

(2022) 10 GAU CK 0001
In the Gauhati High Court
Case No : Bail Application No. 1958 Of 2022

Samsun Noor @ Samsul Noor

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 07-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 22(1), 227
Assam Police Manual Part-IV, — Rule 38, 69 Assam Police Manual Part-V, — Rule 188
Code Of Criminal Procedure, 1973 — Section 57, 167, 167(1), 167(a)(ii), 167(2),
167(2)(a)(i), 172(2), 173(2), 173(2)(i) , 439
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 22C, 25, 29, 36A,
36A(4)

Citation : (2022) 10 GAU CK 0001

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : Z Kamar, A Ahmed, MA Choudhury, M Phukan, R.J Baruah

Final Decision : Disposed Of

Judgement

1. Heard Mr. A Ahmed, the learned counsel for the applicant as well as Mr. M Phukan, the learned PP, Assam along with Mr. R.J. Baruah, the learned Addl. PP. I have also heard Mr. Z Kamar, the learned senior counsel who vide the order dated 29.09.2022 was requested to assist the Court.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 'for short, the Code' for grant of bail to the applicant in connection with Nilambazar PS Case No.432/2021, who had been in custody since 28.11.2021. At the outset it is relevant to mention that the case has been registered under Section 22(C)/25/29 of the NDPS Act, 1985, for short "the Act of 1985."

3. The case of the applicant is that one Kamlesh Singh, SI of Nilambazar Police Station had lodged an FIR to the effect that at about 12. 40 PM a specific information was received by the BSF intelligence team of M&C, BSF Mashimpur, Silchar regarding the presence of huge quantity of suspected narcotic drugs at

the house of the applicant and his brother Abdul Basit. Accordingly a GD Entry was made. At around 2.30 PM, the informant along with other officials reached the place and when they moved towards the house of the applicant and seeing them some people started running from the house of the applicant throwing a gunny bag in the house. The police party apprehended the applicant. After receipt of the FIR, Nilambazar PS registered the same as Nilambazar PS Case No.432/2021 under Section 22(C)/25/29 of the NDPS Act, 1985 and started investigation.

4. It has been further mentioned that the applicant was arrested on 27.11.2021 and on 28.11.2021 he was forwarded before the Chief Judicial Magistrate, Karimganj with a prayer for 3 days police custody for the purpose of investigation and the applicant since then has been languishing in jail. Further it has been mentioned that the applicant preferred a bail application before the Special Judge, Karimganj which was registered under Section 439 Cr.P.C in Bail Appln no.372/2021. The said application was rejected on the ground that the alleged contraband was recovered from the house of the applicant. In the instant bail application, the period during which the applicant was in judicial custody has been mentioned and for the sake of convenience, the same is reproduced herein below:

Table showing the calculation of 180 days

Sl. No.

Month

No. of days

1

Forwarded on 28.11.2022

2 days

2

December 2022

31 days

3

January 2022

31 days

4

February 2022

28 days

5

March 2022

31 days

6

April 2022

30 days

7

May 27.05.2022 (180 days completed)

27 days

5. It is the case of the applicant that one bail application was filed before the Court of the Special Judge, Karimganj seeking default bail on the ground that the accused applicant was arrested on 27.11.2022 and as such, he has completed the statutory period of detention on 26.05.2022. The said application has been enclosed to the instant bail application as Annexure - 6. It is relevant to mention that from a perusal of the certified copy of the vernacular version of the bail application so enclosed as Annexure - 6, it appears that the said petition was numbered as Pet No.506/14 and was filed on 30.05.2022 as would be apparent from the seal. From a perusal of the said petition, it appears that the wife of the applicant had mentioned that her husband had been languishing in the jail for a long time and he had completed the statutory period on 28.05.2022 and hence prayed for release of the applicant on furnishing appropriate surety. The said application which was filed on an off date was directed to be put up on the next date fixed i.e., on 07.06.2022 as would appear from a perusal of the said application itself. It further appears that the applicant filed a bail application before this Court thereafter which was numbered as Bail Appln No. 758/2022 which was withdrawn on 01.06.2022 on the ground that the statutory period of detention being over and there was no charge-sheet submitted before the concerned court.

