IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

LDVC BAIL APPLICATION NO.400 of 2020

Kapil Wadhawan .. Applicant
Versus
1. Directorate of Enforcement,
Government of India, through the
Assistant Director, Mumbai Zonal
Office 2. State of Maharashtra .. Respondents

WITH LDVC BAIL APPLICATION NO. 401
OF 2020

Dheeraj Wadhawan .. Applicant
versus
1. Directorate of Enforcement,
Government of India, through the
Assistant Director, Mumbai Zonal
Office 2. State of Maharashtra .. Respondents

…

Mr. Amit Desai, Sr. Advocate with Mr.Subodh Desai, Mr.Gopalkrishna Shenoy, Mr.Ashwin Thool and Mr.Rohan Dakshini i/b Rashmikant & Partners for the applicants.

Mr.Anil Singh, A.S.G with Mr.H.S. Venegaonkar for Respondent no.1 (ED).

Mrs.Prajakta P. Shinde, APP for the State.

CORAM: SMT. BHARATI DANGRE, J.
DATED : 20th AUGUST, 2020.

P.C.

1 LDVC Bail Application No.400/2020 is filed by Kapil Wadhawan and LDVC Bail Application No.401/2020 is filed by Dheeraj Wadhawan. Since both the applicants are arraigned as accused in the same ECIR registered by Directorate of Enforcement, and since both the applications seek mandatory default bail with the aid of 167(2)(a)(ii) of Cr.P.C, both the applications were argued together and decided by this common order.

2 The applicants came to be arraigned as accused in ECIR/MBZO-I/3/2020 registered by the Enforcement Directorate for the alleged commission of offence under Section 3 of the Prevention of Money Laundering Act, 2002 (PMLA). The said ECIR was registered on 7th March 2020. Both the applicants were shown to be arrested by the respondents in the said ECIR from Taloja Jail where they were confined in judicial custody since 10th May 2020 in RC No.219/2020 registered by the CBI. On 14th May 2020 itself, the applicants were produced before the learned Special Court, Mumbai and were remanded to police custody. On 27th May 2020, the applicants were remanded to judicial custody. Since these are the limited facts which are necessary for determination of the question involved, I need not refer to further details of the case. Shorn off the unnecessary details about the nature of accusation levelled against the present applicants and their plea of denial, these bare necessary facts being not in dispute, I will advert the neat

question of law and adjudge the same which arises in the present two applications.

After hearing the learned senior counsel Shri Amit Desai for the applicants and the learned Additional Solicitor General Shri Anil Singh opposing him in the applications seeking default bail for the applicants, the question which arises for consideration can be formulated in a forthright manner as under :-

> "Whether in computing the period of 90 days or 60 days as contemplated in Section 167(2)(a) of Cr.P.C, the day of remand is to be included or excluded".

3 Learned Senior counsel Shri Amit Desai has extensively referred to Section 167 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and in the backdrop of the facts involved submit that the applicants came to be arrested on 14th May 2020 and on the very same day, they was remanded before the Magistrate. Remand orders were passed by the Magistrate from time to time and it is on 11th July 2020, a complaint was filed by the Enforcement Directorate (ED) through e-mail, which according to him was the entire complaint but only a forward. The said day being Saturday. On 13th July 2020 i.e. on Monday, the copy of the complaint in its physical form was tendered before the Court.

4 Learned counsel assert the period of 60 days from the date of remand of the applicants i.e. 14th May 2020 expired on 12th July 2020 (Sunday). On 13th July 2020, the applicants moved an application seeking enlargement of bail under Section 167(2)(a)(ii) of the Code of Criminal Procedure. The application was transmitted through an e-mail of the counsel for the applicants at 8.53 a.m. On the very same day, at around 11.00 am, the Bail Application was presented for physical filing in the Sessions Court and a token was issued and the said application came to be numbered. The roznama placed on record dated 13th July 2020 take note of the details of the filing and receipt of the email by the Special Court. The respondent claimed to have forwarded complaint on 11/7/2020 through e-mail. On 13th July itself, an application was moved by the respondent seeking extension of judicial remand of the applicants. The in-charge Court extended the judicial custody by one day till 14th July 2020 and the Bail Application was taken up for hearing through video conferencing. The respondent filed their reply and contended that 60 days period from the date of remand would be completed on 13th July 2020 and the complaint has been filed physically on that day. Shri Desai would submit that there was a roster for Judges who were

functional on 11th and 12th July 2020 though it was Saturday and Sunday.

On 14th July 2020, the day on which the application was heard, it came to be rejected by the Special Judge, refusing to extend the benefit of default bail to the present applicants. The learned Special Court did not dispute the factual aspect that the applicants were arrested on 14th May 2020 and produced for remand before the Court on the same day and the complaint was filed by the E.D on 13th July 2020. The learned Judge also also agreed that the offence under Sections 3 read with 4 of PMLA Act prescribe punishment which may extend to 7 years and hence, the time limit for filing of complaint is 60 days. On the debatable question as to from what date the period of 60 days for filing complaint shall be calculated, the learned Judge took a view that it will have to be computed from 15th May 2020, by excluding the date of first remand. With this conclusion being recorded, the application came to be rejected.

5 As per learned Senior Counsel Shri Amit Desai, the latest judgment deciding the issue in question is delivered by the learned Single Judge of this Court, (Justice Prakash D. Naik) recently and to be precise on 29th July 2020. According to him, the judgment in Deepak Satyavan Kudalkar Vs. State of Maharashtra (LDVC Criminal Bail Application No.197 of 2020), has

put the issue involved in the application to rest. In this case, according to Shri Desai, it has been held that the period envisaged under Section 167(2) of Cr.P.C. has to be calculated from the first day of remand/order and the said day cannot be excluded. The counsel submits that the learned Single Judge has taken into consideration the entire spectrum of the existing position of law and held that there cannot be exclusion of any period from authorized detention while computing the period of 60 days/90 days as the case may be by invoking the provisions of General Clauses Act, 1897. By recording the said finding, the applicant came to be released on bail in accordance with sub-section (2) of Section 167.

