



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**AFR**

**CRLREV No.312 of 2022**

**Ajay Singh**

....

**Petitioner**

Mr. Tirtha Kumar Sahu, Advocate

-Versus-

**State of Odisha**

....

**Opposite Party**

Ms. B. Dash, ASC

**CORAM:**

**JUSTICE R.K. PATTANAİK**

**DATE OF JUDGMENT:02.09.2025**

1. Instant revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.') is at the behest of the petitioner assailing correctness, legality and judicial propriety of the impugned order as at Annexure-1 dated 18<sup>th</sup> June, 2022 passed in connection with C.T. Case No.23 of 2021 by the learned Additional Sessions Judge-cum-Special Judge at Balliguda corresponding to Tumudibandha P.S. Case No.24 of 2021, whereby, an application seeking default bail in terms of Section 167(2) Cr.P.C. read with Section 36A(4) of the N.D.P.S. Act was disposed of and declined.

2. The facts pleaded on record revealed that on 9<sup>th</sup> April, 2021, on a written report received, Tumudibandha P.S. Case No.24 of 2021 was registered under Section 20(b)(ii)(C) of the NDPS Act, whereafter, the investigation was commenced. It is pleaded that on 9<sup>th</sup> April, 2021, on



the requisition of the I.O., the learned court below, without receiving the case diary, illegally forwarded the petitioner for having committed the alleged offence, which is in clear violation of Section 167 (1) Cr.P.C., following which, on 9<sup>th</sup> April, 2021, the application for bail was filed but it was rejected on 19<sup>th</sup> April, 2021 primarily considering the nature of allegations and recovery of commercial quantity of Ganja, whereafter, he preferred BLAPL No.5131 of 2021 before this court but it was withdrawn on 22<sup>nd</sup> July, 2021 so as to renew the prayer for bail on completion of investigation and submission of chargesheet. The further pleading is that the I.O failed to file the chargesheet within the stipulated period of 180 days and on 7<sup>th</sup> October, 2021 i.e. 182<sup>nd</sup> day without the chemical examination report, the preliminary chargesheet was filed against the petitioner before learned court below under Section 20(b)(ii)(C) of NDPS Act and by not considering the fact that the chargesheet is incomplete, in absence of such report, unlawfully took cognizance of the offence and for that matter, it failed to inform the petitioner his indefeasible right to go on bail under Section 167(2) Cr.P.C. and finally, on 2<sup>nd</sup> July, 2022, the application for default bail was moved but it was declined vide Annexure-1. Since, the chargesheet was not submitted within the stipulated period of 180 days and thereafter, it was filed without a chemical examination report, the petitioner was, hence, entitled to default bail in terms of Section 167(2) Cr.P.C.



3. Heard Mr. Sahu, learned counsel for the petitioner and Ms. Dash, learned ASC for the State.

4. Mr. Sahu, learned counsel for the petitioner cited the following decisions, such as, **Amar Nath & others Vrs. State of Haryana & others AIR 1977 SC 2185; Honnaiah T.H. Vrs. State of Karnataka 2022 Live Law (SC) 672; Ritu Chhabaria Vrs. The Union of India & others 2023 SCC Online (SC) 502; Rohtash @ Raju Vrs. State of Haryana** in CRR No.933 of 2022 (O&M) dated 1<sup>st</sup> June, 2022 and an order dated 5<sup>th</sup> September, 2023 of this Court in **Thallury Chakrabarty Vrs. State of Odisha** (CRLMC No.2799 of 2023) and furthermore, referring to the citation in **Lambodar Bag Vrs. State of Odisha (2018) 71 OCR 31** contends that the petitioner is eligible and entitled to go on bail as per Section 167(2) Cr.P.C. with the submission that the chargesheet was not filed within the stipulated period of 180 days and with the preliminary chargesheet received by the learned court below, it was not accompanied with the chemical examination report but when the default bail was applied on 2<sup>nd</sup> June, 2022, later to the taking cognizance of the offence under Section 20(b)(ii)(C) of the NDPS Act, it was not entertained. The contention is that an indefeasible right accrued in favour of the petitioner to go on bail on account of the default in filing the chargesheet on or before 5<sup>th</sup> October, 2021 as it was received on 7<sup>th</sup> October, 2021 i.e. on 182<sup>nd</sup> day and that too, without the chemical examination report. Referring to the dates and events, it is



