

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

**CRIMINAL REVISION No. 283 of 2026**

*ARMAAN HUSSAIN*

*Versus*

*UNION OF INDIA*

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**Appearance:**

*Shri Vidhan Mishra and Hritik Dubey - Advocates appeared through VC along with Divyansh Soni - Advocate for the petitioner.*

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**Reserved on            ::        07.04.2026**

**Pronounced on        ::        15.04.2026**

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**ORDER**

This criminal revision under Section 438/442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short 'the BNSS') has been preferred by the petitioner/accused, challenging the impugned order dated 08.01.2026 passed by Special Judge, NDPS Act, Bhopal in case no.SC NDPS/1/2026, whereby first application under Section 187(2) of the BNSS has been dismissed. Relevant part of the impugned order is as under :

“आवेदक के विद्वान अधिवक्ता ने तर्क किया है कि डीआरआई द्वारा अभियुक्त/आवेदक कि गिरफ्तारी से 60 दिन के बाद भी अभियोगपत्र / परिवाद प्रस्तुत नहीं किया था। आवेदक की ओर से दिनांक 05.01.2026 को न्यायालय में उपस्थित होकर अभियोगपत्र / परिवाद प्रस्तुत करने से पूर्व 12:30 पीएम पर जमानत आवेदन प्रस्तुत किया है, जिस कारण से डिफाल्ट बेल पर मुक्त किए जाने का निवेदन किया है।

इसके विपरीत डीआरआई के विद्वान विशेष लोक अभियोजक की ओर से तर्क किया है कि वह न्यायालय में समय से उपस्थित हो गए थे एवं परिवाद के समर्थन में पेश

शपथ पत्र एवं धारा 63 (4) (सी) भारतीय साक्ष्य अधिनियम के प्रमाण पत्र के नौटेराईज करने में सदभावनापूर्ण विलंब हुआ क्योंकि शीतकालीन अवकाश के बाद प्रथम कार्य दिवस होने से न्यायालय परिसर में नोटरी दोपहर 12:00 बजे तक उपलब्ध नहीं थे जिस कारण से परिवाद न्यायालय के समक्ष दिनांक 05.01.2026 दोपहर 1:00 पेश हो सका।

प्रकरण एवं परिवाद का अवलोकन किया गया। परिवाद के साथ शपथ पत्र प्रस्तुत किए गए हैं। डीआरआई द्वारा विवेचना के उपरांत परिवाद प्रस्तुत किया जाता है, जिसके साथ विधिअनुसार शपथ पत्र प्रस्तुत किया जाना आवश्यक है। नोटरी द्वारा शपथपत्र को सत्यापित करवाकर परिवाद दिनांक 05.01.2026 को प्रस्तुत किया गया है। परिवाद निर्मित कर न्यायालय में उपस्थित होकर नोटरी द्वारा शपथ पत्र तैयार कराकर प्रस्तुत किए जाने में विलंब का आधार लिया गया है जो उचित प्रतीत होता है। अतः ऐसी स्थिति में अभियोगपत्र /परिवाद प्रस्तुत हो जाने के कारण आवेदक /अभियुक्त डिफाल्ट बेल प्राप्त करने का अधिकारी नहीं है।

अतः उपरोक्त तथ्य एवं परिस्थितियों को देखते हुए आवेदक / अभियुक्त अरमान हुसैन पिता रोज मोहम्मद का जमानत आवेदन अंतर्गत धारा 187 (2) बी.एन.एस.एस स्वीकार योग्य नहीं होने से निरस्त किया जाता है।”

**2.** As per prosecution story co-accused Mandeep Singh along with the petitioner, was found in possession of 4632.80 grams of hydroponic cannabis (ganja), while travelling in a train and as per provisions of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short ‘the NDPS Act’), they were arrested on 02.11.2025 for the offences punishable under Section 8(c)/20(b)(ii)(B), 28, 29, 35 and 54 of the NDPS Act and remand was ordered on 03.11.2025.

