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**In The High Court for the States of Punjab and Haryana
At Chandigarh**

**CRA-D-260-2022 (O&M)
Date of Decision:- 19.12.2025**

Avtar Singh ... Appellant

Versus

State of Punjab ... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MRS. RAMESH KUMARI**

Present: Mr. Vipul Jindal, Advocate,
for the applicant/appellant.

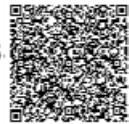
Mr. Sidharth Attri, AAG, Punjab,
assisted by ASI Ghanshyam Sundar.

Mr. R.K.Kapoor and Mr. Shobit Phutela, Advocates,
for the complainant.

GURVINDER SINGH GILL, J.

CRM-48051-2025:

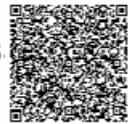
1. The application i.e. CRM-48051-2025 has been filed on behalf of the applicant – Avtar Singh under Section 21(5) of the National Investigation Agency Act, 2008 read with Section 528 BNSS for condonation of delay of 1415 days in filing the appeal i.e. CRA-D-260-2022. The applicant, in the annexed appeal, assails order dated 11.04.2019 passed by the Learned Additional Sessions Judge/Exclusive Court, Amritsar, vide which his revision petition against order dated 25.02.2019 passed by the SDJM,



(2)

Ajnala, seeking default bail in terms of Section 167(2) Cr.P.C. (now Section 187 BNSS) in a case arising out of FIR No.121 dated 18.11.2018 registered at Police Station Raja Sansi, Amritsar, under Sections 302, 307, 452, 341, 427, 34 IPC; Section 25 of the Arms Act; Sections 3, 4, 5, 6 of the Explosive Act and Sections 13, 16, 18, 18-B of the Unlawful Activities (Prevention) Act, 1967, has been dismissed.

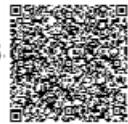
2. Learned counsel for the applicant, while pressing upon the aforesaid application for condonation of delay of 1415 days, submitted that as a matter of fact the applicant – Avtar Singh alongwith co-accused Bikramjit Singh had applied jointly for concession of default bail in the FIR in question, which was dismissed by learned Sub Divisional Judicial Magistrate, Ajnala on 25.02.2019 and that a joint revision petition preferred against the said order i.e. Criminal Revision No.133/2019, was also dismissed by the learned Additional Sessions Judge/Exclusive Court, Amritsar on 11.04.2019. While the applicant – Avtar Singh did not approach this Court against order dated 11.04.2019, co-accused – Bikramjit Singh had filed a petition in this Court i.e. CRM-M-19259-2019, seeking bail as per provisions of Section 167(2)(a)(i)(ii) Cr.P.C., which also came to be dismissed on 30.10.2019. Thereafter, co-accused – Bikramjit Singh approached the Hon'ble Supreme Court, wherein his appeal i.e. Criminal Appeal No.667 of 2020 (SLP (Criminal) No.2933 of 2020) was accepted and he was granted default bail vide order dated 12.10.2020 in terms of provisions of Section 167(2) Cr.P.C.
3. Learned counsel submitted that unlike his co-accused – Bikramjit Singh, the applicant/appellant was not possessed of sufficient means to approach



(3)

this Court or Hon'ble the Supreme Court and it was only subsequently when Hon'ble the Supreme Court granted bail to co-accused – Bikramjit Singh that his relatives and friends arranged funds and approached this Court with a hope that he (applicant) may also be granted identical relief and filed a petition i.e. CRM-M-35642-2020 under Section 482 read with Section 167(2) Cr.P.C on 28.10.2020 i.e. within two weeks of the order passed in the case of co-accused – Bikramjit Singh by Hon'ble the Supreme Court. It has been submitted that later on the said petition i.e. CRM-M-35642-2020, came to be treated as an appeal i.e. CRA-D-260-2022 pursuant to order dated 28.01.2022 passed by learned Single Judge of this Court and that as such, the present appeal has been pending in this Court since the last about 5 years.