submitted by Mr. Sahu, learned counsel that the FIR was lodged on 9<sup>th</sup> April, 2021 and on the same day, the petitioner was arrested and forwarded and within 180 days completed on 5<sup>th</sup> October, 2021, the chargesheet was not filed and the preliminary chargesheet was received on 7<sup>th</sup> October, 2021, whereupon, the order of cognizance for the alleged offence was passed and on 3<sup>rd</sup> February, 2022, the charge was framed against him and lastly, on 2<sup>nd</sup> June, 2022, such an application under Section 167(2) Cr.P.C was moved and rejected on 18<sup>th</sup> June, 2022 vide Annexure-1 and since, the preliminary chargesheet was filed beyond the stipulated period and without the chemical examination report in respect of the contraband Ganja, he should have been granted default bail under Section 167(2) Cr.P.C.

5. Ms. Dash, learned ASC for the State, on the other hand, submits that the petitioner did not make any application under Section 167(2) Cr.P.C. at any time before 7<sup>th</sup> October, 2021 and therefore, the right to go on default bail stood extinguished. It is further submitted that even though, the preliminary chargesheet was not filed at any time before 5<sup>th</sup> October, 2021 and received with a delay of two days i.e. on 7<sup>th</sup> October, 2021, the learned court below having taken cognizance of the offence under Section under Section 20(b)(ii)(C) of the NDPS Act on 7<sup>th</sup> October, 2021 itself and framed the charge against the petitioner on 3<sup>rd</sup> February, 2022 and thereafter, proceeded with the trial, the petitioner since failed to file any such application under Section 167(2) Cr.P.C. within the default period between



5<sup>th</sup> October, 2021 and 7<sup>th</sup> October, 2021, the right of demanding default bail is no more available as it stood extinguished.

6. In course of hearing, Mr. Sahu, learned counsel for the petitioner in addition to the case laws referred to herein before placed reliance on the following citations, such as, **Central Bureau of Investigation, Special Investigation Cell-I Vrs. Anupam J. Kulkarni AIR 1992 SC 1768; Uday Mohanlal Acharya Vrs. State of Maharashtra (2001) 5 SCC 453; Manubhai Ratilal Patel Tr. Ushaban Vrs. State of Gujrat & others 2013 1 SCC 314; Rakesh Kumar Paul Vrs. State of Assam (2017) 15 SCC 67; Gautam Navlakha Vrs. National Investigation Agency (2022) 13 SCC 542; R.K. Nabachandra Singh Vrs. Manipur Administration AIR 1964 Munipur 39; Rajani Kanta Meheta Vrs. State of Orissa 1975 CriLJ 83; and Ishwar Singh Vrs. Panney Singh & others 1983 WLN (UC) 297** to further contend that the chargesheet having not been filed within time, the petitioner was to be allowed to go on default bail. Apart from the above, the decisions, namely, **Fakhrey Alam Vrs. State of UP Live Law 2021 SC 165; Hussainara Khatoon & others Vrs. Home Secretary, State of Bihar 1979 AIR (SC) 1377; and Hitendra Vishnu Thakur & others Vrs. State of Maharashtra & others AIR 1994 SC 2623** are relied upon by Mr. Sahu, learned counsel while advancing an argument that due to default in filing the chargesheet



within the stipulated period, the petitioner was entitled to be released on bail under Section 167(2) Cr.P.C.