6. It appears from the case record called from the Court below that on 24.05.2022, the Presiding Officer of the Court i.e., the Court of the Additional Session Judge, Karimganj was absent and the applicant along with the other co accused were produced from the jail custody through VC and they were further remanded to the jail custody fixing 07.06.2022 for production. On 07.06.2022 the Court of the Special Judge, Karimganj observed as follows:- "Received and Perused C/D with C/S No.43/2022 dated 19.05.2022 (Put up today but received on 27.05.2022 as reported by the Office) and on the very date the Court took cognizance of the offence under Section 22(C)/25/29 of the Act of 1985. The court also had taken due notice about the petition no.506/14 filed for bail of the applicant on the ground of expiry of the statutory period under section 167(2) Cr.P.C along with another bail application filed by a co-accused. Thereafter, the

Court fixed the matter on 21.06.2022 for production, 04.07.2022 for appearance and copy and 09.06.2022 for further hearing on bail petitions.

7. On 09.06.2022, the Court below taking into account that the applicant along with the co accused has filed bail applications before this Court directed the applicant along with the co accused to submit the certified copy of the final orders passed by this Court on the two bail applications and fixed 13.06.2022 for certified copy. On 13.06.2022 the certified copies of the orders in bail application before this Court were produced before the Court below and the Court below fixed 15.06.2022 for orders on both the petitions. The record further shows that on 15.06.2022, the order could not be made ready till 06.10. PM and accordingly fixed 16.06.2022 for orders. It however appears that the Court below passed an order with the date 15.06.2022. Insofar as the petition filed by the applicant is concerned i.e. Petition No.506/14 for bail, the Court duly observed that the bail application filed by the applicant before this Court was closed as withdrawn vide order dated 1.06.2022. It was further observed that the applicant has been in jail custody since 28.11.2021 i.e., completed 180 days of detention on 27.05.2022. Further to that, the Court observed as follows:

“Though the charge-sheet is dated 19.05.2022 and the same was put up with C/D on 07.06.2022, the C/D with charge-sheet was submitted to the office of the Court on 27.05.2022 (as orally reported by the office and reflected in the order dated 07.06.2022). In other words, the charge-sheet was filed on the same date (27.05.2022) on which accused Samsul completed 180 days of detention. But the petition for bail was filed on 07.06.2022 i.e., after submission of the charge-sheet. Given such position, I am inclined to hear all sides further as to whether the accused person has accrued the right to default bail.

Fix 18.06.2022 for further hearing on petition No.506/14.

Rest as before.”

8. From the above quoted portion, it is relevant to take note of that the Court below had categorically observed that the charge-sheet was submitted to the Office of the Court on 27.05.2022 as orally reported by the Office and reflected in the order dated 07.06.2022. It was also observed that the petition for bail was filed on 07.06.2022 which is however, contrary to the Annexure – 6 of the bail application inasmuch as, as per Annexure – 6 the petition No.506/14 was filed on 30.05.2022. On 18.06.2022, the Court further heard the matter and fixed 20.06.2022 for order on Pet No.506/14. The Court passed the order on 20.06.2022 and observed that the applicant completed detention of 180 days in jail custody on 27.05.2022 and taking into consideration the provisions of Section 167(a)(ii) of the Code read with Section 36A(4) of the Act of 1985 and as the petition for default bail was filed on 07.06.2022 i.e., after filing of the charge-sheet, the applicant was not entitled to the default bail in the case. Further to that, the Court below also took into consideration that the learned Addl. PP orally opposed the petition. Accordingly, the Petition No.506/14 was rejected. Relevant

portion of the said order dated 20.06.2022 is quoted herein below:

"The accused person along with others has been charge-sheeted u/s 22(C)/25/29 of the NDPS Act; the case involves recovery of as much as 32.88 kg of tablets containing commercial quantity of methamphetamine (psychotropic substance), as alleged. Though the charge-sheet is dated 19.5.2022, the same was received by the office of this Court on 27.5.2022, as reported by the office, as already reflected in the order dated 15.06.2022. The accused person (Samsul) completed detention of 180 days in jail custody on the same day (27.5.22) and hence, even if the date 27.5.2022 is considered to be the date of filing of the charge-sheet, still it has to be held that the charge-sheet was filed within the maximum period permissible u/s 167(2) [Proviso (a)(ii) Cr.P.C. read with Sec.36A(4) of the NDPS Act. In this context, I may beneficially refer to the clear observation of the Hon'ble Apex Court, in M. Ravindran -Vrs- Intelligence Officer, Directorate of Revenue Intelligence [reported in MANU/SC/0788/2020 (Para : 7)], that in computing the period, "the day on which accused was remanded to judicial custody has to be excluded and the day on which challan/charge-sheet is filed in the court has to be included." (Emphasis supplied). Moreover, the petition was filed (i.e. the right to default bail was exercised) on 07.6.22 i.e. after filing of the charge-sheet. Therefore, I am unable to agree with the learned advocates for the petitioner that the accused person (Samsul) accrued the right to default bail in this case.

For the facts & circumstances of the case abridged above, the stringent bar u/s 37(1)(b) of the NDPS Act is clearly attracted in this Case, because, learned Addl. PP orally opposed the petition. Hence, I reject the petition no.506/14.

Rest as before (i.e., 04.7.22 for appearance of the summoned accused persons & supply of copies as per order dated 07.6.22)."

9. Subsequent thereto, on 02.08.2022 the present application has been filed under Section 439 of the Code. This court vide an order dated 12.08.2022 called for legible scanned copy of the case record including the charge-sheet of the case along with the case diary fixing 9.09.2022. On 09.09.2022 when the matter came up before this Court, this Court further directed the matter to be listed on 16.09.2022 and in the meantime, the Registry was directed to communicate with the Court of the Special Judge, Karimganj and requisition by way of scanned copy any order/record reflecting that the charge-sheet was received on 27.05.2022 by the office of the Court of the Special Judge, Karimganj and fixed 16.09.2022 as the next date. In the case record of the instant bail application, an Office Note is available to the effect that in pursuance to the order dated 09.09.2022, the Court of the Special Judge, Karimganj had forwarded the order dated 07.06.2022. Nothing else was forwarded to reflect that the charge-sheet was received on 27.05.2022. On 20.09.2022 this Court after hearing the parties, observed that this Court was considering the right of an accused for default bail which is a statutory right and merely on the basis of oral statement made by the office the same cannot be construed to be a receipt. Taking into consideration the

submission made by the learned Addl. PP that the Register, the reference of which can be seen in Rule 69 of the Assam Police Manual, is in the custody of the Court Officer of the PI Court relating to the Court of the Special Judge, Karimganj, this Court directed the Court of the Special Judge, Karimganj to make enquiries into the matter and submit a report before this Court as to whether there is any evidence on record showing that on 27.05.2022, the charge-sheet was submitted before the Court or its office and if there is any such evidence, scanned copies of the same be sent to this Court along with the report. Further to that, this Court further directed scanned copy of the Case Register of the PI Court relating to the Court of the Special Judge, Karimganj, pertaining to Special NDPS Case No.122/2021 arising out of Nilambazar PS Case No.432/2021 be sent to the Court.

10. In pursuance to this order passed by this Court on 20.09.2022, the Special Judge, Karimganj submitted a report dated 26.09.2022. In terms with the said report, the learned Special Judge mentioned that in the last year he instructed his office to maintain a register on receipt of charge-sheets in cases under the NDPS Act and POCSO Act so that a record is kept thereby at his office and accordingly a register was maintained from 18.08.2021. He further mentioned in the report that he called for reports from the PI Karimganj and also from the Dealing Assistant of his Office. On the basis of the said enquiries, he mentioned the following which is quoted herein below:

"(1) As per the Register maintained at my office, the charge-sheet of the above noted case was received at my office on 27.5.22. the D/A has also reported so of the Register of my Office and the original report of the D/A are annexed as Annexure – I & Annexure – II respectively.

(2) The Register maintained at the Office fo the PI shows that the concerned charge-sheet was received by the D/A of my office. In this register, the D/A put the date '28.5.22' against his signature endorsing such receipt and the PI has also reported to a similar effect. However, the D/A of my office reported that the date was so put mistakenly instead of the correct date 27.5.22. The charge-sheet was dispatched from the office of the PI on 23.05.2022, as his report & register show. I may note here that 28.5.22 was a holiday leaving little scope for accepting the same on that day (28.5.22) at my office.