6 His opponent, the learned Additional Solicitor General however resists his claim and raise question over the binding effect of the judgment in case of Deepak Kudalkar. The submission of the learned Senior counsel for Enforcement Directorate is to the effect that the said judgment is not good law and he says so in light of two pronouncements of the Apex Court being in case of State of Madhya Pradesh Vs. Rustom and ors, 1995 (Supp) 3 SCC 221 which is followed in Ravi Prakash Vs. State of Bihar, 2015 (8) SCC 340. In light of the position where the adversarial counsels are at loggerhead over the binding effect of the judgment in case of

Deepak Kudalkar, it has become imperative for me to refer to the decisions relied by respective parties in brief.

7 The counsel for the applicants has anchored his submission on Chaganti Satyanarayan Vs State of Andhra Pradesh, 1986 (3) SCC 141. Followed by judgment in case of CBI Special Investigation Cell, New Delhi Vs Anupama Kulkarni, 1992(3) SCC 141. The next judgment on which reliance is placed is in case of Pragyna Singh Thakur Vs. State of Maharashtra, 2011(10) SCC 445, where judgments in case of Chaganti and Anupam Kulkarni were taken note of. Apart from the aforesaid said three judgments, Shri Desai has also relied on the following judgments:-

(1) State Vs. Mohd Ashraf Bhat, 1996 (1) SCC 432

(2) State of Maharashtra Vs. Bharati Chand Verma, 2002, (2) SCC 121.

(3) Uday Acharya Vs. State of Maharashtra 2001 (5) SCC 453

(4) S.Kasi Vs. State, 2020 SCC Online SC 529.

(5) Sanjay Dutt Vs. State, 1994 (5) SCC 410.

The learned senior counsel has also relied upon the judgments of different High Courts including the judgment of the Bombay High Court in case of State of Maharashtra Vs.

Sharad Sarda, 1982 SCC Online 287.

The fulcrum of arguments of Shri Anil Singh is the judgment in case of Rustam and Ravi Prakash (supra) which follow Rustam. His submission is, in Ravi Prakash's case the judgment in Chaganti is considered. He also rely on judgment of a Single Judge (Justice S.B. Shukre) of this Court in case of Shaikh Nasir Shaikh Rehman vs. State of Maharashtra, (Criminal WP No.228 of 2017). According to the learned counsel, the consistent view taken from the year 1995 in case of Rustam is, the first day of remand is to be excluded by applying the well known principle contained in Section 9 of the General Clauses Act. He would asseverate that the learned Single Judge in case of Deepak has not given due weightage to the consistent position of law in excluding the first day of remand and he is in vehement opposition of the learned counsel for the applicants relying upon the judgments which, according to him, do not directly involve the issue which has been put to rest by the verdicts in Rustam and Ravi Prakash (supra).

8 The bone of contention between the parties is the judgment in case of Deepak Kudalkar (supra). The said judgment penned down in an elaborate manner has taken into consideration the catena of decisions holding the field as per the version of the opponents, as to the claim whether the first day of remand has to be included or excluded. With the well researched efforts put in by my brother Judge, in Deepak's case, I will cursorily refer to the ratio flowing

from the judgment so as to discern the stand of the respective parties in the backdrop of the statutory scheme which I would briefly refer to.

9 The Code of Criminal Procedure which chart out the procedure to be followed for investigation into an offence provide machinery for prosecution, trial and punishment of offenders under the various substantive criminal laws. Followance of the procedure ensure a fair trial, in which the rights of the accused are weighed in the scales of justice to the rights of the victim and of the Society at large and an appropriate balance is struck. The Scheme contained in the Code confer power to arrest person with or without warrant who is suspected to be an offender. The investigation contemplated under the Code includes all the proceedings for collection of evidence collected by a police officer or by any person who is authorized by a Magistrate in this behalf. On completion of investigation into a cognizable/non-cognizable offence as contemplated under Chapter XII of the Code, Section 173 stipulate submission of a report. The Code contemplates every investigation under Chapter XII to be completed without unnecessary delay. What should be contained in the report which is to be forwarded to the Magistrate, empowered to take cognizance of an offence on a police report is also prescribed by the Code. Pertinent to note that there is no express limitation or outer limit prescribed for completion of investigation. Barring sub-section (1) of Section 173 which provide that every investigation under this Chapter shall be

completed without unnecessary delay, no time frame is to be found. Sub-section (8) of Section 173 authorizes the officer in charge of a police station,

who even after submission of the report of investigation to the Magistrate, on obtaining further evidence can forward a further report regarding such evidence.

During the course of investigation, when a person is arrested suspecting his alleged involvement in the offence by a police officer, the Code levies a limitation on his detention and it is found in Section 57 which reads as under :-

> "*No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate' s Court"*

10 This provision stands in harmony with Article 22 of the Constitution, which enumerates protection against arrest and detention in certain cases and sub-section (2) of the said Article confer a right on a person who is arrested and detained in custody to be produced before the nearest Magistrate within 24 hours of such arrest and prohibits his detention in custody beyond the said period without the authority of a Magistrate.