7. To consider and appreciate the rival contentions, the Court is inclined to examine the plea, whether, such a right of default bail under Section 167(2) Cr.P.C. was lost upon filing of the preliminary chargesheet on 7<sup>th</sup> October, 2021. It is claimed that the investigation was not over and complete since the chemical examination report was not filed along with the preliminary chargesheet within the time stipulated expired on 5<sup>th</sup> October, 2021. Under such circumstances, the question is, whether, the petitioner is entitled to default bail? In course of hearing, Ms. Dash, learned ASC for the State refers to the decision of the Apex Court in **Sanjay Dutt Vrs. State of Maharashtra through CBI AIR 2013 SC 2687** to contend that the indefeasible right of an accused is enforceable only up to the filing of a chargesheet and does not survive thereafter and since, he failed to apply for default bail under Section 167(2) Cr.P.C. any time after 5<sup>th</sup> October, 2021 but before 7<sup>th</sup> October, 2021, the learned court below did not commit any error or illegality in denying the same.

8. In **Sanjay Dutt** (supra), the Apex Court made it clear that the indefeasible right accrued to the accused is enforceable only prior to the filing of the chargesheet and it does not survive or remain enforceable thereafter, if not already availed of. In other words, it has been held therein that the right of default bail continues till the filling of the challan and stands extinguished referring to the decision in



**Hitendra Vishnu Thakur** (supra), wherein, it is concluded that a right which accrues and is enforceable by the accused is only from the time of default till the filing of the challan and it does not remain to be enforced on the challan being filed. It is further held therein that if the accused applies for bail on expiry of 180 days or the extended period, as the case may be, in that case, he has to be released on bail forthwith under Section 167(2) Cr.P.C. though, subsequent to such release, he may be rearrested and committed to custody according to the provisions of the Cr.P.C. It is also held that the right of the accused to be released on bail after filing of the challan notwithstanding the default in filing it within the time allowed is governed from the time of filing of the challan by the provisions relating to grant of bail applicable at that stage.

9. In **Rakesh Kumar Paul** (supra), the Apex Court observed that it had the occasion to review the entire case laws on the subject in **Union of India through Central Bureau of Investigation Vrs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav (2014) 9 SCC 457** and in that decision, reference was made to **Uday Mohanlal Acharya** (supra) and reached at a conclusion that on expiry of the stipulated period, an indefeasible right accrues in favour of the accused for being released on bail on account of default in the completing the investigation within the period prescribed and hence, the accused is entitled to be released on bail, if he is prepared and furnished the bail as directed by the Court. It is further held



therein that if the chargesheet 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 and the accused can avail his liberty by filing an application pleading that the time stipulated to file the same has expired and therefore, an indefeasible right has accrued in his favour and furthermore, he is prepared to furnish the bail bond. In the above decision, the Apex Court also observed that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the Courts play a part and referred to an earlier decision in **Mohd. Iqbal Madar Sheikh Vrs. State of Maharashtra 1996 (1) SCC 722**, wherein, it was observed that some Courts keep the applications for default bail pending for some days, so that, in the meantime, the chargesheets are filed. In so far as, the case at hand is concerned, the petitioner has admittedly not filed any such application under Section 167(2) Cr.P.C. after expiry of the stipulated period and any time before the filing of the chargesheet on 7<sup>th</sup> October, 2021.

**10. In Lambodar Bag** (supra), this Court, while dealing with a matter of default bail under Section 167(2) Cr.P.C. concluded that such right is enforceable, if within the stipulated period extended for completion of investigation, the chargesheet is not filed. In the said case, the chargesheet was not filed within 180 days as prescribed under Section 36A(4) of the NDPS Act and since, the investigation could not be completed, the prosecution





moved an application on 22<sup>nd</sup> July, 2017 seeking extension and even within the extended period expired on 20<sup>th</sup> September, 2017, the prosecution report was not filed, which was received on 26<sup>th</sup> September, 2017, whereafter, the Court below took cognizance of the offence under Section 20(b)(ii)(C) of the NDPS Act on 7<sup>th</sup> October, 2017 and the Court reached at a conclusion that the Court concerned committed illegality in granting extension for a further period of 60 days to conclude the investigation without issuing any notice to the petitioners therein to have their say and hence, such extension was not in accordance with law and therefore, the remand order dated 22<sup>nd</sup> September, 2017 is illegal and custody becomes unauthorized and that apart, such right to go on bail on account of the alleged default having not been informed, due to non-submission of the chargesheet, they are entitled to be released on bail and at that time, the gravity of offence merits no consideration or for that matter, the bar under Section 37 of the NDPS Act.