Photocopy (authenticated by me) of the relevant page of the concerned register of the office of the PI, Karimganj, and his original report are annexed herewith as Annexure – III & Annexure – IV respectively.

(B) In the aforesaid factual backdrop, I am of the considered opinion that the records suggest that the charge-sheet was received at my office on 27.5.22.

With these, I humbly conclude this report. I sincerely regret that my office failed earlier to send the concerned page of the Register maintained at my office (i.e., the record showing that my office received the charge-sheet on 27.5.22).

11. From the enclosures to the said report it reveals that Annexure (I) is the relevant page of the Register in the Office of the Special Judge. A perusal of Annexure (I) reveals that there are four columns which are "Received date", "PS number", "PS case number" and "signature of the receipt". Relevant to mention that the signatures are of the Dealing Assistant and not that of the Presiding Officer of the Court.

12. Annexure (II) is report submitted by the UD Assistant of the Office of the Additional Sessions Judge, Karimganj addressed to the Additional District & Sessions Judge, Karimganj, wherein he had stated that the case diary in connection with Special NDPS Case No.122/2021 arising out of Nilambazar PS Case No.432/2021 from the PSI of Karimganj Court was received on 27.05.2021 and as per the Register maintained in the PSI of Karimganj Court, he received the case diary on 28.05.2022. He further mentioned that 28.05.2022 was a holiday but inadvertently, he put the wrong date 28.05.2022 instead of 27.05.2022 after his signature in the Register maintained in the PSI of Karimganj Court.

13. Annexure (III) is the relevant page of the Register maintained at the Office of the PI wherein it is shown as against Nilambazar PS Case No.432/2021 therein is an endorsement by the Dealing Assistant dated 28.05.2022. At this stage, it may be relevant to take note of that there is an entry against each specific date but as regards Nilambazar PS Case No.432/2021, the said entries have been put against date 23.05.2022. It further surprises this Court to take note of that as regards the date 23.05.2022 there are three entries, one is KXJ PS Case No.145/2022, the second is BDP GRPS Case No.12/2022 and the third is NLB PS Case No.432/2021. In respect to all the three entries, it is the same person who had received it, however, as regards the entries at serial No.1 & 2 it was received on 24.05.2022 whereas, as regards the entry at serial No.3, the same was shown to have been received on 28.05.2022. It is also worthwhile to take note of that a conjoint reading of Annexure (III) with Annexure (I) as against the entry dated 06.06.2022 in Annexure (III) which pertains to KXJ PS Case No.67/2022 there is no corresponding entry in Annexure (I) although it is same person who had put the signature of having received in Annexure (III).

14. Annexure (IV) is the report submitted by the SI of PSI Court, Karimganj to the Additional District & Sessions Judge relating to Nilambazar PS Case No.432/2021, wherein it has been mentioned that from the records it is learnt that NLB PS Case No.432/2021 was sent to the Court of the Additional District & Sessions Judge, Karimganj along with KXJ PS Case No.145/2022 and BDP GRP Case No.12/2022 on 24.05.2022 and was duly received by the Office of the Court. It was further mentioned that NLB PS Case No.432/2021 was received along with the charge-sheet and other connected papers on 23.05.2022 from the concerned PS and the same along with two other cases were received by the office of the Court on 24.05.2022 and 28.05.2022 as per the PSI Court Dak Book.

15. Pursuant to the report being submitted, copies of the said report was duly

furnished to both the counsels appearing on behalf of the applicant as well as also to the learned Addl. PP on 27.09.2022 and the Court heard the matter on 29.09.2022 and 30.09.2022. In the backdrop of the above, let this Court therefore take into consideration the respective submissions of the parties.