4. Learned counsel submitted that under these circumstances where an indefeasible right had accrued in favour of the applicant/appellant and since identically situated co-accused – Bikramjit Singh had already been extended the concession of default bail, the applicant who was a co-applicant with Bikramjit Singh when their joint application for default bail was declined, also deserves the similar concession particularly when on account of the protracted trial, his right to a speedy trial in terms of Section 21 of the Constitution also stands violated. Learned counsel for the applicant/appellant in order to hammer-forth his contention for condonation of delay places reliance upon a judgment of Bombay High Court reported as **Faizal Hasamali Mirza Vs. The State of Maharashtra & others, 2023 (4) Bom CR(Cri) 330.**



(4)

5. Opposing the application for condonation of delay, learned State counsel assisted by learned counsel for the complainant submitted that in view of a specific bar enshrined in Section 21 of the NIA Act, a delay beyond 90 days cannot be condoned under any circumstance. Learned State counsel in this context cited a judgment of Calcutta High Court reported as **Sheikh Rahamtulla & others Vs. National Investigation Agency, 2023 SCC OnLine Cal 493.** It has further been submitted that the instant appeal is in fact in the nature of a second revision inasmuch as after a petition under Section 167(2) Cr.P.C. had been dismissed by the SDJM, Ajnala on 25.02.2019, the accused had approached the Court of Additional Sessions Judge, Amritsar, by way of a revision petition i.e. Revision Petition No.133/2019, which was dismissed and as such, once his revision petition had been dismissed, the instant petition/appeal is virtually in the nature of a second revision, which would not be maintainable. It has further been submitted that, in any case, having regard to the nature of allegations and the serious crime in which the applicant is involved, there is no room for taking any lenient view. Learned State counsel, thus, prayed for dismissal of the application primarily on the ground that delay remains unexplained and being more than 90 days, cannot be condoned.
6. We have considered the rival submission addressed before this Court.
7. Before proceeding further, it is apposite to bear in mind the relevant developments in the case which for the sake of convenience are being reproduced herein under in chronological order:



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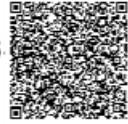
Sr. No.	Date/s	Events/Developments
1.	18.11.2018	FIR No.121 dated 18.11.2018, under Sections 302, 307, 452, 341, 427, 34 IPC; Section 25 of the Arms Act; Sections 3, 4, 5, 6 of the Explosive Act and Sections 13, 16, 18, 18-B of the UAPA Act <u>lodged</u> at Police Station Raja Sansi, Amritsar.
2.	22.11.2018	Co-accused Bikramjit Singh was arrested.
3.	24.11.2018	Accused <u>Avtar Singh (applicant)</u> was arrested.
4.	12.02.2019	Prosecution moved an application before the Illaqa Magistrate/SDJM, Ajnala, <u>seeking extension</u> of time for presentation of challan from 90 days to 180 days.
5.	13.02.2019	Learned SDJM, Ajnala <u>extended</u> the period for presentation of challan from 90 days to 180 days.
6.	19.02.2019	Period of 90 days expired qua co-accused Bikramjit Singh.
7.	21.02.2019	Period of <u>90 days</u> expired qua applicant/accused Avtar Singh.
8.	25.02.2019	Applicant/accused alongwith co-accused Bikramjit Singh <u>moved a joint application under Section 167(2) Cr.P.C.</u> seeking default bail before the SDJM, Ajnala, which came to be <u>dismissed</u> on the same very day primarily on the ground that the period for completion of investigation already stood extended upto 180 days vide order dated 13.02.2019. (Annexure P-2)
9.	06.03.2019	The applicant/accused alongwith co-accused Bikramjit Singh <u>preferred criminal revision</u> i.e. Revision Petition No.91/2019 <u>against order dated 13.02.2019</u> passed by the SDJM extending period from 90 days to 180 days.
10.	25.03.2019	<u>Revision Petition No.91/2019 was accepted</u> by the Additional Sessions Judge/Exclusive Court, Amritsar (being the 'Special Court') holding that SDJM was not competent to grant extension and that it is only the Special designated Court, which was competent to grant such extension. (Annexure P-4)
11.	26.03.2019	The applicant/accused alongwith co-accused Bikramjit Singh <u>preferred criminal revision</u> i.e. Revision Petition No.133/2019 <u>against order dated 25.02.2019</u> passed by the SDJM, Ajnala whereby joint application moved by them under Section 167(2) Cr.P.C. seeking default bail has been dismissed.
12	26.03.2019	The prosecution <u>presented the challan</u> against the accused in the Court of Additional Sessions Judge, Amritsar.
13.	08.04.2019	The applicant/accused alongwith co-accused Bikramjit Singh moved fresh bail application i.e. Bail Application No.1880/2019 under Section 167(2) Cr.P.C. read with Section 43-D(2) of Unlawful Activities (Prevention) Act before Additional Sessions Judge, Amritsar.
14.	11.04.2019	(i) <u>Revision Petition No.133/2019</u> preferred by the applicant/accused alongwith co-accused Bikramjit Singh against order dated 25.02.2019 declining default bail was also <u>dismissed</u> .