**11.** Since, the extension to complete the investigation was allowed without notice to the accused persons and even within the extended period, the prosecution report was not filed and received, under such circumstances, this Court in the case (supra) held that the continued detention has been unlawful and as a necessary corollary, the remand order and as a result, invoked Section 167(2) Cr.P.C. to release them on default bail. As far as, the case of the petitioner herein is concerned, no such application was moved



seeking extension of investigation on expiry of the stipulated period on 5<sup>th</sup> October, 2021 and shortly thereafter, the preliminary chargesheet was filed on 7<sup>th</sup> October, 2021 and the point is, whether, the detention during the interregnum is illegal and hence, he was entitled to go on default bail under Section 167(2) Cr.P.C. Any such custody beyond 5<sup>th</sup> October, 2021 since the chargesheet was not filed entitled the petitioner to make him eligible to apply for default bail before 7<sup>th</sup> October, 2021. As earlier stated, it is not a case seeking extension of investigation. It is assumed that since such extension to complete the investigation was not applied on or before 5<sup>th</sup> October, 2021, the petitioner was immediately to be released on 181<sup>st</sup> day i.e. on 6<sup>th</sup> October, 2021 in terms of Section 167(2) Cr. P.C. But, it is not in dispute that the petitioner had not filed the application under Section 167(2) Cr.P.C. before the preliminary chargesheet was filed on 7<sup>th</sup> October, 2021. Again the question is, under the above circumstances, whether, the petitioner was required to be released on bail forthwith? The further question is, if upon receiving the preliminary chargesheet on 7<sup>th</sup> October, 2021, any such right accrued in favour of the petitioner and enforceable on 6<sup>th</sup> October, 2021 or any time before filing of the same on 7<sup>th</sup> October, 2021 really existed?

**12. In Fakhrey Alam** (supra), the Apex Court held and observed that default bail under Section 167(2) Cr.P.C. is a fundamental right not merely a statutory and such infeasible right is a part of the procedure established by



law under Article 21 of Constitution of India. In **Hussainara Khatoon** (supra), a celebrated judgment of the Apex Court, it is held that an UTP is entitled to be released on bail after being produced before a Magistrate and if he has been in detention for more than the stipulated period prescribed. In **Rakesh Kumar Paul** (supra), it has been observed that the legislative intent is and always has been to complete the investigation into an offence within the stipulated period, or else, the accused is entitled to default bail under Section 167(2) Cr.P.C., which is an indefeasible right and held further that in the matter concerning personal liberty, it is the obligation of the Court to inform the accused that he is entitled to free legal assistance and finally concluded that it is the duty and obligation of a Magistrate before whom a person accused of committing a cognizable offence is produced to make him fully aware that he has a right to consult and be defended by a legal practitioner and in case, he has no means to engage a lawyer of his choice, one would be provided to him for legal aid at the expense of the State and such right flows from Articles 21 and 22(1) of the Constitution of India and it needs to be strictly enforced and adopting the same principle, it would equally be the duty and responsibility of a Court on coming to know that the accused before it is entitled to default bail or at least to apprise him of the indefeasible right and any contrary view would diminish the respect for personal liberty, on which, so much emphasis has been laid time and again. It does mean that the accused should be made aware of the right to



go on default bail upon expiry of the stipulated period so as to enable him to make an application in that regard like in the case when he is produced before a Magistrate and is unrepresented. Referring to the decision in **Sanjay Dutt** (supra), the legal position was discussed therein and it is also affirmed that the release of the accused by default bail would be subject to availing the remedy with an application filed. The requirement for making application seeking enforcement of the right under Section 167(2) Cr.P.C. has been recognized in several cases and in fact, in **Mohd. Iqbal Madar Sheikh** (supra), the Apex Court rejected the claim for statutory bail on ground that no application was made demanding the same. It is, hence, an admitted position of law that unless an application has been made or request received on behalf of the accused, there is no question of him being released on default bail. Rather, it is settled law that such a right under Section 167(2) Cr.P.C cannot be exercised anymore after the chargesheet is filed and received and cognizance is already taken of the offence leaving it to be governed by other provisions of the Cr.P.C.