11 If the investigation is not completed within 24 hours when the accused is arrested, the procedure to be adopted is set out in Section 167 of the Code. When a person is arrested and detained in custody (by police)

> and it appears to the police officer that the investigation cannot be completed within the period available under Section 57 and there are grounds for believing that the information received or the accusation against him is well founded, the police officer making investigation is duty bound to transmit the accused to the Magistrate along with the copy of the entries in the diary. This is the mandate of sub-section (1) of Section 167. Sub-section (2) then set out the course of action to be followed by the Magistrate to whom the accused person is forwarded. The Magistrate is assigned a role to oversee the course of investigation and to prevent abuse of law by the Investigating Agency.

The Magistrate in terms of sub-section (2) may authorize the detention of the accused in such custody as he thinks fit for a term not exceeding 15 days in the whole but if he has no jurisdiction to try the case or commit it for trial and consider that the detention is unnecessary, on perusal of the entries in the diary, he may release the accused or forward him to the Magistrate having jurisdiction. The sub-section is appended with a proviso which places an embargo on the power of the Magistrate and authorizes detention of the accused person beyond period of 15 days, other than in the custody of the police, if he is of the opinion that adequate grounds demand so but the Magistrate shall not authorize the detention of the accused person in custody for a total period exceeding 90 days in clause (i) or 60 days in clause (ii). A right

accrues to the accused if the investigation is not completed within the period prescribed in clause (i) or clause (ii) and on expiry of the said period, the accused person shall be released on bail if he is prepared to and furnish bail for his release.

12 The procedure prescribed in Section 167 charter a course of action for an accused who has been arrested by a police officer and on expiry of period of 24 hours, which is the maximum period for which the police officer can detain him, and his further detention is subject to authorization by the Magistrate. Sub-section (1) and (2) of Section 167 of the Code contains a linkage and as soon as the period of 24 hours fixed by Section 57 is over, it is followed by the production of the accused before the Magistrate and the procedure contemplated in sub-section (2) immediately ensue in line. The wording applied in sub-section (2) makes it amply clear. The Magistrate to whom the accused person is forwarded shall "authorize the detention of the accused" in custody as he thinks fit for a term not exceeding 15 days in the whole. The mandate of the Magistrate is, therefore, to authorize the detention of the accused in custody i.e. either the police custody or the Magisterial custody but the words "not exceeding 15 days in the whole", again put fetters on the power of the Magistrate. The proviso contained in sub-section (a) authorizes further detention of the accused produced before him but with a rider that he shall not authorize his detention in police custody for more than 15 days. If the Magistrate is satisfied that adequate grounds exist for continuing the custody exceeding 15

days, he is empowered to do so and such detention will be an authorized one. The authorized detention is however, circumscribed by period of 90 days and 60 days depending upon the nature of offence and on expiry of such period, the accused person has an indefeasible right to be released on bail.

13 While enacting the Code of Criminal Procedure as early in 1898, the Code inserted a provision which set out the procedure to be followed in the event the investigation into an offence cannot be completed within 24 hours. The legislature intended expeditious completion of investigation, however, on the practical side, the complexities of the investigation in serious offence failed to adhere to the intention of the legislature, completing the investigation in 24 hours. Though the expectation of the legislature surfaced through Section 167 enacted in the Code, 1898, it did not make any distinction in the nature of offence or the punishment. The Law Commission of India in its 41st Report, proposed to increase the time limit for completion of investigation to 60 days with an expectation that such extension may result in maximum period becoming the rule in every case as a matter of routine. The recommendation of the Law Commission were carefully examined and accepted and keeping in view the broader perspective of an accused getting a fair trial,

but at the same time, avoiding any unnecessary delay in investigation and particularly when it was not only harmful to the accused but to those seeking justice and to the Society. The provision therefore, came to be amended by Act 45 of 1978 inserting sub-section (a) which included clauses (i) and (ii).

14 The provisions of the Code, in particular, section 57 and section 167 manifest the legislative anxiety that once the liberty of the person is interfered with by the police arresting him without a Court's order or the warrant, the investigation must be carried out with utmost promptitude and completed within a period allowed by proviso (a) to Section 167(2). On failure of prosecuting agency to grab the urgency and a default on its part to file a challan within the stipulated period, the accused would be entitled to be released on bail.

15 The Section contemplate a continuous process in subsection (1) and sub-section (2) and sub-section (2) authorizes the custody by a police officer for 24 hours which he had availed for the purposes of investigation. The power of Magistrate in further authorizing his detention exceeding 15 days with a limitation of 15 days in the police custody, if adequate grounds exist, serves two-fold purpose. The detention of the accused in

custody of police is only on the authorization of the Magistrate. Sub-section

(3) of Section 167 makes it mandatory for the Magistrate to record reasons whenever custody is granted to the police. The Magistrate may refuse the custody of an accused to the police if he is of the view that the custodial interrogation is unwarranted. However, when the accused is forwarded to the Magisterial custody, the investigation can still continue. i.e. the collection of evidence, with only reprieve that when the accused is in magisterial custody, he can seek his release on bail.

16 The purpose of the proviso to Section 167(2) is to impress upon the need for expeditious completion of investigation by the police officer within the prescribed limitation and to prevent laxity in that behalf. On a default being committed, the Magistrate shall release the accused on bail if he is ready to furnish the same. This is subject to the restriction imposed in Section 436-A providing for maximum period for which an under-trial prisoner can be detained. Chapter XXXVI provides for limitation for taking cognizance of certain offences. Section 468 imposes a bar on taking cognizance of an offence specified in sub-section (2) after the expiry of the period of limitation. Section 469 provides for commencement of period of limitation and it is to be noted that while setting out the date on which the period of limitation would be said to have started, subsection (2) state that in computing the period of limitation, the day from which such period is to be computed, shall be excluded.