**3.** Since the quantity of the substance is lesser than commercial quantity but greater than small quantity, therefore, minimum sentence for the alleged offences is less than 10 years but the maximum sentence is not death or life imprisonment, therefore, Section 187(3)(ii) of the BNSS (Section 167(2)(a)(ii)

of the Cr.P.C.) will apply and the accused will be entitled to grant of default bail after 60 days of remand, in case charge-sheet is not filed.

4. Placing reliance on a decision of co-ordinate Bench of this Court in the case of Raja Bhaiya Singh vs. State of M.P., **2021 Cr.L.J. 2513 = (2021) 1 MPLJ (Cri) 376**, learned counsel for the petitioner submits that apparently the respondent/prosecution filed challan/charge sheet on 05.01.2026 at 1:00 p.m., prior to which the petitioner filed application for default bail at 12:30 p.m., therefore, he was entitled to be released on bail, but the Court below has committed an illegality in dismissing the application just contrary to law laid down by this Court. He submits that although the Court below has mentioned the aforesaid decision in the impugned order dated 08.01.2026, but has not followed the same, which is grave illegality on the part of the Court below. Learned counsel also placed reliance on the decisions in the case of Enforcement Directorate, Government of India vs. Kapil Wadhawan & Anr. **(2024) 7 SCC 147**; and Vinay Dubey and Anr. vs. State of Chhattisgarh, in **CRMP No. 465 of 2021** given on 09.07.2021 by High Court of Chhattisgarh, Bilaspur. On inter alia submissions, he prays for allowing the criminal revision.

5. Heard learned counsel for the petitioner and perused the record.

6. It is undisputed fact available on record that for the offence in question, the petitioner was arrested on 02.11.2025 in pursuance of recovery of about 4632.80 grams Ganja and as per Section 187(3)(ii) of the BNSS, the charge sheet was to be filed within a period of 60 days from the date of remand i.e. 03.11.2025. Undisputedly, the challan was filed on 05.01.2026 at 1:00 p.m. and prior to that i.e. at 12:30 p.m., application for grant of default bail was filed. As per submissions made by learned counsel for the petitioner, period of 60 days would complete on 02.01.2026 but upon calculation by this Court and after including date of remand, it would complete on 01.01.2026.

7. It is an undisputed fact on record that due to winter vacation the Courts were closed from 01.01.2026 to 04.01.2026 and were opened on 05.01.2026.

Even in presence of the provisions of Section 36A(c),(d) of the NDPS Act, due to holidays of the Courts, challan could have been filed before the Magistrate available on Remand duty, but the charge sheet was filed before the Special Court on 05.01.2026 at 1.00 p.m. Even though the Courts were closed from 01.01.2026 to 04.01.2026, but these days cannot be excluded from the period of 60 days, resultantly, the 60<sup>th</sup> day would be 01.01.2026 and upon filing challan after a period of 60 days, that too at 1:00 p.m., the application for default bail filed at 12:30 p.m., can be allowed. Although, the impugned order runs into single spaced 6 pages, but for the reasons best known to the Court below, aforesaid aspect has not been considered in the impugned order. More so, the Court below has on the oral prayer of the prosecution, condoned the delay in filing the challan/charge sheet.

**8.** In the present case following legal questions are arising for consideration of this Court :

(i) Whether last date, which is Sunday or Holiday will be counted in 60<sup>th</sup> day?

(ii) Whether date of remand will be included in the period of 60 days and provisions of the General Clauses Act or Limitation Act would apply to Section 187 of the BNSS, for the purpose of condonation of delay?

(iii) Whether default bail can be granted in a case where on the last day i.e. 60<sup>th</sup> day, the court is closed, and charge sheet is filed on 61<sup>st</sup> day (or any other later date), there being a holiday?

(iv) Whether filing of charge sheet on 64<sup>th</sup> day (i.e. 05.01.2026) due to court being closed from 60<sup>th</sup> to 64<sup>th</sup> day, it can be considered as non-compliance of mandatory provision under Section 187(3)(ii) of the BNSS?

(v) Whether charge sheet can be submitted before remand /duty magistrate?

(vi) Whether oral application for default bail can be made before remand/duty magistrate?

