

FIR No.121 dated 06.08.2024,
U/S 109, 115 (2), 118, 190, 191 BNS,
& Section 25 of Arms Act,
Police Station Nihal Singh Wala.
Rapat No.9 dated 13.08.2024

Present: Shri Kuldip Singh Sidhu, Advocate for the applicants/accused.
Shri Gurdeep Singh, A.P.P for the State.

1. Bail application presented under Section 187 (3) of BNSS. It be registered. Notice of the bail application was given to learned APP for the State, who was present in the Court.

2. Heard on the application moved on behalf of applicants-accused under Section 187 (3) of BNSS for releasing the applicants-accused on bail, in case bearing FIR No.121 dated 06.08.2024, under Section 109, 115 (2), 118, 190, 191 BNS & Section 25 of Arms Act,, Police Station Nihal Singh Wala, on the ground that applicants-accused have been arrested by the police on 13.08.2024 and was produced before the learned Court and since then they are in custody. As further averred, the statutory period of 90 days for the presentation of the investigation report Section 173 Cr.P.C./193 of BNSS (Challan) by the prosecution agency has elapsed, but so far no investigation report has been presented by the police. As such, applicants/accused has become entitled for bail Under Section 167(2) of Criminal Procedure Code.

3. On the other hand, the learned APP for the State has argued that the offences under Section 109, 115 (2), 118, 190, 191 BNS & Section 25 of Arms Act are a henious offences and maximum awarded for the said offences is life imprisonment and hence as per Section 187 (3) of BNSS the challan in said like

cases is to be filed within 90 days. The challan in this case has been presented before the filing of the present bail application and hence the right of bail under Section 187 (3) of BNSS is not available to the accused now.

4. I have heard the submissions of the learned counsel for the applicant/accused Satpal Singh @ Satti and the learned APP for the State and had called for the report of the Criminal Ahlmad attached to this Court, who has reported that the police challan has been presented today in the above titled case. The relevant provision of Section 187 (3) of BNSS for better understanding are reproduced hereinafter:-

Proviso to Section 187 (3) of BNSS says that:-

(a) the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding,

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

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

5. Perusal of the challan reveals that the accused persons have been nominated for having committed the aforesaid offences. Moreover, as per the report of Ahlmad, the challan had already been filed by the police, as such, the right of the accused to be released on default bail U/s 187 (3) of BNSS has been defeated.

6. To support my said conclusion, I place my reliance upon case titled as **Pragyna Singh Thakur Versus State of Maharashtra 2012 (1) RCR Criminal 302 # 273521, SC**, wherein **Hon'ble Mr.Justice J.M.Panchal and Hon'ble Mr.Justice H.L.Gokhale** had held that the right under Section 187 (3) of BNSS to be released on bail on default if charge sheet is not filed within 90 days from the date of first remand **is not an absolute or indefeasible right. The said right would be lost if charge sheet is filed and would not survive after the filing of the charge sheet. In other words, even if an application for bail is filed on the ground that charge sheet was not filed within 90 days, but before the consideration of the same and before being released on bail, if charge sheet is filed, the said right to be released on bail would be lost.** After the filing of the charge sheet, if the accused is to be released on bail, it can be only on merits.

7. This is quite evident from Constitution Bench decision of this Court in *Sanjay Dutt v. State, 1994(3) R.C.R.(Criminal) 684 : (1994)5 SCC 410* [Paras 48 and 53(2)(b)] and their lordship further held that this settled principle has been reiterated time and again in the following decisions of this Court :

(1) *State of M.P. v. Rustam and Others, 1995 Supp. (3) SCC 221 para 4,*

(2) *Dr. Bipin Shantilal Panchal v. State of Gujarat, 1996(1) R.C.R. (Criminal) 505 : (1996)1 SCC 718 para 4.* It may be mentioned that this judgment was delivered by a Three Judge Bench of this Court.

(3) *Dinesh Dalmia v. CBI, 2007(4) R.C.R.(Criminal) 283 : 2007(5) R.A.J. 182 : (2007)8 SCC 770 para 39*, and

(4) *Mustaq Ahmed Mohammed Isak and others v. State of Maharashtra, 2010(5) R.C.R.(Criminal) 122 : (2009)7 SCC 480 para 12*.

8. Thus, in view of the law so laid down by the Hon'ble Supreme Court as discussed above, applicable to the facts and circumstances of this case, the right of the accused to be released on default bail U/s 187 (3) of BNSS is accordingly not available to him as the challan has already been presented before the application for bail was considered and before the bail bonds were actually to be submitted by him. Hence for the reasons as discussed above, present bail application is hereby dismissed, being devoid of any merit.

9. Any observation made over here shall not be construed to be the expression of mind over the merit of the case, as it was only for a limited purpose for deciding the application in hand only.

Dt.14.11.2024.
Yograj Garg, STG-II.

(Shivangi Sangar), PCS,
Sub Divisional Judicial Magistrate,
Nihal Singh Wala,
(UID No.PB-0392).