

WEB COPY

Crl.A(MD) No.1131 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.09.2026

PRONOUNCED ON: .10.2026

CORAM

THE HON'BLE MR.JUSTICE S.KARTHIKEYAN

CRL A(MD) No.1131 of 2026

CNR:{HCMD011313972026}



Case QR

Alagar @ Alagesan @ Kedi

..Appellant/Petitioner/4th accused

Vs

1. The State of Tamil Nadu rep by
The Deputy Superintendent of Police,
Othakadai Zone,
Madurai District.
(Crime No.123/2026)

2. The State of Tamil Nadu,
Rep by The Inspector of Police,
Othakkadai Zone,
Madurai District.

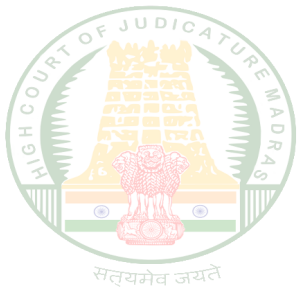
3. P.Stalin

..Respondent(s)

PRAYER: This Criminal Appeal has been filed under Section 14-A(2) of SC/ST (PoA) Act, 2015, to call for the records in Crl.M.P.No.418 of 2016 on the file of the learned III Additional District Judge for PCR Cases, Madurai and set aside the order dated 09.09.2026 and release the appellant on bail.

For Appellant : Thiruvadi Kumar.A

For Respondent : Mr.A.Robinson
Government Advocate (Criminal Side)



JUDGMENT

WEB COPY

This Criminal Appeal has been filed against the order of declining bail by the learned III Additional District and Sessions Judge, Madurai in Crl.M.P.No.418 of 2026 in Crime No.123 of 2026 by order dated 09.09.2026.

2. The learned counsel for the appellant submitted that the appellant was arrested and remanded to judicial custody on 14.04.2026 in connection with Crime No.123 of 2026, pending on the file of the second respondent, for the alleged offences punishable under Sections 103, 109, 126(2), 191(2), 191(3), 296(b) of BNS @ Sections 103, 109, 126(2), 191(2), 191(3), 296(b) of BNS and Sections 3(1)(r), 3(1)(s), 3(2)(v) of SC/ST Act. Even after the completion of 90 days from the date of remand, the respondent police had not filed the charge sheet and therefore, the appellant had filed an application seeking statutory bail under Section 187(3) of the BNSS. The co-accused had also filed a similar petition. Though the petition filed by the appellant was returned on certain grounds, the petition filed by the co-accused was considered and they were granted statutory bail. Subsequently, the appellant filed a petition seeking regular bail before the Trial Court in Crl.M.P.No.329 of 2026, which came to be dismissed by the trial Court by order dated 05.08.2026. Aggrieved by the same, the appellant has preferred an appeal before this Court in Crl.A(MD) No.969 of 2026, in which, the appellant stated that he wants to pursue the remedy before



the Trial Court seeking for mandatory bail in the light of the decision of the Hon'ble Apex Court in ***Sanjay Dutt Vs. State through C.B.I, Bombay, reported in (1995) 5 SCC 410***. Thereafter, the appellant has re-presented the petition for statutory bail which was came to be dismissed by the Trial Court by the impugned order, dated 09.09.2026 on the ground that after filing of the charge sheet, the mandatory bail application is not maintainable.

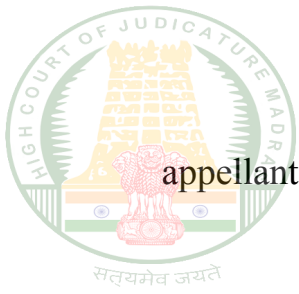
3. The learned counsel for the appellant contended that the said course of action adopted by the Trial Court is directly against the dictum laid down by the Hon'ble Apex Court. The learned Counsel for the appellant contended that the right to claim the mandatory bail accrues on 60th or 90th day when the investigation agency failed to file the final report. The said right of the accused is an indefeasible right which cannot be taken away subsequently by filing the final report. The learned counsel for the appellant relied on the decision of the Hon'ble Apex Court in ***Rakesh Kumar Paul Vs. State of Assam reported in (2017) 15 SCC 67***. The learned counsel for the appellant further contended that the date relevant for computation is the date of filing of application and not the date of taking cognizance by the Court. He relied on the judgment of Hon'ble Apex Court in ***Sarah Mathew Vs. Institute of Cardio-Vascular Diseases by its Director Dr.K.M.Cherian and others, reported in (2014) 2 SCC 62***.