(vii) Whether merits and demerits of the case are required to be considered while considering an application for default bail?

**9. In the case of Raja Bhaiya Singh v. State of M.P., 2021 Cr.L.J. 2513 = (2021) 1 MPLJ(Cri) 376, a coordinate Bench of this Court, held as under:**

“14. As for (sic: far) as computation of period of 90 or 60 days is concerned, the law has been settled. It was held in Jagdish v. State of M.P., 1984 CRI. L. J. 79 [M.P.] that date of arrest is to be excluded. Further in the case of Chaganti Satyanarayana v. State of A.P., AIR 1986 SC 2130 = (1986) 3 SCC 141 = 1986 CriLR 256 the Apex Court said that Period of 90 days / 60 days envisaged by Proviso (a) begins to run from date of order of remand and not from earlier date when accused was arrested. The Court observed that detention can be authorized by the Magistrate only when the order of remand is passed. The earlier period when the accused is in the custody of a public officer in exercise of his powers under S.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. This case has been subsequently followed in Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J. Kulkarni [(1992) 3 SCC 141 : AIR 1992 SC 1768 : 1992 AIR SCW 1976], State through CBI v. Mohd. Ashraff Bhat and another [(1996) 1 SCC 432, 1996 AIR SCW 237 ]. State of Maharashtra v. Bharati Chandmal Varma (Mrs) [(2002) 2 SCC 121 AIR 2002 SC 285 : 2001 AIR SCW 5003], State of Madhya Pradesh v. Rustom and others, 1995 Supp. (3) SCC 221, Sadhwi Pragyna Singh Thakur v. State of Maharashtra [2011 AIR SCW 5551:(2011)10 SCC 445].

....

18. In Ashok Sharma v. State of M.P. 1993 J.L.J. 99, it has been held that last date, which is Sunday or Holiday will also be counted in 90th day because Sec. 10 of General Clauses Act 1897 will not be applicable. The Court said that Word “Magistrate” used in section 56, 57 and 167 not mean the “Court of Magistrate”. If the last date of remand is Holiday, the accused will be produced before the magistrate.

**19.** Therefore it is the settled position of law that :-

(i) Period for filing the challan will run from date of order of remand and “one day” will be complete on the next day of the remand. Therefore first date of remand will exclude but last date will be included.

(ii) Period of temporary bail for few days shall be excluded in computing said 90 days.

(iii) Last date, which is Sunday or Holiday will also be counted in 90th day.

....

28. Because the offence under section 8(b)/20(a)(i) is punishable by imprisonment upto 10 years, not minimum period of 10 years or death or life imprisonment, therefore, limitation for filing the challan will be 60 days and not 90 days or 180 days.

....

40. Therefore, it appears that the right of default bail under section 167(2) of CrPC cannot be curtailed by subsequent filing of challan even on the same date. In the aforesaid case, the bail application was filed on 10:30 a.m. on 1.2.2019 and challan was filed at 4:25 p.m. on the same date. At that time, the application was not considered but the Hon'ble Supreme Court held that the right of accused to get the default bail will be available.

41. Hence, it appears that the limitation period was 60 days. Challan was not filed within the prescribed limit of 60 days and before filing the challan, the applicant moved the application for default bail. Therefore, the trial Court was having no any discretion to dismiss the aforesaid application by saying that the time was extended for filing the challan. By subsequent filing of challan, the right of accused was not forfeited."

**10.** The aforesaid judgment of Raja Bhaiya Singh (**supra**) came for reconsideration before a Division Bench of this court in the case of Kalla Mallah and others vs. State of Madhya Pradesh and another, **2022 Supreme(Online)(MP) 12008=CRR 1933/2021 final order dated 14.11.2022** (Gwalior Bench), in which the Division Bench held as under:

"2. The following two questions have been framed in the reference order dated 26/10/2021 passed by the learned Single Bench of Hon'ble Shri Justice Sheel Nagu :-

(1) Can 7000 kgs of opium plants be treated to be less than commercial and small quantity to fall u/S. 18(c) NDPS Act r/w Note-3 of Notification dated 19.10.2021, for availing benefit of default bail u/S.167 Cr.P.C. despite bar u/S.36-A(4) NDPS Act?