**13. In Hitendra Vishnu Thakur** (supra), it is held that an accused seeking bail under Section 20(4) of the TADA has to make an application to the Court for grant of bail on the ground of default of the prosecution and the Court shall release him on bail after notice to the Public Prosecutor uninfluenced by the gravity of the offence as Section 20(8) thereof does not control the grant of bail as both the



provisions operate in separate and independent field. In fact, the conclusion therein is that an application of bail is required to be filed by an accused for enforcement of his indefeasible right said to have been accrued on account of the default in completion of investigation within the stipulated period and upon receiving the same, the Court must dispose it of forthwith and such prompt action on its part is absolutely necessary to frustrate any such ploy of the prosecution destroying the right already accrued and the purpose being to advance the legislative mandate of an accused being released on bail forthwith and in case, he is unable to furnish the bail bond, then on a conjoint reading of Explanation I and proviso to sub-section (2) of Section 167 Cr.P.C., the continued custody even beyond the specified period would not become unauthorized and if during that period, the investigation is completed and the chargesheet is filed, then, the so called indefeasible right stands extinguished. It has been reiterated that the expression 'if not already availed of' used in **Sanjay Dutt** (supra) must be understood to mean when the accused files an application and is prepared to furnish bail on being directed. In other words, on expiry of the stipulated period, if the accused moves an application for bail and offers to furnish the bail bond, it has to be held that he has availed the right even though the Court has not considered the same and has not indicated the terms and conditions of bail. It is also held therein that the right to default bail is a fundamental right and therefore, it is the duty of the counsel representing the accused, whether, paid or legal



aid counsel to inform him that on expiry of the statutory period, he is entitled to bail and the Magistrate should equally to not encourage wrongful detention and must inform of his right and in case, the accused still does not exercise the right to go on bail, he shall remain in custody but if he chooses to exercise such right and willing to furnish bail bond, he must have to be released forthwith.

**14.** Turning to the facts of the case, the plea of the petitioner is that illegality has been committed from the time of his remand. Mr. Sahu, learned counsel appearing for him contends that for all such illegalities, the petitioner's remand is illegal. But, on perusal of record, it is made to understand that at such stages, from the time of remand, the petitioner never ever raised any objection. Undeniably, the preliminary chargesheet was filed two days after expiry of the stipulated period and again, the challenge to the same has been delayed. According to the Court, it is the duty of a Court to ensure strict compliance of law instead of pushing an accused to a corner blaming him entirely on account of delay and laches. In the case of the petitioner, admittedly, the request for default bail has been from him long after filling of the chargesheet. Even though, it is stated to be preliminary chargesheet, according to the Court, the same is final for the reason that the investigation was almost over by then. It is, therefore, not to be a case of investigation pending and therefore, extension was to be sought for. Rather, the ground herein is that the investigation to be inchoate without the chemical



examination report being received along with the preliminary chargesheet. Against the aforesaid backdrop, the detention of the petitioner is alleged to be unauthorized as the investigation without such report shall have to be held as incomplete. The Court is of the view that either casually the preliminary chargesheet was filed under the impression that the investigation is completed with all major exercises being over or the intent could be to prevent release of the petitioner by default bail as the period had already expired. Is it a final chargesheet for all intent and purpose? Or was it an exercise which by no means held to be a completed investigation? It may be alleged that without the chemical examination report, in a case of the present nature, there is no prima facie conclusion one could reach at that the recovery is of a contraband substance. Therefore, a Court, upon receiving a chargesheet, is to examine, whether, the materials do reveal and make out a case involving a contraband substance, recovery of which, is a punishable offence under the N.D.P.S. Act. In the instant case, the learned Court below did not appear to be serious enough to examine the said aspect after receiving the preliminary chargesheet in anticipation and believing that the chemical examination report is to formally obtained and filed. According to the Court, a Court must have to be vigilant and meticulous while dealing with a preliminary chargesheet filed which is almost final but is not received along with the chemical examination report. It could lead to a disastrous consequence, if upon receipt of the report,



the substance is found not to be contraband resulting thereby the detention of the accused to be illegal.