Barring the said provision contained in Section 468 and Section 436A, there is no limitation prescribed in completion of investigation and the investigation can continue but for the right which accrues to the accused on expiry of 60th and 90th day in terms of sub-section (2) of Section 167. This being the entire scheme of investigation of offences contemplated under the Code of Criminal Procedure which serves a twin purpose, firstly speedy trial of the accused which would transform him into a convict or his release on culmination of the trial and secondly, to assure justice to the victim and to the society in general.

17 In light of the statutory scheme, I would refer to the judgments relied upon by the parties during the course of arguments. The judgment in case of Chaganti (supra) clearly dealt with the proviso (a) of Section 167(2) and the question which fell for consideration was whether total period of 90 days or 60 days prescribed in sub-clause (i) & (ii) of proviso (a) to be computed from the date of remand of the accused or from the date of his arrest. The question arose in the backdrop of the fact that the accused was arrested on 19th July 1985 produced before the Addl. Munsif Magistrate on 20th July 1985, remanded to judicial custody for a period of 15 days and the remand was extended from time to time till 18th October 1985. The charge-sheet was filed on 17.10.1985 i.e. on 90th day of remand in the offence of murder and rioting. After analyzing the historical background of the legislative provision, Their Lordships held as under :-

14 Apart from these anomalous features, if an accused were to contend that he was taken into custody more than 24 hours before his production before the Magistrate and the police officer refutes the statement, the Magistrate will have to indulge in a fact finding inquiry to determine when exactly the accused was arrested and from what point of time the remand period of 15 days is to be reckoned. Such an exercise by a Magistrate ordering remand is not contemplated or provided for in the Code. It would, therefore, be proper to give the plain meaning of the words occurring in sub-section (2) and holding that a Magistrate is empowered to authorise the detention of an accused produced before him for a full period of 15 days from the date of production of the accused.

16 As sub-section (2) of Section 167 as well as proviso (1) of sub-section (2) of Section 309 relate to the powers of remand of a Magistrate, though under different situations, the two provisions call for a harmonious reading in so far as the periods of remand are concerned. It would, therefore, follow that the words "15 days in the whole" occurring in sub-section (2) of Section 167 would be tantamount to a period of "15 days at a time" but subject to the condition that if the accused is to be remanded to police custody the remand should be for such period as is commensurate with the requirements of a case with provision for further extensions for restricted periods, if need be, but in no case should the total period of remand to police custody exceed 15 days. Where an accused is placed in police custody for the maximum period of 15 days allowed under law either pursuant to a single order of remand or to more than one order, when the remand is restricted on each occasion to a lesser number of days, further detention of the accused, if warranted, has to be necessarily to judicial custody and not otherwise. The

Legislature having provided for an accused being placed under police custody under orders of remand for effective investigation of cases has at the same time taken care to see that the interests of the accused are not jeopardised by his being placed under police custody beyond a total period of 15 days, under any circumstances, irrespective of the gravity of the offence or the serious nature of the case.

19 Now coming to proviso (a) itself, the proviso authorises a Magistrate to order further detention of an accused person, otherwise than in police custody which as already stated means that the maximum period under which a Magistrate can place an accused in police custody is only 15 days. A limitation to the powers of further remand is, however, placed by interdicting the Magistrate from authorising the detention of an accused person in custody beyond a total period of 90 days where the offence is punishable with death, imprisonment for life or for a term of not less than 10 years and beyond a total period of 60 days in other cases. The interdiction will, however, operate only in those cases where the accused persons are in a position to furnish bail.

20 The words used in proviso (a) are "no Magistrate shall authorise the detention of the accused person in custody", "under this paragraph", "for a total period exceeding i.e. 90 days/60 days". Detention can be authorized by the Magistrate only from the time the order of remand is passed. The earlier period when the accused is in the custody of a police officer in exercise of his powers under Section 57 cannot constitute detention pursuant to an authorization issued by the Magistrate. It, therefore, stands to reason that the total period of 90 days or 60 days can begin to run only from the date of order of remand.

18 As regards the applicability of the provisions of General Clauses Act in light of the submissions advanced by the learned counsel for the State, the judgment overrules a series of judgments relied upon from various High Courts and in paragraph no.32, it is held as under :-

> *"As the terms of proviso (a) with reference to the total periods of detention can be interpreted on the plain language of the proviso itself we do not think it is necessary to invoke the provisions of the General Clauses Act or seek guidance from the Limitation Act to construe the terms of the proviso".*

19 The next judgment relied upon is in the case of CBI Vs. Anupam Kulkarni (supra) where the issue was slightly different. The question that arose for consideration was whether a person arrested and produced before the nearest Magistrate as required under Section 167(1), can still be remanded to police custody after expiry of initial period of 15 days. Since this was a first judgment on the said point, the provision was considered in great depth along with its legislative history. While deliberating on the said issue in paragraph no.9, the judgment in Chaganti was referred to and the following observations made :-

> "9 *At this juncture we want to make another aspect clear namely the computation of period of remand. The proviso to Section 167(2) clearly lays down that the total period of*

detention should not exceed ninety days in cases where the investigation relates to serious offences mentioned therein and sixty days in other cases and if by that time congnizance is not taken on the expiry of the said periods the accused shall be released on bail as mentioned therein. In Chaganti Satyanarayan's case it was held that "It, therefore, stands to reason that the total period of 90 days or 60 days can begin to run from the date of order or remand." Therefore the first period of detention should be computed from the date of order or remand. Section 167(2A) which has been introduced for pragmatic reasons states than if an arrested person is produced before and Executive Magistrate for remand the said Magistrate may authorise the detention of the accused not exceeding seven days in aggregate. It further provides that the period of remand by the Executive Magistrate should also be taken into account for computing the period specified in the proviso i.e. aggregate periods of ninety days or sixty days. Since the Executive Magistrate is empowered to order detention only for seven days in such custody as he thinks fit, he should therefore either release the accused or transmit him to the nearest Judicial Magistrate together with the entries in the diary before the expiry of seven days. The Section also lays down that the Judicial Magistrate who is competent to make further orders of detention, for the purposes of computing the period of detention has to take into consideration the period of detention ordered by the Executive Magistrate. Therefore on a combined reading of Section 167(2) and (2A) it emerges that the Judicial Magistrate to whom the Executive Magistrate has forwarded the arrested accused can order detention in such custody namely police custody or judicial custody under Section 167(2)for the rest of the first fifteen days after deducting the period of detention ordered by the Executive Magistrate. The detention thereafter could only be in judicial custody. Likewise the remand under Section 309 Cr. P.C. can be only to

