17. Before we proceed to expand upon the parameters of the right to default bail under Section 167(2) as interpreted by various decisions of this Court, we find it pertinent to note the observations made by this Court in *Uday Mohanlal Acharya* on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows: (SCC p. 472, para 13)

"*13*. … 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."

17.1. Article 21 of the Constitution of India provides that "*no person shall be deprived of his life or personal liberty except according to procedure established by law*". It has been settled by a Constitution Bench of this Court in *Maneka Gandhi* v. *Union of India*9, that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2) CrPC and the safeguard of "default bail" contained in the proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law.

17.2. Under Section 167 of the Code of Criminal Procedure, 1898 ("the 1898 Code") which was in force prior to the enactment of the CrPC, the maximum period for which an accused could be remanded to custody, either police or judicial, was 15 days. However, since it was often unworkable to conclude complicated investigations within 15 days, a practice arose wherein investigating officers would file "preliminary charge-sheets" after the expiry of the remand period. The State would then request the Magistrate to postpone commencement of the trial and authorise further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final charge-sheet was filed. The Law Commission of India in Report No. 14 on *Reforms of the Judicial Administration* (Vol. II, 1948, pp. 758-760)pointed out that in many cases the accused were languishing for several months in custody without any final report being filed before the courts. It was also pointed out that there was conflict in judicial opinion as to whether the Magistrate to postpone commencement of the trial and authorise further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final charge-sheet was filed. The Law Commission of India in Report No. 14 on *Reforms of the Judicial Administration* (Vol. II, 1948, pp. 758-760) pointed out that in many cases the accused were languishing for several months in custody without any final report being filed before the courts. It was also pointed out that there was conflict in judicial opinion as to whether the Magistrate was bound to release the accused if the police report was not filed within 15 days.

17.3. Hence the Law Commission in Report No. 14 recommended the need for an appropriate provision specifically providing for continued remand after the expiry of 15 days, in a manner that "*while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual*". Further, that the legislature should prescribe a maximum time period beyond which no accused could be detained without filing of the police report before the Magistrate. It was pointed out that in England, even a person accused of grave offences such as treason could not be indefinitely detained in prison till commencement of the trial.

17.4. The suggestion made in Report No. 14 was reiterated by the Law Commission in Report No. 41 on *The Code of Criminal Procedure, 1898* (Vol. I, 1969, pp. 76-77). The Law Commission re-emphasised the need to guard against the misuse of Section 344 of the 1898 Code by filing "preliminary reports" for remanding the accused beyond the statutory period prescribed under Section 167. It was pointed out that this could lead to

serious abuse wherein "*the arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner*". Hence the Commission recommended fixing of a maximum time-limit of 60 days for remand. The Commission considered the reservation expressed earlier in Report No. 37 that such an extension may result in the 60-day period becoming a matter of routine. However, faith was expressed that proper supervision by the superior courts would help circumvent the same.

17.5. The suggestions made in Report No. 41 were taken note of and incorporated by the Central Government while drafting the Code of Criminal Procedure Bill in 1970. Ultimately, the 1898 Code was replaced by the present CrPC. The Statement of Objects andReasons of the CrPC provides that the Government took the following important considerations into account while evaluating the recommendations of the Law Commission:

"**3.** The recommendations of the Commission were examined carefully by the Government, keeping in view, among others, the following basic considerations: (*i*) an accused person should get a fair trial in accordance with the accepted principles of natural justice (*ii*) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and (*iii*) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community."

17.6. It was in this backdrop that Section 167(2) was enacted within the present day CrPC, providing for time-limits on the period of remand of the accused, proportionate to the seriousness of the offence committed, failing which the accused acquires the indefeasible right to bail. As is evident from the recommendations of the Law Commission mentioned supra, the intent of the legislature was to balance the need for sufficient time-limits to complete the investigation with the need to protect the civil liberties of the accused. Section 167(2) provides for a clear mandate that the investigative agency must collect the required evidence within the prescribed time period, failing which the accused can no longer be detained. This ensures that the investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This also ensures that the court takes cognizance of the case without any undue delay from the date of giving information of the offence, so that society at large does not lose faith and develop cynicism towards the criminal justice system.

17.7. Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three-Judge Bench of this Court in *Rakesh Kumar Paul* v. *State of Assam*10, which laid down certain seminal principles as to the interpretation of Section 167(2) CrPC though the questions of law involved were somewhat different from the present case. The questions before the three-Judge Bench in *Rakesh Kumar Paul*10 were whether, firstly, the 90-day remand extension under Section 167(2)(*a*) (*i*) would be applicable in respect of offences where the maximum period of imprisonment was 10 years,though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under Section 167(2) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90-day limit is only available in respect of offences where a *minimum* ten year' imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in lieu of a written application. This was based on the reasoning that the court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows: (SCC pp. 95-96 & 99, paras 29, 32 & 41)

"*29*. Notwithstanding this, the basic legislative intent of completing investigations within twenty-four hours and also within an otherwise time-bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete

investigations, *the legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a prolonged or indefinite period. It is for this reason and also to hold the investigating agency accountable that time-limits have been laid down by the legislature*.

...* * *

32. ... Such views and opinions over a prolonged period have prompted the legislature for more than a century to ensure expeditious conclusion of investigations so that an accused person is not unnecessarily deprived of his or her personal liberty by remaining in prolonged custody for an offence that he or she might not even have committed. *In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned counsel for the State*.

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)

Therefore, the courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21.

17.8. We may also refer with benefit to the recent judgment of this Court in *S. Kasi* v. *State*11, wherein it was observed that the indefeasible right to default bail under Section 167(2) is an integral part of the right to personal liberty under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasised that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge-sheet.

17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

17.10. With respect to the CrPC particularly, the Statement of Objects and reasons (supra) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature, namely, ensuring a fair trial, expeditious investigation and trial, and setting down a rationalised procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21.

17.11. Hence, it is from the perspective of upholding the fundamental right to life and personal liberty under Article 21 that we shall clarify and reconcile the various judicial interpretations of Section 167(2) for the purpose of resolving the dilemma that has arisen in the present case.

"24. In the present case, admittedly the Appellantaccused had exercised his option to obtain bail by filing the application at 10:30 a.m. on the 181st day of his arrest, i.e., immediately after the court opened, on 01.02.2019. It is not in dispute that the public prosecutor had not filed any application seeking extension of time to investigate into the crime prior to 31.01.2019 or prior to 10:30 a.m. on 01.02.2019. The Public Prosecutor participated in the arguments on the bail application till 4:25 p.m. on the day it was filed. It was

only thereafter that the additional complaint came to be lodged against the Appellant. Therefore, applying the aforementioned principles, the Appellant-accused was deemed to have availed of his indefeasible right to bail, the moment he filed an application for being released on bail and offered to abide by the terms and conditions of the bail order, i.e. at 10:30 a.m. on 01.02.2019. He was entitled to be released on bail notwithstanding the subsequent filing of an additional complaint.

..

24.2. We also find that the High Court has wrongly entered into merits of the matter while coming to the conclusion. The reasons assigned and the conclusions arrived at by the High Court are unacceptable.

…

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 chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court."

***M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence,* (2021) 2 SCC 485**

Tags: Charge sheet, COI Art. 21, CrPC S. 167(2), Default bail, fundamental right, Fundamental right to personal liberty, Personal liberty