16. The learned counsel for the applicant submitted that in terms with Section 173 (2) of the Code, the Officer-in-Charge of the Police Station shall forward to a Magistrate empowered to take cognizance of an offence on a police report in the form prescribed by the State Government. The learned counsel for the applicant submitted that the Assam Police Manual, more particularly, the Part-IV, the State Government has prescribed the mode and manner by which the charge-sheet is required to be filed. Referring to Rule 38 of the Assam Police Manual, Part-IV, the learned counsel for the applicant submitted that the charge-sheet is to be submitted to the Magistrate by the Officer who prosecutes or watches the case, and the said Officer, putting up this form before the Magistrate, is responsible for obtaining the initial of the Magistrate or order either in the form or in the Magistrate's General Register as the case may be. Drawing reference to Form-11, the learned counsel for the applicant submitted that it is in this particular form where the Magistrate's initial has to be taken as required under Rule 38 of the Assam Police Manual, Part-IV. The learned counsel for the applicant further submitted that Rule 69 of the Assam Police Manual, Part-IV stipulates that the entries to be made on receipt of final papers. The learned counsel for the applicant submitted that in terms with Rule 69 of the Assam Police Manual, Part-IV, as soon as the final papers of the case are received by the Court Officer, whether a charge-sheet or the final report form, the said Court Officer has to fill in Column Nos.10 to 14 of the register and again submit the final report or charge-sheet to the Magistrate. Thereupon, the Magistrate, if a charge-sheet has been submitted, would either take the case to his/her own file or will pass order to be entered in Column No.15 as to which the Magistrate is to try the case. The learned counsel for the application submitted that nothing of such kind has been done in the instant case. Referring to the report submitted by the Special Judge, Karimganj on 26.09.2022, the learned counsel for the applicant submitted that the enclosures to the said report, i.e. Annexure Nos.I & III contained a lot of discrepancies amongst itself apart from the fact that the said enclosures which are registers maintained by the Court Officer (PI Court) as well as by the Office of the Court, do not contain any signature of the Special Judge in question. Drawing reference to Annexure-III of the said report which is the P.I. Register, the learned counsel for the applicant submitted that on 19.05.2022, a case being KXJ P.S. Case No.101/2022 was sent to the District and Sessions Judge, Karimganj and an initial was obtained from the Dealing Assistant on 19.05.2022 itself. However, referring to Annexure-I, which is the Court Register maintained, the learned counsel for the applicant submitted that there is no mention of KXJ Case No.101/2022 or even any entry on 19.05.2022 in the register maintained in the Court. As regards the entry with the date 23.05.2022 in the P.I. Register, the learned counsel for the applicant submitted that on

23.05.2022, three numbers of case records, i.e. (i) KXJ P.S. Case No.145/2022, (ii) BDP GRPS Case No.12/2022 and (iii) Nilambazar P.S. Case No.432/2021 were sent to the Court. The P.I. Register shows that out of the three records, two records were received by the Court on 24.05.2022 but the record of the present case, i.e. Nilambazar P.S. Case No.432/2021 was received on 28.05.2022. The person who put the initial in the P.I. Register also allegedly receiving the copy put his signature and date, i.e. 28.05.2022. But on the other hand, he entered the same in the register maintained in the Court's Office on 27.05.2022. The learned counsel for the applicant submitted that the relevant portion P.I. Register (Annexure-III) shows that on 06.06.2022, Karimganj P.S. Case No.67/2022 was sent to the Court. However, the case record of Karimganj P.S. No.67/2022 is not reflected in the Court Register. The learned counsel for the applicant further submitted that the letter dated 23.09.2022, (Annexure-IV) addressed to the Additional Sessions Judge, Karimganj by the S.I. Tajamul Ali Laskar of P.S.I. Court, Karimganj mentions that all the three cases, i.e. (i) KXJ P.S. Case No.145/2022, (ii) BDP GRPS Case No.12/2022 and (iii) Nilambazar P.S. Case No.432/2021 along with the charge-sheet was sent on 23.05.2022 but was received in the P.I. Register on 24.05.2022 and 28.05.2022 but there is no explanation why the documents were received on two different dates. The learned counsel for the applicant, therefore, submitted that when the Rules framed by the State Government specifically mandates that it is the Magistrate who has to put the initial by way of endorsement in the charge-sheet or in the General Register, such functions cannot be delegated to the Office, more so, when there is a likelihood of manipulation being carried out. The learned counsel for the applicant submitted that the reason for having the initial of a Magistrate in the charge-sheet or in the General Register wherein the date of submission of charge-sheet has been mentioned is a safeguard to the accused so that there is no manipulation being carried out by the prosecution.