4. He further contended that no written application is necessary for seeking statutory bail and that even an oral application is sufficient. In support of the said contention, the learned counsel for the appellant relied upon the decision of the Hon'ble Apex Court in ***Bikramjit Singh Vs. State of Punjab, reported in (2020) 10 SCC 616.***

5. He also relied upon the decision of this Court in ***K.Muthirul Vs. Inspector of Police, Samayapuram Police Station, Madurai District, reported in 2021 SCC OnLine Mad 17811*** to say the indefeasible right to default bail under Section 167(2) Cr.P.C. is an integral part of the right to personal liberty guaranteed under Article 21 of the Constitution of India and that the said right to bail cannot be suspended even during a pandemic situation.

6. The learned counsel for the appellant further relied upon the decision of this Court in ***Rahim Vs. State of Tamil Nadu, represented by the Inspector of Police, Thalamuthunagar Police Station, Thoothukudi District, in Crl.O.P. (MD) No.1517 of 2026***, dated 30.03.2026, wherein it was held that even if the bail application and the charge sheet were filed on the same day, the indefeasible right of the accused to seek statutory bail will not get lost. Therefore, according to the learned counsel for the appellant, the Trial Court erred in holding that the application for statutory bail is not maintainable. Hence, he prayed for setting aside the impugned order and for enlarging the



appellant on bail, with or without conditions.

WEB COPY

7. The learned Government Advocate (Criminal Side) submitted that it is a case of double murder. The appellant has five previous cases. The appellant has already approached this Hon'ble Court in Crl.O.P(MD) No.12570 of 2026, wherein this Court has declined to grant bail to the appellant. Further, though the appellant has claimed that he filed an application under Section 183 of the BNSS seeking statutory bail, the said application was returned and he has not pursued the said application thereafter. Subsequent to the return of the said application, the prosecution has filed the final report and therefore, the indefeasible right, whatever accrued, is lost. Apart from that, the petitioner has again filed a regular bail application. It was declined by the trial court. Aggrieved by the said dismissal, the appellant has approached this Court by way of appeal in Crl.A(MD) No.969 of 2026 and he withdrew the said application on 24.08.2026.

8. The learned Government Advocate (Criminal Side) further submitted that though the co-accused were granted bail, they were granted statutory bail due to the non filing of the final report before the court. Now, the right of the appellant to file a statutory bail application is lost. Therefore, according to the learned Government Advocate (Criminal Side), the trial court rightly rejected the application as not maintainable. Therefore, he prays for dismissal of the



present appeal.

WEB COPY

9. This Court has given its thoughtful consideration to the rival submissions put forth by either side. On careful perusal of the records, it is found that the appellant herein was arrested on 14.04.2026 in connection with Crime No.123 of 2026, pending on the file of the second respondent, for the offences punishable under Sections 103, 109, 126(2), 191(2), 191(3), 296(b) of BNS @ Sections 103, 109, 126(2), 191(2), 191(3), 296(b) of BNS and Sections 3(1)(r), 3(1)(s), 3(2)(v) of SC/ST Act. From the submission of the learned counsel for the appellant, it is found that the appellant herein has filed an application before the trial court seeking mandatory bail under Section 187(3)(i) of the BNSS and on 17.07.2026, the said application was returned for certain defects. The said defect was not rectified and represented immediately. However, the co-accused were granted mandatory bail by the trial court.

10. Thereafter, this appellant has moved for regular bail, it was declined by the trial court. Challenging the said order, the appellant has preferred the appeal in Criminal Appeal (MD) No.969 of 2026, and the same was subsequently withdrawn on 24.08.2026. Only thereafter, the appellant had re-presented the mandatory bail application on 25.08.2026, which was originally filed on 17.07.2026,. In the meantime, the final report was filed on the 92nd day from 17.07.2026. Therefore, the trial court has held that the application is not



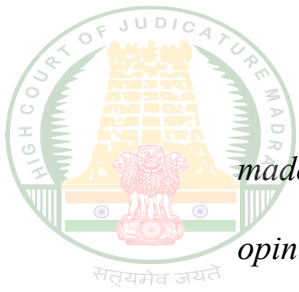
maintainable.