15. As far as the petitioner is concerned, he has been detained even after the preliminary chargesheet under the impression that the seizure from him is of a contraband substance. Such a situation could have been avoided had there been a direction to the I.O. to file the chemical examination report along with the chargesheet. It is made to suggest that the preliminary chargesheet was filed hurriedly as the prescribed period to submit the same had expired and it could lead to release of the petitioner by default bail. The learned Court below should have been vigilant in dealing with the situation to dispel any kind of impression of miscarriage of justice to have resulted thereby or to scuttle any kind of misadventure of the investigating agency at times purposefully employed to delay and frustrate the right of an accused to be released on bail under Section 167(2) Cr.P.C. As such a situation has been alleged at present, it could legitimately be ground demanding default bail as with the preliminary chargesheet, no chemical examination report was filed and as such, the investigation may rightfully be alleged as incomplete.

16. In one of such cases, the Punjab and Haryana High Court in **Rohtash @ Raju Vrs. State of Haryana** in CRR No. 933 of 2022 (O&M) disposed of on 1<sup>st</sup> June, 2022 concluded that the accused therein is entitled to default bail under Section 167(2) Cr.P.C. referring to the Apex Court's





order in SLP (Cri.) No. 8164-8166 of 2021 (**Mohammad Arbaz & others Vrs. State of NCT of Delhi**) and batch of matters, while dealing with a question, whether, a chargesheet is complete without the chemical examination report, hence, the accused persons are entitled to default bail, wherein, pending decision thereon by a Larger Bench in SLP (Cri.) No.5724 of 2023 directed their release on interim bail.

17. In so far as, the plea of the petitioner that the learned Court below was to inform about his rights to go default bail, is concerned, the decision in **Lambodhar Bag (supra)** is referred to by Mr. Sahu, learned counsel to contend that upon expiry of the stipulated period, such was the responsibility to be discharged by the learned Court below but instead, the preliminary chargesheet was accepted followed by the order of cognizance. In **Hitendra Vishnu Thakur (supra)**, the Apex Court, while recognizing the rights of the accused was not impressed with the argument that on expiry of the period during which the investigation is required to be completed under Section 167 Cr.P.C. read with Section 20(4) TADA, the Court must release him on bail on its own motion even without any application received on his offering to furnish bail, rather, he is to apply for the same, if wishes to be released on account of the default of the investigating agency and once such an application is received, to consider it with a notice to the prosecution. In **Uday Mohanlal Acharya (supra)**, it is held that the indefeasible right is to be availed



of at the time when an application is made for enforcement of the right under section 167(2) Cr.P.C. and the accused offers to abide by the terms and conditions of bail. In the same breath, for the decision in **Rakesh Kumar Paul** (supra), it is not to be lost sight of the fact that such a right is to be apprised to the accused forthwith on expiry of the stipulated period so as to enable him to submit an application seeking default bail adopting the same principle referable to the duty and obligation of a Magistrate before whom a person accused of committing a cognizable offence is produced and the duty to make him fully aware about his right to consult and be defended by a legal practitioner. In **Ritu Chhabaia** (supra), the Apex Court discussing the legal position reiterated in **Satender Kumar Antil Vrs. CBI and another (2022) 10 SCC 51**, wherein, it has been held that as a consequence of the right flowing from Section 167(2) Cr.P.C., the Courts are to give due effect of it and any detention beyond the period would certainly be illegal being an affront to the liberty of the person concerned and therefore, it is not only the duty of the Courts but also the investigating agency to ensure that an accused receives the benefit of such provision and at last concluded that this right of statutory bail is extinguished, if the chargesheet is filed within the stipulated period and the question of resorting to supplementary chargesheet under Section 173(8) Cr.P.C. only arises after the main chargesheet has been filed, as such, a supplementary chargesheet, wherein, it is explicitly stated that the investigation is pending, cannot under any



circumstances, be used to scuttle the right of default bail, for then, the entire process of statutory bail is frustrated and filling of a chargesheet or supplementary chargesheet becomes a mere formality and a tool to crush such a right, which has already accrued.