(2) Whether the Coordinate Bench in the case of Raja Bhaiya Singh vs. State of M.P. (Criminal Revision No. 1813/2020, decided on 8.1.2021) has laid down the correct law or not?

....

**12.** As a matter of fact, the right to default bail under section 167(2) of the Cr.P.C. is an indefeasible right. In this behalf, the Apex Court in the case of M. Ravindran Vs Intelligence Officer, Directorate of Revenue Intelligence, (2021) 2 SCC 485, has held as under:-

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 subsection (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*, (1978) 1 SCC 248, 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.

17.8 We may also refer with benefit to the recent judgement of this Court in *S. Kasi v. State* (2021) 12 SCC 1, 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 emphasized 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 chargesheet.

13. In view of the foregoing discussion, the questions referred to this Bench are answered in the following terms:

(1) 7000 kgs of opium can neither be termed as “small” nor “commercial” quantity, but should be treated to fall within the net of residuary clause; section 18(c) governing “any other case” r/w Note-3 of the Notification dated 19/10/2021 for availing the benefit of default bail u/S 167 Cr.P.C.

(2) The decision in the case of *Raja Bhaiya* (Supra) lays down the correct law.”

11. There is often confusion on the part of the Prosecution as to whether challan is to be filed before the Special Court only or it can be filed before the Remand/Duty Magistrate. Therefore, relevant portions of the following decisions deserve to be quoted as under :

\*\* In the case of *Rammu v. State of M.P.*, 1993 (2) MPWN 66, a coordinate Bench of this Court, held as under :



singh's case (AIR 1957 SC 271), as stated by me at paragraph 26 (supra). With utmost respect, I disagree with the view of the Orissa High Court.

**30.** In P.N. Ogenchi v. The State (Delhi Admn.) (19X6 Cri. L.J., 2081), a Division Bench of Delhi High Court applying the ratio-decidenti in Harinder Singh's case (AIR 1957 SC 271), held that **section 10 (1) of the General Clauses Act (1897) is not attracted to the provisions of section 167 (2) because these provisions do not contain any prescribed period for the filing of a charge-sheet by the police.** The Court dissented from Sureya Reddy's case (1985 Cri. L.J. 395). I am in respectful agreement with Delhi High Court's view.

....

**32.** The learned counsel of the State and the complainant urged on a decision of K.M. Agarwal, J. in Bhanu Pratap Singh 's case (1986 C. Cr. J. Note 47) (M.P.) decided on 20.8.1985 that the filing of a charge-sheet after the expiry of 90 days detention of an accused extinguishes his right to be released under section 167 (2) Cr. P.C. The decision was not only contrary to the law laid down in an earlier Division Bench decision of this Court, Umashankar's case (1982 JIJ 697) but also cannot stand upto a Supreme Court decision reported in Rajni Kant's case (1989 CAR 208(SC) decided on 26.5. 1989. In the latter case, it was stated (at paragraph 9) as follows:

"9 ... The right to bail under section 167 (2) proviso (a) thereto is absolute. It is a legislative command and not Court's discretion. If the Investigating agency fails to file charge- sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. But at that stage, merits of the case are not to be examined. Not at all. In fact, the Magistrate has no power to remand a person beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds"

**33.** In Umashankar's case (1982 JIJ 697), it was first observed:

"4. A plain reading of proviso (a) makes it clear that an accused is entitled to be released on bail on the expiry of 90 days or 60 days, as the case may be, "if he is prepared to and does furnish bail." The right to release arises on the expiry of the aforesaid period when the accused intimates the Court that he is prepared to furnish bail although the release naturally has to follow as stated in the explanation when bail is furnished. The proviso does not in terms say that the accused has not to make a formal written application for exercising the right of being released on bail. All that he has to do is to intimate that he is prepared to furnish bail that may be ordered by the Court. If he does so intimate the Court whether orally or in writing, the Court cannot refuse to pass an order directing his release on bail for want of a written application. Indeed as held by the Supreme Court in Hussainara Khatoon's, it is the duty of the Magistrate to inform the accused that he has a right to be released on bail under the proviso and if the accused is prepared to furnish bail as ordered and does, furnish bail, he has to be released. If a challan is filed before the expiry of the maximum period for which an accused can be detained in custody under section 167 further remand to custody can be ordered under section 309. No maximum period of remand is provided for under section 309. The Magistrate, however, cannot postpone the release of an accused under proviso (a) to section 167 (2) after the expiry of 90 days or