WEB COPY

11. However, the learned counsel for the appellant contended before this Court that insofar as mandatory bail is concerned, no written application is necessary; even an oral application is sufficient. In this connection, he relied on the decision of the Hon'ble Apex Court in ***Rakesh Kumar Paul Vs. State of Assam reported in (2017) 15 SCC 67***. The Hon'ble Apex Court in the said decision has held as follows:

“Procedure for obtaining default bail

40. In the present case, it was also argued by learned counsel for the State (1996) 1 SCC 722 that the petitioner did not apply for ‘default bail’ on or after 4th January, 2017 till 24th January, 2017 on which date his indefeasible right got extinguished on the filing of the charge sheet. Strictly speaking this is correct since the petitioner applied for regular bail on 11th January, 2017 in the Gauhati High Court – he made no specific application for grant of ‘default bail’. However, the application for regular bail filed by the accused on 11th January, 2017 did advert to the statutory period for filing a charge sheet having expired and that perhaps no charge sheet had in fact being filed. In any event, this issue was argued by learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the petitioner did not make any application for default bail – such an application was definitely

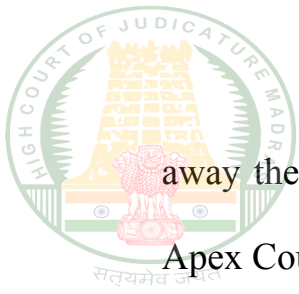


WEB COPY

made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for 'default bail' or an oral application for 'default bail' is of no consequence. The concerned court must deal with such an application by considering the statutory requirements namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge sheet or challan has been filed and whether the accused is prepared to and does furnish bail."

12. In view of the above decision of the Hon'ble Apex Court, it is found that in the matter of personal liberty, the Court should not adopt hyper technicality and it should lean in favour of personal liberty. Therefore, even though the application for default bail was returned, the trial court ought to have considered that the appellant had applied for statutory bail on the expiry of the statutory period, that is, the 92nd day from the date of his arrest. Only thereafter, the final report was filed before the trial court. Since the appellant had applied for statutory bail even before the filing of the final report, this Court is of the considered view that the indefeasible right accrued to the appellant on his filing of the petition.

13. Once the indefeasible right is accrued, as submitted by the learned counsel for the appellant, the subsequent filing of the final report will not take

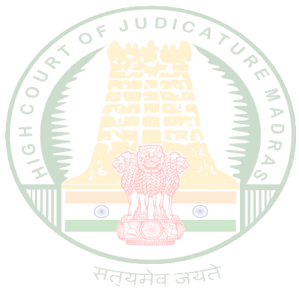


away the said indefeasible right already accrued to the appellant. The Hon'ble Apex Court in ***Bikramjit Singh Vs. State of Punjab, reported in (2020) 10 SCC***

616 has held as follows:

“29. The question as to whether default bail can be granted once a charge sheet is filed was authoritatively dealt with in a decision of a Three Judge Bench of this Court in Uday Mohanlal Acharya v. State of Maharashtra (2001) 5 SCC 453. The majority judgment of G.B. Pattanaik, J. reviewed the decisions of this Court and in particular the enigmatic expression “if already not availed of” in Sanjay Dutt (supra). The Court then held:

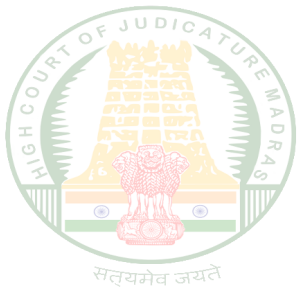
“13...The crucial question that arises for consideration, therefore, is what is the true meaning of the expression “if already not availed of”? Does it mean that an accused files an application for bail and offers his willingness for being released on bail or does it mean that a bail order must be passed, the accused must furnish the bail and get him released on bail? In our considered opinion it would be more in consonance with the legislative mandate to hold that an accused must be held to have availed of his indefeasible right, the moment he files an application for being released on bail and offers to abide by the terms and conditions of bail. To interpret the expression “availed of” to mean actually being released on bail after furnishing the necessary bail required would cause great injustice to the accused and would defeat the very purpose of the proviso to Section 167(2) of the Criminal Procedure Code and further would make an illegal custody to be legal, inasmuch as after