(6)

(Impugned order) (ii) Bail Application No.1880/2019 was dismissed by the Additional Sessions Judge observing that since challan has already been presented, the accused have lost their right for bail by way of default. (Annexure P-6)		
15.	30.10.2019	Petition i.e. CRM-M-19259-2019 seeking <u>bail</u> as per provisions of Section 167(2)(a)(i)(ii) Cr.P.C. <u>moved by co-accused – Bikramjit Singh</u> on 24.04.2019 was dismissed <u>by this Court</u> . (Annexure P-7)
16.	12.10.2020	Appeal i.e. Criminal Appeal No.667 of 2020 (SLP (Criminal) No.2933 of 2020) filed by co-accused Bikramjit Singh before <u>Hon’ble Supreme Court allowed</u> and the order dated 30.10.2019 (Annexure P-7) passed by this Court has been set aside and co-accused granted default bail. (Annexure P-8)
17.	06.07.2021	Review Petition moved by the complainant before the Hon’ble Supreme Court seeking review of order dated 12.10.2020 i.e. Review Petition (Crl.) D.No.24123/2020 in Criminal Appeal No.667/2020 dismissed.
18.	26.10.2020	Applicant/accused <u>filed a petition under Section 482</u> read with proviso (a) to Section 167(2) Cr.P.C. i.e. CRM-M-35642-2020 <u>before this Court seeking his release on default bail</u> .
19.	28.01.2022	Learned Single Judge ordered that CRM-M-35642-2020 be <u>treated as Appeal</u> and be listed before a Division Bench as an appeal under Section 21 of the NIA Act.
20.	22.03.2022	After soliciting orders from Hon’ble the Chief Justice, CRM-M-35642-2020 is ordered to be treated as Criminal Appeal i.e. CRA-D-260-2022 and is listed before the Division Bench.
21.	18.04.2022	The <u>complainant approached the Hon’ble Supreme Court</u> seeking interim relief i.e. stay of operation of order dated 28.01.2022 by way of filing SLP(Criminal) Diary No.11983/2022.
22.	09.05.2022	SLP(Criminal) Diary No.11983/2022 is ordered <u>to be dismissed as withdrawn</u> with liberty to urge all the contentions before the Division Bench.
23.	19.11.2025	Keeping in view the pendency of some of the applications for placing on record several annexures filed at various points of time, this Court directed the applicant/appellant – Avtar Singh to file an amended appeal.
24.	26.11.2025	Amended CRA-D-260-2022 accompanied by CRM-48051-2025 i.e. application for condonation of delay of 1415 days and CRM-48052-2025 i.e. application for placing on record the amended appeal filed. Hence, the instant amended appeal.