> *judicial custody interims mentioned therein. This has been concluded by this Court and the language of the Section also is clear. Section 309 comes into operation after taking cognizance and not during the period of investigation and the remand under this provision can only be to judicial custody and there cannot be any controversy about the same., vide Natabar Parida and other v. State of Orissa, [1975] 2 SCC 220.*

20 Conclusively, it upheld the judgment of the High Court which allowed the petition holding that period of 90 days envisaged by the proviso to Section 167(2) has to be computed only from the date of remand as against the finding of Magistrate who held it to be reckoned from the date of arrest. Mr.Desai has heavily relied upon the judgment in case of Chaganti and has submitted that this judgment excludes the applicability of General Clauses Act and Limitation Act to the provision in question after a detailed discussion and therefore, this is an authoritative pronouncement on the issue that the period of 60/90 days should be computed from the date of remand and therefore, the first day of remand cannot be excluded. This judgment has been consistently followed and in Pragyna Thakur (supra) while determining the issue as to what is the relevant date for counting 90 days for filing charge-sheet, it has been unequivocally held that date of first order of remand is the relevant date and not the date of arrest. Though this judgment has been impliedly overruled on an aspect whether this right is absolute and can be availed after the charge-sheet is filed. However, the following observations in Pragyna's case in paragraph nos. 49 to 52 still hold the field.

49 As far as Section 167(2) of the Criminal Procedure Code is concerned this Court is of the firm opinion that no case for grant of bail has been made out under the said provision as charge sheet was filed before the expiry of 90 days from the date of first remand. In any event, right in this regard of default bail is lost once charge sheet is filed. This Court finds that there is no violation of Article 22(2) of the Constitution, because on being arrested on October 23, 2008, the appellant was produced before the Chief Judicial Magistrate, Nasik on October 24, 2008 and subsequent detention in custody is pursuant to order of remand by the Court, which orders are not being challenged, apart from the fact that Article 22(2) is not available against a Court i.e. detention pursuant to an order passed by the Court.

50 The appellant has not been able to establish that she was arrested on October 10, 2008. Both the Courts below have concurrently so held which is well founded and does not call for any interference by this Court.

51 Though this Court has come to the conclusion that the appellant has not been able to establish that she was arrested on October 10, 2008, even if it is assumed for the sake of argument that the appellant was arrested on October 10, 2008 as claimed by her and not on October 23, 2008 as stated by the prosecution, she is not entitled to grant of default bail because this Court finds that the charge sheet was filed within 90 days from the date of first order of remand. In other words, the relevant date of counting 90 days for filing charge sheet is the date of first order of the remand and not the date of arrest. This proposition has been clearly stated in the Chaganti Satyanarayana and

Others vs. State of Andhra Pradesh (1986) 3 SCC 141.

52 *If one looks at the said judgment one finds that the facts of the said case are set out in paragraphs 4 and 5 of the judgment. In paragraph 20 of the reported decision it has been clearly laid down as a proposition of law that 90 days will begin to run only from the date of order of remand. This is also evident if one reads last five lines of Para 24 of the reported decision. Chaganti Satyanarayana and Others (Supra) has been subsequently followed in the following four decisions of this Court :*

(1)Central Bureau of Investigation, Special Investigation Cell-I, New Delhi vs. Anupam J.

Kulkarni (1992) 3 SCC 141, para 9 placitum d-e, para 13 placitum c where it has been authoritatively laid down that :

"The period of 90 days or 60 days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police".

(2) State through State through CBI vs. Mohd.

Ashraft Bhat and another (1996) 1 SCC 432, Para 5.

(3) State of Maharashtra Vs. Bharati Chandmal Varma(Mrs) (2002) 2 SCC 121 Para 12, and (4) State of Madhya Pradesh vs. Rustom and Others 1995 Supp. (3) SCC 221, Para 3.

53 Section 167(2) is one, dealing with the power of the learned Judicial Magistrate to remand an accused to custody. The 90 days limitation is as such one relating to the power of the learned Magistrate. In other words the learned Magistrate cannot remand an accused to custody for a

period of more than 90 days in total. Accordingly, 90 days would start running from the date of first remand. It is not in dispute in this case that the charge sheet is filed within 90 days from the first order of remand. Therefore, the appellant is not entitled to default bail.

21 Now, I deal with the two judgments on which Shri Anil Singh has placed heavy reliance; first being in case of Rustam (supra). A short judgment delivered in the peculiar facts while dealing with the indefeasible right of the accused exclude the date of remand and include the date of filing of the charge-sheet by applying Section 9 of the General Clauses Act. Para 3 of the said judgment needs a reproduction :-

3 We find that the High Court was in error - both in the matter of computation of the period of 90 days prescribed as also in applying the principle of compulsive bail on entertaining a petition after the challan was filed as the socalled "indefeasible right" of the accused, in our view, stood defeated by efflux of time. The prescribed period of 90 days, in our view, would instantly commence either from 4-9-1993 (excluding from it 3-9-1993) or 3-12-1993 (including in it 212-1993). Clear 90 days have to expire before the right begins. Plainly put, one of the days. Sections 9 and 10 of the General Clauses Act warrant such an interpretation in computing the prescribed period of 90 days. The period of limitation thus computed on reckoning 27 days of September, 31 days of October and 30 days of November would leave two clear days in December to compute 90 days and on which date the challan was filed, when the day running was the 90th day. The High Court was, thus, obviously in error in assuming that on 2-12-1993 when the challan was filed, period of 90 days had expired"

The judgment sketchily refers to the facts but

highlight the date of remand to be 3.9.1993 and state that the date of submission of challan was 2.12.1993. In para 3 while counting the period of 90 days, it has been counted from 4/9/1993 (excluding 3/9/1993) i.e. the date of remand. The judgment in Chaganti was not noted.