WEB COPY



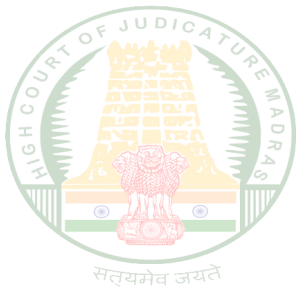
the expiry of the stipulated period the Magistrate had no further jurisdiction to remand and such custody of the accused is without any valid order of remand. That apart, when an accused files an application for bail indicating his right to be released as no challan had been filed within the specified period, there is no discretion left in the Magistrate and the only thing he is required to find out is whether the specified period under the statute has elapsed or not, and whether a challan has been filed or not. If the expression “availed of” is interpreted to mean that the accused must factually be released on bail, then in a given case where the Magistrate illegally refuses to pass an order notwithstanding the maximum period stipulated in Section 167 had expired, and yet no challan had been filed then the accused could only move to the higher forum and while the matter remains pending in the higher forum for consideration, if the prosecution files a charge-sheet then also the so-called right accruing to the accused because of inaction on the part of the investigating agency would get frustrated. 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. v. Rustam [1995 Supp (3) SCC 221 : 1995 SCC (Cri) 830] setting aside the order of grant of bail by the High Court on a conclusion that on the date of the order the prosecution had already submitted a police report and,



WEB COPY



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 [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433]*...In the aforesaid premises, we are of the considered opinion that an accused must be held to have availed of his right flowing from the legislative mandate engrafted in the proviso to sub-section (2) of Section 167 of the Code if he has filed an application after the expiry of the stipulated period alleging that no challan has been filed and he is prepared to offer the bail that is ordered, and it is found as a fact that no challan has been filed within the period prescribed from the date of the arrest of the accused. In our view, such interpretation would subserve the purpose and the object for which the provision in question was brought on to the statute-book. In such a case, therefore, even if the application for consideration of an order of being released on bail is posted before the court after some length of time, or even if the Magistrate refuses the application erroneously and the accused moves the higher forum for getting a formal order of being released on bail in enforcement of his indefeasible right, then filing of challan at that stage will not take away the right of the accused. 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

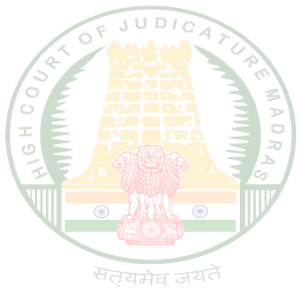


WEB COPY



period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution. There is no provision in the Criminal Procedure Code authorising detention of an accused in custody after the expiry of the period indicated in proviso to sub-section (2) of Section 167 excepting the contingency indicated in Explanation I, namely, if the accused does not furnish the bail...But so long as the accused files an application and indicates in the application to offer bail on being released by appropriate orders of the court then the right of the accused on being released on bail cannot be frustrated on the off chance of the Magistrate not being available and the matter not being moved, or that the Magistrate erroneously refuses to pass an order and the matter is moved to the higher forum and a challan is filed in interregnum. This is the only way how a balance can be struck between the so-called indefeasible right of the accused on failure on the part of the prosecution to file a challan within the specified period and the interest of the society, at large, in lawfully preventing an accused from being released on bail on account of inaction on the part of the prosecuting agency. On the aforesaid premises, we would record our conclusions as follows:

3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour



WEB COPY



of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

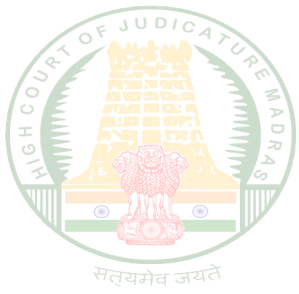
6. The expression “if not already availed of” used by this Court in Sanjay Dutt case [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in para (a) of the proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.”

32. Also, in Syed Mohd. Ahmad Kazmi v. State (Govt. of NCT of Delhi) (2012) 12 SCC 1, Section 43-D of the UAPA came up for consideration before the Court, in particular the proviso which extends the period for investigation beyond 90 days up to a period of 180 days. An application for default bail had been made on 17.07.2012, as no charge sheet was filed within a period of 90 days of the appellant’s custody. The charge sheet in the aforesaid case was filed thereafter on 31.07.2012. Despite the fact that this application was not taken up for hearing before the filing of the charge sheet, this Court held that this since an application for default bail had been filed



prior to the filing of the charge sheet the “indefeasible right” spoken of earlier had sprung into action, as a result of which default bail had to be granted. The Court held:

“25. Having carefully considered the submissions made on behalf of the respective parties, the relevant provisions of law and the decision cited, we are unable to accept the submissions advanced on behalf of the State by the learned Additional Solicitor General Mr Raval. There is no denying the fact that on 17-7-2012, when CR No. 86 of 2012 was allowed by the Additional Sessions Judge and the custody of the appellant was held to be illegal and an application under Section 167(2) CrPC was made on behalf of the appellant for grant of statutory bail which was listed for hearing. Instead of hearing the application, the Chief Metropolitan Magistrate adjourned the same till the next day when the Public Prosecutor filed an application for extension of the period of custody and investigation and on 20-7-2012 extended the time of investigation and the custody of the appellant for a further period of 90 days with retrospective effect from 2-6-2012. Not only is the retrospectivity of the order of the Chief Metropolitan Magistrate untenable, it could not also defeat the statutory right which had accrued to the appellant on the expiry of 90 days from the date when the appellant was taken into custody. Such right, as has been commented upon by this Court in *Sanjay Dutt [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433]* and the other cases cited by the learned Additional Solicitor General, could only be distinguished (sic extinguished) once the charge-sheet had been filed in the



WEB COPY



case and no application has been made prior thereto for grant of statutory bail. It is well-established that if an accused does not exercise his right to grant of statutory bail before the charge-sheet is filed, he loses his right to such benefit once such charge-sheet is filed and can, thereafter, only apply for regular bail.

26. The circumstances in this case, however, are different in that the appellant had exercised his right to statutory bail on the very same day on which his custody was held to be illegal and such an application was left undecided by the Chief Metropolitan Magistrate till after the application filed by the prosecution for extension of time to complete investigation was taken up and orders were passed thereupon.

27. We are unable to appreciate the procedure adopted by the Chief Metropolitan Magistrate, which has been endorsed by the High Court and we are of the view that the appellant acquired the right for grant of statutory bail on 17-7-2012, when his custody was held to be illegal by the Additional Sessions Judge since his application for statutory bail was pending at the time when the application for extension of time for continuing the investigation was filed by the prosecution. In our view, the right of the appellant to grant of statutory bail remained unaffected by the subsequent application and both the Chief Metropolitan Magistrate and the High Court erred in holding otherwise.”

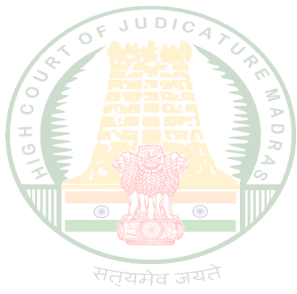
33. *In a fairly recent judgment reported as Rakesh Kumar Paul v. State of Assam (2017) 15 SCC 67, a Three-Judge Bench of this Court*



referred to the earlier decisions of this Court and went one step further. It was held by the majority judgment of Madan B. Lokur, J. and Deepak Gupta, J. that even an oral application for grant of default bail would suffice, and so long as such application is made before the charge sheet is filed by the police, default bail must be granted. This was stated in Lokur, J.'s judgment as follows:

“37. This Court had occasion to review the entire case law on the subject in Union of India v. Nirala Yadav [Union of India v. Nirala Yadav, (2014) 9 SCC 457 : (2014) 5 SCC (Cri) 212] . In that decision, reference was made to Uday Mohanlal Acharya v. State of Maharashtra [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] and the conclusions arrived at in that decision. We are concerned with Conclusion (3) which reads as follows: (Nirala Yadav case [Union of India v. Nirala Yadav, (2014) 9 SCC 457 : (2014) 5 SCC (Cri) 212] , SCC p. 472, para 24)

“13. (3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.’ (Uday Mohanlal case [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] , SCC p. 473, para 13)”

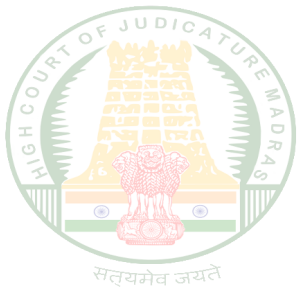


WEB COPY



38. *This Court also dealt with the decision rendered in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] and noted that the principle laid down by the Constitution Bench is to the effect that if the charge-sheet is not filed and the right for “default bail” has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge-sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.*

39. *This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to Mohd. Iqbal Madar Sheikh v. State of Maharashtra [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] wherein it was observed that some courts keep the application for “default bail” pending for some days so that in the meantime a charge-sheet is submitted. While such a practice both on the part of the prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for “default bail”*



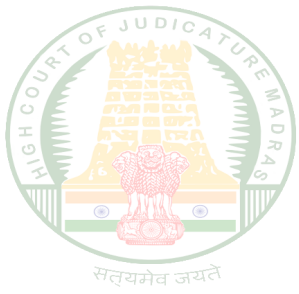
WEB COPY



during the interregnum when the statutory period for filing the charge-sheet or challan expires and the submission of the charge-sheet or challan in court.