17. Referring to the judgment of the Supreme Court in the case of Achpal Alias Ramswaroop and Another vs. State of Rajasthan, reported in (2019) 14 SCC 599, the learned counsel for the applicant submitted that on completion of the investigation, the papers pertaining to the investigation has to be before the Magistrate concerned within the prescribed period under Section 167 of the Code read with Section 36A (4) of the Act of 1985. Therefore, the said document being before the Office allegedly could not defeat the right of an accused for default bail. The learned counsel for the applicant submitted by drawing the reference to a judgment of the Orissa High Court in CRL MC Case No.362/2022 (Pramesh Pradhan @ Rani and Another vs. State of Orissa) that the date of submission before the Court is the only date relevant for the purpose of default bail under Section 167 (2) of the Code. The learned counsel for the applicant, drawing the attention of this Court to the various order passed in the bail application filed being Petition No.506/14, submitted that the Court below rejected the bail application on two counts, one on the ground that the bail application was filed on 07.06.2022 which on the face of it was perverse taking into the account that

the said bail application was filed on 30.05.2022 and secondly, on the basis of being verbally informed that the charge-sheet was received on 27.05.2022 which is contrary to Section 173 (2) of the Code and Rules 38 & 69 of the Assam Police Manual, Part-IV. The learned counsel for the applicant submitted that the receipt by the Officer has no value unless the same is not placed before the Magistrate and an endorsement is taken in that regard. The learned counsel further submitted that there is a difference between an endorsement being taken in terms with Rule 38 and the cognizance being taken by the Court. Rule 38 of the Assam Police Manual, Part-IV is a safeguard which taking into consideration the right under Article 21 of the Constitution of India read with Section 167 of the Code has to be strictly interpreted.

18. On the other hand, Mr. M. Phukan, the learned Public Prosecutor and Mr. R. J. Baruah, the learned Additional Public Prosecutor submitted that it is a practice followed in all matters wherein the charge-sheet is submitted by the Investigating Officer to the P.I. Court and thereafter, the P.I. Court sends it to the Office of the Court and it is the responsibility of the Office to place it before the Magistrate. It was submitted that any dereliction of the duty by the Office of the Court in not placing it before the Magistrate cannot give an indefeasible right to the accused for grant of default bail. The learned counsel for the State respondent further submitted that in the instant case on 23.05.2022, the charge-sheet was sent which was actually received on 27.05.2022. But an endorsement was put as 28.05.2022 by the Dealing Assistant of the Office of the District and Sessions Judge, Karimganj. The learned counsel for the State respondent submitted that this aspect of the matter is further clear from the fact that in the Court Register it was duly endorsed that it was received on 27.05.2022 which was within the stipulated period under Section 167 of the Code read with Section 36A (4) of the Act of 1985. Further to that the learned counsel submitted that whether it was received on 27.05.2022 or 28.05.2022 would have no relevance in view of the fact that it was only on 30.05.2022 after submission of the charge-sheet that the application was filed for default bail and it being a well established principle of law that after the submission of charge-sheet, the right to default bail extinguishes.

19. Mr. Z. Kamar, the learned senior counsel whose assistance has been sought for by this Court vide the order dated 29.09.2022 has submitted that Rule 38 read with Rule 69 of the Assam Police Manual, Part-IV provides the necessary safeguard so that the date of submission of the charge-sheet cannot be manipulated. He further submitted that Section 167 of the Code read with Section 36A (4) of the Act of 1985 provides a statutory indefeasible right upon the accused and as such, it is strictly required to be adhered to by the Magistrate or the Court before whom the charge-sheet is filed.

20. Referring to the judgment of the Supreme Court in the case of M. Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence, reported in (2021) 2 SCC 485, the learned counsel submitted that the Supreme Court has