22 In case of Union of India Vs. Nirala Yadav, 2014 (9) SCC 457, a Co-ordinate Bench of the Apex Court overruled State of M.P. Vs. Rustam and in paragraph 22, it referred to the judgment in Uday Mohanlal Acharya with the following observation:-

> "*13 … Since the legislature has given its mandate, it would be the bounden duty of the Court to enforce the same and it would not be in the interest of justice to negate the same by interpreting the expression 'if not availed of' in a manner which is capable of being abused by the prosecution. A two Judge Bench decision of this Court in State of M.P. Vs.Rustom setting aside the order of grant of bail b the High Court on a conclusoin that on the day of order, the prosecution had already submitted a police report and, therefore, the right stood extinguished, in our considered opinion, does not express the correct position in law of the expression 'if already not availed of' used by the Constitution Bench in Sanjay Dutt".*

Further, while disapproving the ratio in Pragyna Singh Thakur's case as recorded in para 56 – 58 based on the decision in Rustam, Bipin Shantilal Panchal, Dinesh Dalmia and Mustaq Ahmed Mohd. Isaq and Uday Mohanlal Acharya, it was held as under :-

> *"44. At this juncture it is absolutely essential to delve into what were the precise principles stated in Uday Mohanlal Acharya's case and how the two Judge bench has understood the same in Pragnya Singh Thakur. We have already reproduced the paragraphs in extenso from Uday Mohan Acharya case and the relevant paragraphs from Pragnya which has drawn support from Rustom's case to buttress the principle it has laid down though in Uday Acharya the said decision has been held not to have stated the correct position of law and therefore, the same could not have been placed reliance upon".*

The Judgment in Rustam was thus overruled with the finding that the High Court had passed an erroneous order and particularly, paragraph no.4 of the judgment in case of Rustam where it was held that the dates when the High Court entertained the petition for bail, and granted it to the accused, undeniably, the challan stood filed in the Court and then the right as such was not available.

23 The judgment in Rustam was then followed in RaviPrakash (supra) but Ravi Prakash also contain a reference to Chaganti and the proposition that period of 90 days shall be computed from the date of remand of the accused and not from the date of his arrest, was followed. However, on the factual aspect being the appellant Ravi Prakash who has surrendered before the CJM on 5th July 2013 for the offence punishable under sections 302 read with Section 34 and 120B of the IPC and who was remanded to judicial custody till 19th July 2013 and the last remand being granted till 3rd October 2013

on which date an endorsement was made by the CJM that charges-sheet has already been received, as such, Bail Application moved under Section 167(2) was rejected. On facts of the case, it was held that the relevant date as the date when the accused surrendered and was remanded by the Court should be taken into consideration and relying upon Rustam, the date on which the accused was remanded to judicial custody was excluded and date on which challan was filed, was included. 5th July 2013 was therefore, excluded and the charge-sheet filed on 3rd October 2013 was therefore, held not to confer any right on the accused to seek bail as there was no infringement of Section 167(2) of the Code. The Appeal came to be dismissed.

24 The judgment in case of Deepak Kudalkar (supra) in great detail, has referred to the judgment in case of Nirala Yadav (supra) and it has been extensively relied upon and particularly, para 44 of the said decision, finds a mention to the effect that decision in case of Rustam did not state the correct position of law and it should not have been considered in Pragyna Singh Thakur's case while expressing view in para 54 and 58 of the said decision. In Deepak Kudalkar (supra), Reliance was placed on State of Maharashtra Vs. Sharad Sarda where in paragraph no.9, it was held that on plain reading of Section 167 of the Code, it do not admit two meanings and plainly read and giving effect to the intention of the legislature, the accused cannot be allowed to remain in custody for more than 60 or 90 days. The date of arrest under Section 57 cannot be included while computing the period of 60 or 90 days. I need not

repeat the exercise undertaken by the learned Judge in Deepak in dealing with the judgment in case of Shaikh Nasir relied by the learned ASG. In paragraph no.33, the learned Single Judge held as under :-

> "*33 It is evident from various decisions referred to hereinabove that the Apex Court has examined the provision of Section 167(2) of Cr.P.C and has held that the detention of the accused is authorized on the date when he is produced before the Court and remanded to custody. The period of 60 days/90 days would start running from the date of remand. The first decisino delivered after in depth analysis of the right of bail construed under Section 167(2) of Cr.P.C in the case of Chaganti Satyanarayan. Undisputedly, the said decision was not placed before the Hon'ble Supreme Court while deciding the case of State of M.P. Vs. Rustam and Ors. From the ratio in CBI Vs. Anupam Kulkarni also, it is crystal clear that the period of detention envisaged under Section 167(2) shall be calculated from the date of remand. In both these decisions, the Apex Court has not observed that the date of remand is to be excluded and in the light of Section 57 and Section 167 of Cr.P.C, it was held that the period has to be counted from the date when the accused produced before the Court and remanded to the custody. Although, decision in the case of Rustam was delivered subsequently, both the aforesaid decisions in Chaganti Satyanarayan and CBI Vs. Anupam Kulkarni judgment was not placed for consideration while deciding Rustam's case. In the case of Pragnya Singh Thakur (supra) also it was observed that the period as stated above starts running from the date of order of remand. This decision was delivered after decisions in Rustam's case.*
>
> *34 Thus, consistently, it has been held that the detention is authorized from the date of remand and therefore, the period*

of 60 days or 90 days starts running from the date of the order of the remand. The date of remand has not been excluded in those decisions.