8. It is apposite to bear in mind the relevant provisions of the NIA Act pertaining to the maintainability of an appeal against an order passed by



(7)

the Special Court constituted under the NIA Act. Section 21 of the NIA Act reads as under:

“21. **Appeals.** - (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

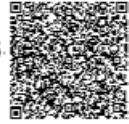
(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

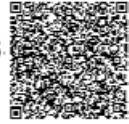
Provided further that no appeal shall be entertained after the expiry of period of ninety days.”

9. A perusal of Section 21 of the NIA Act, as reproduced above, shows that the limitation prescribed for assailing any order passed by the Special Court is thirty days and that the High Court under special circumstances may even condone delay to the extent of ninety days. Although it is a case where there is colossal delay of 1415 days in filing the appeal, but there are certain peculiar and special circumstances which impel this



Court to condone the delay including the fact that in case the instant appeal is not entertained, the applicant would not be left with any other remedy to avail of his right of default bail. The special circumstances in the present case justifying condonation of delay are enumerated hereinunder:

- (i) Unlike an appeal against dismissal of any ‘regular’ bail, wherein an accused has a right to file successive bail applications and even in case his appeal is not entertained by the High Court on one occasion on ground of limitation, he can still choose to file afresh before the Special Court and upon dismissal, he can again approach this Court, the case pertaining to ‘default bail’ would stand on a different footing inasmuch as seeking ‘default bail’ is a ‘one-time’ opportunity only.
- (ii) The applicant is entitled to the relief claimed on grounds of parity inasmuch as the identically situated co-accused, who had initially filed a joint application seeking default bail before the Special Court, which had been dismissed, had later on chosen to approach this Court and upon being unsuccessful in this Court, had also approached the Hon’ble Supreme Court, which had accepted his appeal and had granted relief of default bail. It was immediately after the co-accused got relief from Hon’ble the Supreme Court, the present applicant chose to approach this Court.



(9)

(iii) That the applicant has been in custody since the last about 7 years and the prosecution has been able to examine only 60 PWs out of cited 128 PWs.

(iv) The ground of insufficiency of means to approach this Court or Hon'ble the Supreme Court earlier, as the co-accused had approached, could also be accepted as every person may not be in a position to engage a counsel before Hon'ble the Supreme Court. It is apparent that when there was a ray of hope upon co-accused having been granted bail by Hon'ble the Supreme Court in the year 2020, the applicant's friends and relatives, after arranging funds, filed this petition/appeal before this Court.

10. Having regard to the aforestated peculiar circumstances particularly the fact that the Hon'ble Supreme Court has already granted default bail to the co-accused, who had also applied for grant of default bail by way of moving a joint application with the applicant, which was dismissed by a common order, this Court finds that it is a special case where indulgence could be shown so as to condone the delay and to maintain parity.

11. It may here be mentioned that there are conflicting judgments of various High Courts pertaining to the powers of the Courts to condone the delay beyond ninety days and as of now the said issue is pending adjudication before the Hon'ble Supreme Court and the matter is stated to be fixed in the month of March, 2026 without there being any kind of interim directions.



(10)

12. In view of the discussion made above particularly on ground of parity wherein co-accused, who was a co-applicant with the applicant herein when the joint application for default bail was dismissed by a common order, has been granted bail by Hon'ble the Apex Court and bearing in mind that it is a case of default bail, which is 'one time' opportunity available to the applicant, unlike an application for grant of regular bail, we are of the opinion that a lenient approach can be taken so as to extend a similar benefit to the applicant as extended to the identically situated co-accused, who has been granted relief by the Hon'ble Supreme Court by setting aside the order of this Court which had upheld the common order declining default bail, particularly when it is almost 7 years that the applicant has been languishing in jail and as on date only 60 PWs out of cited 128 PWs has been examined. The application i.e. CRM-48051-2025, as such, is accepted and the delay of 1415 days in filing the accompanying appeal is hereby condoned.