Procedure for obtaining default bail

40. In the present case, it was also argued by the learned counsel for the State that the petitioner did not apply for “default bail” on or after 4-1-2017 till 24-1-2017 on which date his indefeasible right got extinguished on the filing of the charge-sheet. Strictly speaking, this is correct since the petitioner applied for regular bail on 11-1-2017 in the Gauhati High Court — he made no specific application for grant of “default bail”. However, the application for regular bail filed by the accused on 11-1-2017 did advert to the statutory period for filing a charge-sheet having expired and that perhaps no charge-sheet had in fact being filed. In any event, this issue was argued by the learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the petitioner did not make any application for default bail — such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused



WEB COPY

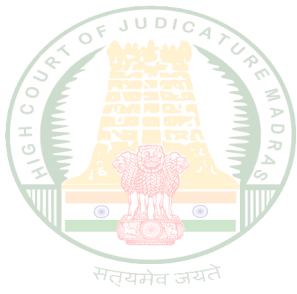


makes a written application for “default bail” or an oral application for “default bail” is of no consequence. The court concerned must deal with such an application by considering the statutory requirements, namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge-sheet or challan has been filed and whether the accused is prepared to and does furnish bail.

41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court.

Application of the law to the petitioner

45. On 11-1-2017 [Rakesh Kumar Paul v. State of Assam, 2017 SCC OnLine Gau 573] when the High Court dismissed the application for bail filed by the petitioner, he had an indefeasible right to the grant of “default bail” since the statutory period of 60 days for filing a charge-sheet had expired, no charge-sheet or challan had been filed against him (it was filed only on 24-1-2017) and the petitioner had orally applied for “default bail”. Under these circumstances, the only course open to the High

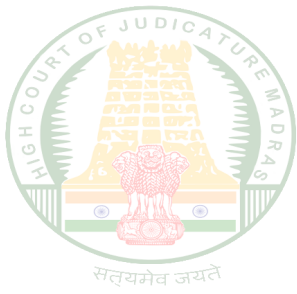


WEB COPY



Court on 11-1-2017 was to enquire from the petitioner whether he was prepared to furnish bail and if so then to grant him “default bail” on reasonable conditions. Unfortunately, this was completely overlooked by the High Court.

46. It was submitted that as of today, a charge-sheet having been filed against the petitioner, he is not entitled to “default bail” but must apply for regular bail — the “default bail” chapter being now closed. We cannot agree for the simple reason that we are concerned with the interregnum between 4-1-2017 and 24-1-2017 when no charge-sheet had been filed, during which period he had availed of his indefeasible right of “default bail”. It would have been another matter altogether if the petitioner had not applied for “default bail” for whatever reason during this interregnum. There could be a situation (however rare) where an accused is not prepared to be bailed out perhaps for his personal security since he or she might be facing some threat outside the correction home or for any other reason. But then in such an event, the accused voluntarily gives up the indefeasible right for default bail and having forfeited that right the accused cannot, after the charge sheet or challan has been filed, claim a resuscitation of the indefeasible right. But that is not the case insofar as the petitioner is concerned, since he did not give up his indefeasible right for “default bail” during the interregnum between 4-1-2017 and 24-1-2017 as is



WEB COPY

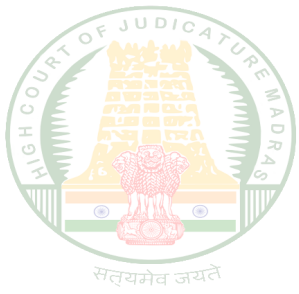


evident from the decision of the High Court rendered on 11-1-2017 [Rakesh Kumar Paul v. State of Assam, 2017 SCC OnLine Gau 573] . On the contrary, he had availed of his right to “default bail” which could not have been defeated on 11-1-2017 and which we are today compelled to acknowledge and enforce.