The judgment in Deepak has in great detail dealt with the law of precedent and as to what decision of the Apex Court would be followed in case of a conflict and para 42 it is conclusively held that the earlier decisions including the date of remand were not placed for consideration while deciding Rustam. As far as the applicability of the General Clauses Act is concerned, in case of Chaganti, the Supreme Court in paragraph 32 (which is quoted above), has excluded the applicability of provisions of General Clauses Act or Limitation Act.

25 The exclusion of the provisions of General Clauses Act, 1897 to Section 167 of the Code, is based on the practical implementation of the procedural aspect contained in the said Section and need a little more deliberation, since Rustam and Ravi Prakash has taken into account Section 9 of the General Clauses Act, 1897. It would be appropriate to reproduce the said section :-

***9 Commencement and termination of time** :-*

(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(2) This section applies to all Central Act made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

The principle contained in the said section is based on the principle of Halsbury Law of England, 37th Edition, Vol.3, page 92 and it would be appropriate to quote the same.

"*Days included or excluded – when the period of time running from a given date or even to another date or event is prescribed by law or fixed as a contract, and the question arises whether the computation is to be made inclusively or exclusively of the first mention or of the last mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is a room for doubt, the enactment or instrument ought to be construed as to effectuate and not to defeat the intention of Parliament or of the purpose as the case may be. Expression such as "from such a day' or 'until such a day; are equivocal since they do not make it clear whether the inclusion or inclusion of the day named, may be intended. As a general rule, however, the effect of defining a period in such a manner is to exclude a first day and to include a last day".*

26 In Marren Vs. Dawson Bentley and Co. Limited, [1961] 2 All ER 270 – (S 127 MCA), while excluding the day of accident and computing the period within which action should be brought, reliance was placed on the passage from Halsbury Law of England. In the said case, an accident occurred on 8.11.1954, whereby the plaintiff was injured in the course of his employment with the defendant. On 8.11.1957, he filed a Suit claiming damages

for the injuries which he alleged were caused by the defendants' negligence. The defendants pleaded, inter alia, that the plaintiffs cause of action, if any, accrued on 8.11.1954 and the proceedings had not been commenced within the period of three years, contrary to Section 2(1) of Limitation Act, 1939. While excluding the day of accident and rejecting the plea of the defendant, it was held as under :-

> "*207. .....The general rule in cases in which a period is fixed within which a person must act or take the consequences if day of the act or event from which the period runs, should not be counted against him. This rule is especially reasonable in the case in which that person is not necessarily cognisant of the act or event; and further in support of it there is consideration that in case the period allowed, was one day only, the consequence of including that day would be able to reduce a few hours or minutes the time within which the person affected should take action.*
>
> *208. In view of these considerations, the general rule is that as well in cases where limitation of time is imposed by an act of the parties as in those where it is imposed by a statute, the day from which the time begins to run is excluded; thus, where a period is fixed within which a criminal prosecution or a civil action may be commenced, the day on which the offence is committed or the cause of action arises is excluded in the computation..."*

The principle enunciated above has been extensively quoted in case of Haroo Das Gupta Vs State of West Bengal, 1972 (1) SCC 639 and in a further decision of Three Judges

Bench in case of Econ Antri Ltd. Vs Rom Industries, 2014 (11) SCC 769. In case of Haroon Das Gupta (supra), the petitioner was arrested and detained on 5th February 1971 by order of Magistrate passed on that day. The order of confirmation and continuation which was to be passed within three months from the date of detention, that was 5th May 1971. The question for decision was as to when the period of three months can be said to have expired. The contention of the petitioner was that the period of three years expired on midnight of 4th May 1971 and any confirmation and continuation of detention thereafter could not be valid. After having reference to several English decisions on the point, the submission advanced that the date of commencement of detention i.e. 5th February 1971 is to be included was rejected with the following observation :

> "*These decisions show that Courts have drawn a distinction between the term created within which an act may be done and the time limited for doing of an act. The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded".*

27 The applicability of the aforesaid principle and also of the provision contained in Section 9 of the General Clauses Act would be of some semblance/relevance, where the law/statute prescribes a limitation and in terms of Section 9, if in any Central Act or Regulation made after the commencement of the General Clauses

Act, 1897 it shall be sufficient for the purpose of excluding the first in a series of days or any other days or any other period of time, to use the word 'from' and 'for the purpose of including the last in a series of days or any other period of time to use the word 'to'. The principle would be attracted when a period is delimited by a Statute or Rule, which has both a beginning and an end; the word 'from' indicate the beginning and then the opening day is to be excluded and then the last day is included by use of words 'to'. The requisite form for applicability of Section 9 is prescribed for a period 'from' and 'to', i.e. when the period is marked by terminus quo and terminus ad quem.