CRA-D-260-2022

13. The matter in hand pertains to a case arising out of FIR No.121 dated 18.11.2018 registered at Police Station Raja Sansi, Amritsar, under Sections 302, 307, 452, 341, 427, 34 IPC; Section 25 of the Arms Act; Sections 3, 4, 5, 6 of the Explosive Act and Sections 13, 16, 18, 18-B of the Unlawful Activities (Prevention) Act. The said FIR was lodged at the instance of one Arjan Singh, wherein it has been alleged that on 18.11.2018, when a *Satsang* was going on at Nirankari Bhawan, Raja Sansi, Amritsar, where about 200 devotees were present, then two young boys came on a motor-cycle and lobbed a hand grenade on account of



(11)

which an explosion took place and as many as 22 persons present there sustained serious injuries. Three of such injured also succumbed to the injuries. The appellant is stated to be one of those two persons.

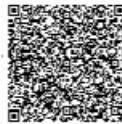
14. Learned counsel for the appellant submits that he has falsely been implicated in the present case. It has further been submitted that since the appellant has been behind bars for a substantial period of 7 years, he deserves the concession of default bail particularly when his co-accused Bikramjit Singh has already been granted the same concession way back in the year 2020.
15. Opposing the appeal, learned State counsel assisted by learned counsel for the complainant submitted that since the appellant apart from the present case stands involved in 3 more cases, it will not be in societal interest to release him on bail. Learned State counsel has today filed the custody certificate, which is taken on record. As per the said custody certificate, the applicant/appellant has undergone an actual sentence of 06 years, 11 months & 29 days. It has also been informed that as on date out of cited 128 PWs, only 60 PWs have already been examined.
16. The appellant having been arrested on 24.11.2018, the police was expected to file challan within the prescribed period of 90 days i.e. by 21.02.2019, but the prosecution before expiry of the said period of 90 days moved an application to the Illaqa Magistrate i.e. SDJM, Ajnala seeking extension of the said period of 90 days to 180 days, which was accepted vide order dated 13.02.2019. On 25.02.2019, appellant – Avtar Singh alongwith co-accused Bikramjit Singh moved a joint application



(12)

seeking default bail, but the same was dismissed the same very day on the ground that the period of presentation of challan already stood extended upto 180 days. Thereafter, appellant alongwith co-accused Bikramjit Singh preferred Revision Petition No.91/2019 before the Additional Sessions Judge, Amritsar against the order dated 13.02.2019 extending the period of presentation of challan, which was allowed vide order dated 25.03.2019. On the next day i.e. 26.03.2019, while the prosecution presented the challan, both the accused also filed Revision Petition No.133/2019 before the Additional Sessions Judge, Amritsar against the order dated 25.02.2019 dismissing their joint application seeking default bail. After presentation of challan, appellant and the co-accused Bikramjit Singh moved Bail Application No.1880/2019 on 08.04.2019. Subsequently, vide two separate orders dated 11.04.2019, Additional Sessions Judge, Amritsar, dismissed both the petitions moved by the appellant as well as co-accused Bikramjit Singh i.e. Revision Petition No.133/2019 and Bail Application No.1880/2019.

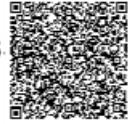
17. After the dismissal of Revision Petition No.133/2019 and Bail Application No.1880/2019 filed jointly by the appellant as well as co-accused Bikramjit Singh, it was co-accused Bikramjit Singh alone, who approached this Court seeking default bail by way of filing CRM-M-19259-2019, which was also dismissed vide order dated 30.10.2019. Aggrieved by order dated 30.10.2019, co-accused Bikramjit Singh approached the Hon'ble Supreme Court by filing Criminal Appeal No.667 of 2020 (SLP (Criminal) No.2933 of 2020), which was accepted vide



(13)

order dated 12.10.2020 and he (Bikramjit Singh) was granted default bail in terms of provisions of Section 167(2) Cr.P.C.