**18.** In the present case, the learned court below was unaware of any such consequence to follow and simply waited to respond upon receiving the preliminary chargesheet ( to be treated as a final chargesheet, since investigation was not pending in real terms) under the impression that the right of the petitioner for default bail stood extinguished thereby. A duty cast upon the learned Court below to inform the petitioner to go on bail was not sincerely discharged when a complete chargesheet was not filed within the stipulated period. Since, the right to go on statutory bail under Section 167(2) Cr.P.C. was not informed to the petitioner any time before receiving the chargesheet on 7<sup>th</sup> October, 2021, in the considered view of the Court, where was occasion for him to avail the remedy making an application demanding release. That apart, the learned Court below was under the impression that the right of default bail is lost after filling of the chargesheet and as the investigation is complete. According to the Court, an investigation could be challenged for being not over or incomplete in absence of a chemical examination report since an opinion is to be formed that the seized article to be a contraband substance. Such a question, as earlier stated, is still pending decision of the Apex Court in



SLP (Cri.) No. 5724 of 2023 with batch of matters. Nevertheless, the learned court below was required to inform the petitioner regarding the right to be released on bail in terms of Section 167(2) Cr.P.C. immediately after expiry of the period. Such right of an accused being a fundamental right, according to the Court, is required to be zealously guarded without any breach. Notwithstanding the delay in demanding release, the learned Court below was to consider the same since further detention without statutory compliance infringed upon the petitioner's fundamental right guaranteed under the Constitution of India.

**19.** After a threadbare discussion taking judicial notice of the settled position of law, the irresistible conclusion of the Court is that the learned Court below failed in its solemn duty to let the petitioner know about him having the right to go on default bail and that apart, was oblivious of the consequence of receiving a chargesheet in a case of present nature without a chemical examination report, which could lead to an impression that the investigation is inchoate, hence, further detention would be unauthorized. The petitioner has been in custody from 9<sup>th</sup> April, 2021 and in similar cases, the Apex Court pending decision in the SLPs, directed release of some of the accused persons on interim bail on account of for long detention. In any view of the matter, regard being had to the discussions held herein before, the Court reaches at a conclusion that the petitioner, who is in custody since 9<sup>th</sup> April, 2021 and



though involved in a case leading to recovery and seizure of commercial quantity of contraband Ganja, deserves to be released on bail under Section 167(2) Cr.P.C. as a right to go on default bail accrued to him, which could not be availed of, as he was not informed about it upon expiry of the statutory period, a duty, which is not only cast upon the Courts but even to the extent including the investigating agency as held in **Satender Kumar Antil** (supra).

**20.** Accordingly, it is ordered.

**21.** In the result, the revision petition stands allowed. As a logical sequitur, the impugned order as at Annexure-1 dated 18<sup>th</sup> June, 2022 passed in C.T. Case No.23 of 2021 by the learned Additional Sessions Judge-cum-Special Judge at Balliguda corresponding to Tumudibandha P.S. Case No.24 of 2021 is hereby set aside with a direction for immediate release of the petitioner in connection therewith subject to suitable conditions imposed.

**22.** Issue urgent certified copy of the order as per rules.

**(R.K. Pattanaik)**  
**Judge**

Rojina

Signature Not Verified

Digitally Signed  
Signed by: ROJINA SAHOO  
Designation: Junior Stenographer  
Reason: Authentication  
Location: OHC, CTC  
Date: 04-Sep-2025 11:03:22