60 days, as the case may be, just to enable the police to file the challan and to alter the detention under section 167 to one under section 309. If the accused of his own or on being told of his right by the Magistrate, is prepared to furnish bail, the Magistrate must order the accused to be released on bail, without waiting for the challan and must release him when bail is furnished.....\*\*\*\*"

**12.** Almost identical view has been taken by many other Hon'ble High Courts in the case of *Ada Alias Adeita Behera vs. State*, **1996 Cr.L.J. 3130** (Orissa High Court); in the case of *Aman Kumar @ Satyam Kumar Aanu vs. State of Bihar*, **2018 Supreme (Pat) 1426=(2019) 1 BLJ 217** (Patna High Court); in the case of *Prahlad vs. State of Rajasthan*, **2022 LiveLaw (Raj) 143=S.B. Criminal Miscellaneous 2nd Bail Application No. 4266/2022, final order dtd.22.04.2022** (Rajasthan High Court); and in the case of *Naresh @ Nana Baliram Sonwane and others vs. State of Maharashtra*, **1999 Supreme (Bom) 170= (1999) 3 MhLJ 631** (Bombay High Court).

**13.** Another confusion in the mind of Prosecution has been, as to whether date of remand is to be included in 60 days' period or not. This issue came into consideration before the Hon'ble Supreme Court in the case of *Chaganti Satyanarayana and others vs. State of A.P.*, **(1986) 3 SCC 141**, and was decided as under:

"24. Turning now to the alternate argument of Mr. Ram Reddy, the contention is that even if there is scope for contending that the total period of detention should be reckoned from the date of arrest there is no room at all for any such contention being raised after the amendment of the proviso by Act 45 of 1978. We have already referred to the fact that the amending Act has substituted the words "under this paragraph" for the words "under this section" in proviso (a). We have also adverted to Explanation 1 and sub-section (2A) which also refer to "the period specified in paragraph (a)". The change of wording in the proviso has to be given its due significance because the Legislature would not have effected the change without any purpose or objective. We must bear in mind that significant changes have been made in Section 167 as well as to the proviso by Act 45 of 1978 such as increasing the period for investigation in grave cases from 60 to 90 days, conferring of powers of remand on Executive Magistrates in certain situations etc. Therefore, it can be legitimately contended that the words occurring in proviso (a) should be construed within the framework of the proviso itself without any reference to Section 167(2). If such a construction is made, it may be seen that the proviso forbids the extension of remands only beyond a total period of 90 days under clause (i) and beyond a total period of 60 days under clause (ii). Thus if proviso (a) is

treated as a separate paragraph it necessarily follows that the period of 90 days or 60 days as the case may be, will commence running only from the date of remand and not from any anterior date in spite of the fact that the accused may have been taken into custody earlier by a police officer and deprived of his liberty.

25. Thus in any view of the matter i.e. construing proviso (a) either in conjunction with sub-section (2) of Section 167 or as an independent paragraph, we find that the total period of 90 days under clause (i) and the total period of 60 days under clause (ii) has to be calculated only from the date of remand and not from the date of arrest.”