18. The aforesaid factual position is not disputed by learned State counsel, who has however vehemently opposed the appeal primarily on the ground that the appellant stands involved in a commission of heinous offence, wherein apart from 3 deaths having taken place, it is the stability of the Nation, which has been targeted by the accused by lobbing a grenade at a religious congregation. Learned State counsel has also argued that the instant appeal is virtually in the nature of a second revision, which is barred under the Provisions of Cr.P.C. (now BNSS) inasmuch as a revision against the order dismissing an application for default bail had been dismissed by the Court of Additional Sessions Judge, Amritsar.
19. We are not impressed with the said argument inasmuch as it is in fact a case where the appellant had initially filed a quashing petition under Section 482 Cr.P.C. so as to assail order dated 11.04.2019, as this Court while exercising inherent powers under Section 482 Cr.P.C. in exceptional circumstances has been interfering even in orders passed by the Revisional Court in case the same are found to be resulting in miscarriage of justice or smack of perversity. In any case, the scheme of the NIA Act does provide for an appeal against an order passed by the Special Court. The impugned order, in any case, was passed by the Special Court and under these circumstances, the appeal would very well be maintainable.

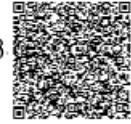


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20. The controversy in the case in hand narrows down to the relevant dates. The appellant having been arrested on 24.11.2018, the period of 90 days was to expire on 21.02.2019. The prosecution, however, had chosen to move an application before the Illaqa Magistrate/SDJM, Ajnala, for extension of time a few days before hand i.e. on 12.02.2019, which was accepted on 13.02.2019. Such extension for presentation of challan was, however, set aside upon a joint revision petition having been filed by the Additional Sessions Judge/Exclusive Court, Amritsar on 25.03.2019. The consequential effect of the setting aside of that order was that as on date when the appellant alongwith co-accused Bikramjit Singh had moved a joint application seeking default bail on 25.02.2019, the period of 90 days had already expired and there was no valid order pertaining to extension of prescribed time period for filing challan. As such, an indefeasible and an inalienable right came to be vested in the appellant for seeking default bail and he accordingly opted to exercise the same by moving an appropriate application on 25.02.2019. The law pertaining to grant of default bail in terms of Section 167(2) Cr.P.C. is well settled.

21. A Constitution Bench of Hon'ble Apex Court in **Sanjay Dutt Vs. State through CBI (1994) 5 SCC 410**, while interpreting the scope of right of accused to be released on default bail in terms of section 167(2) Cr.P.C., held as under:

“48. We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4)(bb) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of



the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of.”

22. A Three Judge Bench of Hon'ble Supreme Court in **Uday Mohanlal Acharya Vs. State of Maharashtra (2001) 5 SCC 453** dwelled on the expression “if already not availed of” in *Sanjay Dutt's case* (supra) and held:

“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.....

..... 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



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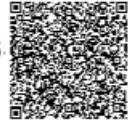
purpose and the object for which the provision in question was brought on to the statute-book. In such a case, therefore, even if the application for consideration of an order of being released on bail is posted before the court after some length of time, or even if the Magistrate refuses the application 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.....

.....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.

..... The expression “if not already availed of” used by this Court in Sanjay Dutt case [(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)

23. The aforesaid view has been followed in judgment rendered by Three Judge Bench in **Sayed Mohd. Ahmad Kazmi [(2012) 12 SCC 1 : (2013) 2 SCC (Cri) 488]** and again in **Union of India v. Nirala Yadav (2014) 9 SCC 457** which exhaustively discussed the entire case law on the subject.



In yet another judgment rendered by a Three Judge Bench in **Rakesh Kumar Paul v. State of Assam (2017) 15 SCC 67**, Hon'ble Supreme Court went to the extent of holding that even an oral application on behalf of accused for his release on default bail will suffice and that the Courts are not expected to delve into technicalities where right to liberty is involved. The relevant extracts are reproduced herein-under:

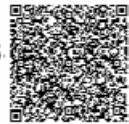
“40 In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for “default bail” or an oral application for “default bail” is of no consequence. The court concerned must deal with such an application by considering the statutory requirements, namely, whether the statutory period for filing a chargesheet 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.”

