Magistrate, Bengaluru dated

26.12.2025 in Crime No.73/2025, rejecting the default bail application filed by the petitioners under Sec.187(3) of BNSS, 2023 dated 22.12.2025 is confirmed.

The office is hereby further directed to send a copy of the order to the learned XLII ACJM, Bengaluru forthwith.

(Dictated to the Stenographer Grade-I directly on the Computer, pronounced and thereafter, transcribed by him, revised and corrected by me and signed by me ***2nd day of February, 2026****)*

(SANTHOSH GAJANAN BHAT)
LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases related to elected former and sitting MPs/MLAs in the State of Karnataka)

SANTHOSHGAJANANABHAT

Digitally signed by SANTHOSHGAJANANABHAT
Date: 2026.02.06 12:57:23 +0530