If this principle is the underlining principle for applicability of Section 9 of the General Clauses Act, 1897, perusal of Section 167 (2) would reveal that there is no starting point or an end point. In the scheme of the Code, as has been elaborated above, the provisions contained in sub-section (1) of Section 167 runs in continuation of sub-section (2). Production of the accused before the Magistrate is a sequel of his arrest by the police in exercise of their power and the mandate of the police, and at the same time, a right of the accused to be produced before the Magistrate within 24 hours. The day on which the accused is brought on remand before the Magistrate, sub-section (2) of Section 167 empowers the Magistrate to authorize the detention with the police either by continuing it or remanding him to Magisterial custody. There cannot be a pause/break between the two processes. There is no de-limitation conceptualized in Section 167 nor can it be befitted into a

period of limitation 'from' and 'to' as there is no limitation for completion of investigation and filing of the charge-sheet. The production before the Magistrate is a process in continuation of his arrest by the police and the Magistrate will authorize his detention for not more than 15 days in the whole but if he is satisfied that sufficient ground exist, he may authorise his detention beyond 15 days otherwise than in custody of police. There is no starting point or end point for the authorities to complete their action but if the investigation is not completed and charge-sheet not filed within 60 days or 90 days, a right accrues to the accused to be released on bail.

The anterior period of custody with the police prior to the remand is no detention pursuant to an authorization issued from the Magistrate. The period of detention by the Magistrate runs only from the date of order of first remand. Sub-section (2) of Section 167 of the Cr.P.C pertain to the power of the Magistrate to remand an accused and there is no reason why the first day has to be excluded. The sub-section finds place in a provision which prescribe the procedure when investigation cannot be completed in 24 hours and distinct contingencies are carved out in sub-section (2); the first being the Magistrate authorizing the detention of the accused for a term not exceeding 15 days in the whole, secondly, when the Magistrate do not consider further detention necessary and thirdly, the Magistrate authorise the detention beyond period of 15 days if adequate grounds exists for doing so. However, there is no time stipulated as to extension of custody beyond period of 15 days with a maximum limit on the same. The accused can be in

magisterial custody for unlimited point of time if he is not admitted to bail. In order to avoid the long incarceration of an accused for the mere reason that the investigation is being carried out in a leisurely manner, prompted the legislature to confer a right on the accused to be released on bail if he is prepared to do so and the investigation can still continue. This is the precise reason why the General clauses Act cannot be made applicable to sub-section (2) of Section 167 and the submission of Mr.Singh to the effect that the first day of remand will have to be excluded, would result into a break in the continuity of the custody of the accused which begin on his arrest and which could have continued till conclusion of investigation but for insertion of proviso to subsection (2) of Section 167.

As regards the applicability of the provisions of Limitation Act, 1963 is concerned, which prescribe limitation in filing of suits, appeals and applications is concerned, the right of release being claimed as by way of default, there is no scope of applicability of the said enactment and in particular, Section 12 (1) and (2) since there is no decision/order, against which any Appeal/ Application is being preferred.

28 It is pertinent to note the recent three Judge bench decision of the Apex Court in case of S. Kasi Vs. State (Criminal Appeal No.452 of 2020 decided on 19 th June 2020) where it is reiterated that the period u/s.167 is inviolable and cannot be extended by the Supreme Court even while exercising its power under Article 142. The power of Magistrate authorizing detention of accused in custody

by prescribing the maximum period, cannot be extended directly or indirectly by any Court with an exception contained in Special Statutes, which to that extent modify the applicability of Section 167 of the Code. Undue delay is not conducive to administration of criminal justice. By this time, crossing several hurdles, the position of law which has clearly emerged is that if the charge-sheet is not filed and right for 'default bail' has ripened into a status of indefeasibility, it cannot be frustrated by prosecution nor by the Court on any pretext. It is time and again reiterated through authoritative pronouncements that no subterfuge should be resorted to defeat the indefeasible right of the accused for default bail. The mandatory default bail is a sequel to non-filing of the charge-sheet/challan within the period set out by clause (i) and (ii) as the case may be of Section 167(2) (a) of the Code. The merits of the matter cannot be gone into at this stage.

As a corollary to the aforesaid discussion, the impugned order passed by the Sessions Judge, excluding the first day of remand while computing the period of 60 days cannot be sustained and is liable to be set aside and the filing of the chargesheet by the Directorate of Enforcement on 13th July 2020, being after of 60 days, by excluding the day of remand i.e. 14th May 2020, make the applicants entitled for default bail. They deserve to be released on bail in light of the right conferred u/s.167(2)(a) (ii), if they are prepared to and furnish the bail. Hence, I pass the following order :-

O R D E R

(i) Applicant Kapil Wadhawan (LDVC BA No.400/2020) and Applicant Dheeraj Wadhawan (LDVC BA No. 401/2020) are directed to be released on bail in connection with ECIR/MBZO-I/3/2020 registered by Enforcement Directorate on executing P.R. bond in the sum of Rs.One lakh each, with one or more sureties in the like amount.

(ii) The applicants shall attend the office of the Enforcement Directorate every Monday till further orders. (iii) The applicants shall furnish the details of the place of residence and their contact numbers to the Investigating Officer, on being released on bail.

(iv) The applicants shall not leave India without prior permission of the Special Court. The applicant Dheeraj Wadhawan will surrender his passport to the Enforcement Directorate.

(v) The applicants shall not directly or indirectly makeany inducement, threat or promise to any person acquainted with facts of case so as to dissuade them from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

29 At this point of time, after the order is pronounced and the applicants being held entitled for compulsive default bail, the learned Additional Solicitor General- Shri Anil Singh, request for grant of stay since according to him, the Directorate of Enforcement would

like to test the pure question of law that has been formulated and answered by this Court. The request of the learned Additional Solicitor General deserves a rejection on a simple count that once the view has been taken that the custody beyond 60 days, accrues indefeasible right in favour of the applicants and once this right has accrued, the applicants must be set forth at liberty without any further detention and in the latest judgment of the Hon'ble Apex Court in case of S.Kasi (supra), it has been authoritatively held that no Court has power to extend the said period. In view of this, request of Shri Anil Singh is declined.

SMT. BHARATI DANGRE, J