**\*\* By following the aforesaid judgment in the case of Chaganti Satyanarayana (supra), the Hon’ble Supreme Court again in the case of Enforcement Directorate, Government of India vs. Kapil Wadhawan and Anr., 2023 INSC 723=(2024) 7 SCC 147 clarified the legal position as under :**

“28. The insertion of proviso (a) to Section 167(2) of the Code was examined and analyzed in Chaganti (supra). In writing the two-judge bench opinion in the case, S. Natarajan J. had the occasion to examine the reasoning and the ratio in Rajoo alias Raj Kishore Singh vs. State of Bihar, (1980) 1 SCC 108 as also the High Court decisions in Raj Kumar Vs. State of Punjab, AIR 1979 P&H 80 , Batna Ram vs. State of H.P. 1980 CrL LJ 748 (HP), Jagdish vs. State of M.P., 1984 CrL LJ 79 (MP) and N. Sureya Reddy vs. State of Orissa (supra) and the learned Judge observed the following :-

“31. Some of the decisions cited on either side have been rendered prior to the amendment of proviso (a) by Act 45 of 1978 and some have been rendered after the amendment. Mr. Ram Reddy sought to make a distinction of the earlier decisions by contending that they ceased to have relevance because of the amendment to proviso (a) making it an independent paragraph all by itself. Since, we have held that in whichever way proviso (a) is construed i.e. with reference to Section 167(2) or without reference to it the periods of 90 days and 60 days prescribed by the legislature can be reckoned only from the date of remand the distinction sought to be made between the decisions rendered prior to Amendment Act 45 of 1978 and subsequent to it does not have much of significance.

32. 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.”

29. However, noticing that some of the aforementioned decisions were prior to the insertion of proviso (a) by the amending Act 45 of 1978, it was opined in Chaganti (supra) that those earlier case laws have no relevance. The Court then went on to state that the 90/60 days prescribed in proviso (a) to Section 167 (2) can be reckoned only from the date of remand and it is made clear through the amendment that the legislature had intended to provide a 90/60 day remand period, for the purpose of investigation. It was also expressly opined that the proviso (a) in reference to the total period of detention can be interpreted on the plain language of

the proviso itself, **being a complete code on its own and it being wholly unnecessary to invoke provisions of the General Clauses Act or Limitation Act.**

**30. The above authoritative pronouncement in Chaganti (supra) was later considered in Gautam Navlakha (supra), wherein, for computing the prescribed 60/90 day remand period, the date of remand was included.**

31. In the above context, let us now examine the decision in State of M.P. vs. Rustam (supra), and Ravi Prakash Singh Vs. State of Bihar (supra) which are relied upon by the learned ASG to argue that the period specified in proviso (a) to Section 167 (2) of the CrPC should exclude the date of remand. On reading Rustam (supra), it comes to light that the Court while counting the period has considered Sections 9 and 10 of the General Clauses Act. But in doing so, the Court in Rustam(supra) failed to appreciate the ratio in Chaganti (supra) where it was categorically observed, that for the purpose of computing the period under Section 167 (2), the provisions of General Clauses Act will have no application. Insofar as Ravi Prakash Singh (supra) cited by Mr. Raju, it can be seen that the Court merely follows Rustam (supra) and it does not lay down any law as such, which may have a bearing on the present consideration.

**32. Considering the legislative intent behind Section 167 (2) CrPC, and the proviso (a) being a complete code in itself, as also elucidated in Chaganti (supra), the computation method laid down in Rustam (supra), may not be the correct way. Further, since Rustam (supra) ignored the binding precedent in Chaganti (supra) on computing the prescribed 60/90 day period under proviso (a) of Section 167(2), from the date a Magistrate ordered remand, it is a per incuriam decision.**

33. The law of binding precedent provides that the rule of per incuriam is an exception to the doctrine of judicial precedent. Quite literally, it provides that when a judgment is passed in ignorance of a relevant precedent or any other binding authority, the same is said to be postulating incorrect law. It becomes pertinent to resolve the conflict arising from diverging opinions by taking recourse to the ratio decidendi of the earliest opinion. In this context MN Venkatachaliah J., in the 7-judge Bench decision of A.R. Antulay vs. R.S. Nayak [(1988) 2 SCC 602] opined that:

“...the point is that the circumstance that a decision is reached per incuriam merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A coordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such a decision...”<sup>19</sup> [AR Antulay vs. RS Nayak (1988) 2 SCC 602, para 183 (per MN Venkatchaliah J.)]