(emphasis supplied)

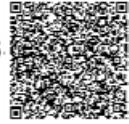
24. Hon'ble Apex Court while dealing with the case of identically situated co-accused – Bikramjit Singh, whose application (joint application) for default bail had been dismissed by SDJM, Ajnala vide same very impugned order dated 25.02.2019 (common order as both accused had applied for bail joint by way of joint application), held as under:

“ 28. 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.

29. *On the facts of the present case, the High Court was wholly incorrect in stating that once the challan was presented by the prosecution on 25.03.2019 as an application was filed by the Appellant on 26.03.2019, the Appellant is not entitled to default bail. First and foremost, the High Court has got the dates all wrong. The application that was made for default bail was made on or before 25.02.2019 and not 26.03.2019. The charge sheet was filed on 26.03.2019 and not 25.03.2019. The fact that this application was wrongly dismissed on 25.02.2019 would make no difference and ought to have been corrected in revision. The sole ground for dismissing the application was that the time of 90 days had already been extended by the learned Sub-Divisional Judicial Magistrate, Ajnala by his order dated 13.02.2019. This Order was correctly set aside by the Special Court by its judgment dated 25.03.2019, holding that under the UAPA read with the NIA Act, the Special Court alone had jurisdiction to extend time to 180 days under the first proviso in Section 43-D(2)(b). The fact that the Appellant filed yet another application for default bail on 08.04.2019, would not mean that this application would wipe out the effect of the earlier application that had been wrongly decided. We must not forget that we are dealing with the personal liberty of an accused under a statute which imposes drastic punishments. The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is,*



(19)

therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled. This being the case, we set aside the judgment of the High Court. The Appellant will now be entitled to be released on “default bail” under Section 167(2) of the Code, as amended by Section 43-D of the UAPA. However, we make it clear that this does not prohibit or otherwise prevent the arrest or re-arrest of the petitioner on cogent grounds, and upon arrest or re-arrest, the petitioner is entitled to petition for the grant of regular bail which application should be considered on its own merit. We also make it clear that this judgement will have no impact on the arrest of the petitioner in any other case.

30. *The appeal is, accordingly, allowed, and the impugned judgment of the High Court is set aside”*
25. In view of the discussion made above, there is no room to come to a conclusion other than that in the instant case the prosecution had not presented the challan within the prescribed period of 90 days, which expired on 21.02.2019 and thereafter the appellant alongwith co-accused had moved an application seeking default bail which came to be dismissed primarily on the ground that the period of 90 days stood extended upto 180 days, whereas the said order of extension was subsequently set aside by the Additional Sessions Judge/Exclusive Court, Amritsar and thus, there was no extension of time and the accused was required to be released on bail having specifically approached for the same. Identically situated co-accused – Bikramjit Singh, who had applied jointly with the appellant for grant of default bail, had approached this Court and subsequently the Hon’ble Supreme Court and the Hon’ble Apex Court, while reiterating that the Illaqa Magistrate/SDJM, Ajnala was not competent to grant extension of period for concluding



(20)

investigation from 90 days to 180 days and that an indefeasible right for default bail came to be vested in the accused, granted bail to co-accused Bikramjit Singh by making strong observations in this regard. The appellant is situated on absolute parity with that of the co-accused – Bikramjit Singh and as such, he also deserves the same concession.

26. Consequently, the instant appeal is allowed and while setting aside impugned order dated 11.04.2019, it is ordered that the appellant be released on bail in terms of provisions of Section 167(2) Cr.P.C. (now Section 187 BNSS) on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court. The trial Court shall, however, insist upon an undertaking from the appellant that in case, he is absent or seeks exemption from his personal presence, he would not have any objection for recording of evidence in his absence and that his counsel shall duly cooperate for the same and that in case his counsel does not appear, the trial Court would be at liberty to appoint any free legal aid counsel on his behalf to facilitate conduct of proceedings without any obstruction.

**(GURVINDER SINGH GILL)
JUDGE**

19.12.2025
Vimal

**(RAMESH KUMARI)
JUDGE**

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**