47. Consequently, we are of the opinion that the petitioner had satisfied all the requirements of obtaining “default bail” which is that on 11-1-2017 he had put in more than 60 days in custody pending investigations into an alleged offence not punishable with imprisonment for a minimum period of 10 years, no charge-sheet had been filed against him and he was prepared to furnish bail for his release, as such, he ought to have been released by the High Court on reasonable terms and conditions of bail.

Conclusion

49. The petitioner is held entitled to the grant of “default bail” on the facts and in the circumstances of this case. The trial Judge should release the petitioner on “default bail” on such terms and conditions as may be reasonable. However, we make it clear that this does not prohibit or otherwise prevent the arrest or re-arrest of the petitioner on cogent grounds in respect of the subject charge and upon arrest or re-arrest, the petitioner is entitled to petition for grant of regular bail which application should be considered on its own merit. We also make it clear that this will not impact on the arrest of the

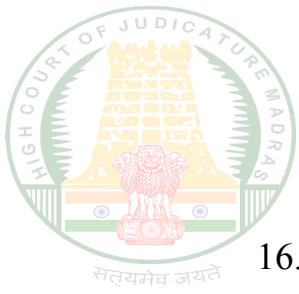


petitioner in any other case.”

WEB COPY

14. In the light of the above decisions, it is clear that once the indefeasible right accrues in favour of the appellant on filing an application for default bail, the subsequent filing of the charge sheet will not take away that indefeasible right.

15. This issue can be looked into from another aspect also. The application which was returned on 17.07.2026, was re-presented on 25.08.2026. Once the application is accepted and numbered, then it will be dated back to the date of its original presentation. Therefore, for all practical purposes, despite the application was taken on file only on 25.08.2026, it should be construed that the application was filed on 17.07.2026 itself. Therefore, the subsequent filing of the final report after the filing of the application cannot take away the right of the appellant. In this connection, the learned counsel for the appellant relied on the decision of this Court in ***K.Muthirul Vs. Inspector of Police, Samayapuram Police Station, Madurai District, reported in 2021 SCC OnLine Mad 17811*** , and the decision of this Court in ***Rahim Vs. State of Tamil Nadu, represented by the Inspector of Police, Thalamuthunagar Police Station, Thoothukudi District, in Crl.O.P.(MD) No.1517 of 2026.***



WEB COPY

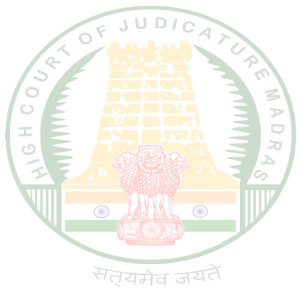
16. In the light of the above decisions, this Court is of the considered view that the appellant had applied for mandatory bail within the statutory limit, even before the filing of the final report and therefore, the indefeasible right accrued on 17.07.2026 itself. That will not get lost by the subsequent filing of the charge sheet. Therefore, the finding of the trial court that the application is not maintainable is liable to be set aside. Accordingly, the impugned order dated 09.09.2026 is set aside and the appellant is granted statutory bail on following conditions:

i) The appellant shall execute a bond for a sum of Rs.20,000/- (Rupees Twenty Thousand only) with two sureties each for a like sum to the satisfaction of the learned III Additional District and Sessions Judge for PCR Cases, Madurai.

ii) The appellant and the sureties shall submit a copy of their Aadhaar Card or any other identity card issued by the Government in proof of their residence address;

iii) The appellant and the sureties shall file an affidavit of undertaking before the respondent police that the appellant will not involve in any offence in future.

iv) The appellant shall report before the trial Court daily at 10.30 a.m., until further orders, except the days, on which their appearance is required before the trial Court.



WEB COPY



v) On violation of any of the above conditions by the appellant, the respondent police is at liberty to move an application for cancellation of the bail.

-10-2026

Index: Yes/No

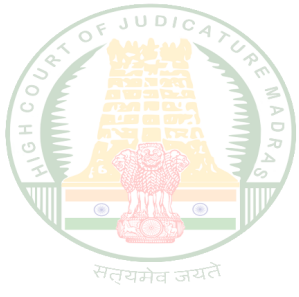
Speaking/Non-speaking order

Neutral Citation: Yes/No

Indu

To

1. The Deputy Superintendent of Police,
Othakadai Zone,
Madurai District.
2. The Inspector of Police,
Othakkadai Zone,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY

Crl.A(MD) No.1131 of 2



S.KARTHIKEYAN, J.

Indu

Crl.A(MD) No.1131 of 2026

-10-2026