Likewise, a Constitution Bench in Shah Faesal vs. Union of India, Shah Faesal vs. Union of India, (2020) 4 SCC 1 (para 33) taking note of this Court’s decision in Sandeep Kumar Bafna Vs. State of Maharashtra, 2014 (16) SCC 623 pertinently observed:

“...a decision or judgement can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgement of a co-equal or larger bench or if the decision of the High Court is not in consonance with the views of this court...”

34. It logically flows from the above that the operative part in Rustam (Supra) with respect to the 60/90 day period of computation, arrived at after, invoking Sections 9 and 10 of the General Clauses Act, 1897, where the court excluded the date of remand and ignored the contrary opinion in Chaganti (supra), cannot be a binding judicial precedent as the same is rendered per incuriam.

35. Significantly the principle of computing the 60/90 day period by including the date of remand, as laid down in Chaganti (supra), has been followed in State vs. Mohd. Ashraft Bhat (supra), Pragnya Singh Thakur (supra), and in Gautam Navlakha (supra).

36. The 3-Judge Bench in M. Ravindrana (supra), followed Rustam (supra) viz. a viz. Ravi Prakash (supra), wherein the date of remand is excluded. However, the computation as stipulated in Rustam (supra), being per incuriam, cannot in our opinion be considered as the correct law. **Therefore, the Court in Ravindrana (supra) ought to have followed the computation principle laid down in Chaganti and not Rustam.**

....

61. Since there exists vacuum in the application and details of Section 167 CrPC, we have opted for an interpretation which advances the cause of personal liberty. The accused herein were remanded on 14.05.2020 and as such, the charge sheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on 13.07.2020 which was the 61st day of their custody. Therefore, the right to default bail accrued to the accused persons on 13.07.2020 at 12:00 AM, midnight, onwards. On that very day, the accused filed their default bail applications at 8:53 AM. The ED filed the chargesheet, later in the day, at 11:15 AM. Thus, the default bail Applications were filed well before the chargesheet. In Ravindrana(supra) and Bikramjit (supra), which followed the Constitution Bench in Sanjay Dutt(supra) it was rightly held that if the accused persons avail their indefeasible right to default bail before the chargesheet/final report is filed, then such right would not stand frustrated or extinguished by any such subsequent filing.

**62. We therefore declare that the stipulated 60/90 day remand period under Section 167 CrPC ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period, as we notice will extend beyond the permitted 60/90 days' period resulting in unauthorized detention beyond the period envisaged under Section 167 CrPC.** In cases where the chargesheet/final report is filed on or after the 61st/91st day, the accused in our considered opinion would be entitled to default bail. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused."

14. In the case of Subhelal @ Sushil Sahu vs. The State of Chhattisgarh, AIR 2025 SC 1483=2025 INSC 242, the Hon'ble Supreme court held that default bail can be granted irrespective of nature of offence. Relevant paragraphs are quoted as under :

“19. Sub-section (6) of Section 437 has been very exhaustively explained by the High Court of Gujarat in Nehul Prakashbhai Shah v. State of Gujarat reported in (2012) 53 (3) GLR 2685. One of us, J.B Pardiwala, J. was a part of the Bench which decided the Criminal Reference. We quote the relevant observation:

“9.4.2 Our say, in context of Section 437(6), would be better understood if word 'investigation' is read to mean 'trial' in the above quote.

10. Attempt on part of the Magisterial Court in such situation should be to strike a balance by putting one hand on right to speedy trial of an accused as embodied under Article 21 of the Constitution of India and the interest of the prosecution and society on the other hand.

11. A close reading of provisions of Section 437(6) of the Code, prima-facie would show that a duty is cast upon the concerned Magistrate to see that the trial of an accused is concluded within a period of sixty days from the first date of taking evidence. The Magistrate is obliged to make all possible endeavours to see that provisions contained in Section 437(6) of the Code are complied with in its true, letter and spirit. To that extent, it appears that a right accrues in favour of an accused to tell the Court concerned that the trial has not been concluded within sixty days from the first date fixed for taking evidence for no fault on his part and, therefore, he should be released on bail, may be at that stage, there is some discretion vested in the Magistrate to refuse bail for the reasons which the Magistrate may deem fit to record. Such reasons cannot be routine. Such reasons have to be weighty enough to outweigh the right that accrues to the accused in first part of sub-section (6) of Section 437 of the Code, which appears to be drawing force from Article 21 of the Constitution of India.

11.1 The words 'any case' appearing in sub section (6) of Section 437 of the Code point at the legislative intent to make that provision applicable to all cases which are Magisterial triable and nonbailable. Legislature has not drawn any other distinction for applicability of sub-section (6) of Section 437 of the Code. **In comparison to that, the provisions contained in Section 167(2)(a)(i) and (ii) of the Code provide for grant of bail in event charge-sheet is not filed within stipulated time. The provision is aimed at expeditious conclusion of investigation. It also protects liberty of an accused where the Investigating Agency fails to conclude investigation and file charge-sheet within a stipulated time. Since the accused gets arrested on basis of allegations of offence, the legislature has deemed it proper to protect his interest by awarding to him a right of bail, irrespective of nature of offence if the charge-sheet is not filed within stipulated time limit. That right has been held to be absolute and infeasible.** The parameters contained therein cannot be wholly employed while dealing with an application under Section 437(6) of the Code since they both operate on different plains. Even the language employed in both the provisions is different. Whereas, it gives discretion to Judicial Officer to refuse bail under Section 437(6), it leaves no scope for such discretion under Section 167(2) of the Code....”

**15.** In the light of aforesaid factual and legal scenario and in my considered opinion answers to the aforesaid seven questions, are as under :

(i) Where last day, which is Sunday or Holiday will be counted in the 60<sup>th</sup> day.

(ii) Date of remand will be included in the period of 60 days and provisions of the General Clauses Act or the Limitation Act would not apply to Section 187 of the BNSS, hence no question arises for condonation of delay.

(iii) There being holiday, the Court is closed on the last day of filing charge sheet, and charge sheet is filed on 61<sup>st</sup> day or any other later/subsequent day, the Default Bail can be granted.

(iv) Even if the court was closed from 60<sup>th</sup> to 64<sup>th</sup> day, filing of charge sheet on 61<sup>st</sup> or 64<sup>th</sup> day, can be considered as a non-compliance of mandatory provision under 187(3)(ii) of the BNSS.

(v) With a view to avoid non-compliance of the aforesaid mandatory provision, and further with a view to maintain dignity of the Prosecution, charge sheet can be submitted before remand/duty magistrate.

(vi) If the accused is prepared to furnish bail as ordered and does furnish bail, even an oral application for grant of default bail before remand/duty magistrate, is sufficient.

(vii) If an accused is entitled to default bail, then irrespective of merits and demerits of the case, he deserves to be granted default bail.

**16.** Surprisingly, despite being a Special Judge of NDPS Court, the Judge has not spared any time to peruse/follow the aforesaid settled and binding legal position and on extraneous reasons, dismissed the application for grant of default bail, despite accrual of an indefeasible right to the petitioner/accused due to non-filing of charge sheet within stipulated period.

**17.** Resultantly, as has been held in the case of Raja Bhaiya Singh (**supra**), the order passed on the application for grant of default bail, is not an interlocutory order, therefore, instant criminal revision being maintainable, deserves to be and is hereby allowed and by setting the impugned order passed by the Special Judge, NDPS, Bhopal, it is ordered that the petitioner- Armaan Hussain be released on bail upon his furnishing a bail bond of Rs.50,000/- (Rs.

Fifty thousand) with one solvent surety of the like amount to the satisfaction of the Trial Court for his regular appearance before the Trial Court during trial with a condition that he shall remain present before the Court concerned during trial and shall also abide by the conditions enumerated under Section 437(3) of CrPC/480(3) of BNSS.

**18.** With the aforesaid, the criminal revision stands **allowed**.

**19.** Pending application(s), if any, shall stand disposed of.

**(DWARKA DHISH BANSAL)**  
**JUDGE**

pb