categorically laid down that if an accused apply bail under Section 167 (2) of the Code read with Section 36A (4) of the Act of 1985, upon expiry of 180 days or the extension period as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the Public Prosecutor as mentioned therein. He submitted that the Supreme Court in the said judgment had directed that prompt action needs to be taken, taking into consideration that upon prompt action being taken, it would restrict the prosecution from frustrating the legislative mandate to release the accused on bail in the case of default by the Investigating Agency. He further submitted that when the accused fails to apply for default bail when the right accrues to him and subsequently a charge-sheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished and in such cases the Magistrate would be at liberty to take cognizance of the case or grant further time for completion of investigation as the case may be though the accused may still be released on bail on other provisions of the Cr.P.C. He, therefore, submitted that it is the precious right of the accused under Section 167(2) read with Section 36A (4) of the Act of 1985 and as such the Court/the Magistrate should be directed in all cases to put the initial endorsement under the seal and signature about the fact of submission of the charge-sheet along with the date so that the infeasible right of the accused is protected. Referring to the judgment of the Supreme Court in the case of Rakesh Kumar Paul vs. the State of Assam, reported in (2017) 15 SCC 67, the learned senior counsel draws the attention of this Court to paragraph No.44 of the opinion of Justice Madan B. Lokur wherein it was observed that it was equally the duty and responsibility of a court on coming to know that the accused person before it is entitled to "default bail", to at least apprise him or her of the indefeasible right. He further submitted that the Supreme Court also made it clear in the said judgment which have been applied in all future judgments that whenever a person is released on default bail, it should also be made clear that the same does not prohibit or otherwise prevent the arrest or re-arrest of the applicant on cogent grounds in respect of the subject charge and upon arrest or re-arrest, the applicant is entitled to petition for grant of regular bail, and the application shall be considered on its own merit.

21. I have heard the learned counsel for the parties and also perused the materials on record. Before proceeding further it is relevant to take note of the provisions of Section 167 (2) of the Code which is reproduced herein below:-

"167. Procedure when investigation cannot be completed in twenty-four hours.—

(1) * * *

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention

unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the Second Class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in Para (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be:

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution."

22. From a reading of the above quoted provisions it would be seen that the right to bail under the proviso to Section 167 (2) of the Code which is commonly referred to as "default bail" or "compulsive bail", is granted on account of the default of the investigating agency in not completing the investigation within the

prescribed time, irrespective of the merits of the case. Taking into account that the instant bail application has been filed in a proceeding under the Act of 1985 it would be relevant to take note of Section 36A (4) which is quoted herein below:-

"36-A. Offences triable by Special Courts.—(1)-(3) * * *

(4) In respect of persons accused of an offence punishable under Section 19 or Section 24 or Section 27-A or for offences involving commercial quantity the references in sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days."

23. Section 36A of the Act of 1985 prescribes modified application of the Cr.P.C. to the extent as indicated therein. The effect of sub-section (4) of Section 36A of the Act of 1985 is to require that the investigation into certain offences under the Act of 1985 be completed within a period of 180 days instead of 90 days as provided under Section 167 (2) of the Code. Hence, the benefit of additional time limit is given for investigating a more serious category of offence. This is augmented by a further proviso that the Special Court may extend time prescribed for investigation upto 1 (one) year if the Public Prosecutor submits a report indicating the progress of investigation and giving specific reason for requiring the detention of the accused beyond the prescribed period of 180 days. In the matter in hand, it is admitted that the Public Prosecutor had not filed any such report within 180 days period seeking extension of time upto 1 (one) year for filing final report/additional complaint before the Trial Court as could be seen from the record. Thus, in the instant case, the final report is required to be filed within 180 days from the first date of remand.

24. The Supreme Court in the case of Ravi Prakash Singh vs. State of Bihar, reported in (2015) 8 SCC 340 had observed that while computing the period under Section 167 (2) of the Code, the date on which the accused was remanded to judicial custody has to be excluded and the date on which the challan/charge-sheet is filed to the Court has to be included. In the instant case, the applicant was forwarded to judicial custody on 28.11.2022 and 180 days is completed on 27.05.2022 which is an admitted case of both the parties. The default bail application was filed on 30.05.2022 being bail application No.506/14. A perusal of the default bail application as already observed herein above shows that it was filed on 30.05.2022 but was directed to be taken up on 07.06.2022. In fact, this approach by the court below shocks and surprises this Court taking into account that the Supreme Court have been categorical in various judgment that the default bail application has to be taken up forthwith. It was on 07.06.2022 when

the said default bail application was taken up by the Trial Court. On that very date, the court below recorded that the charge-sheet No.43/2022 dated 19.05.2022 was put up on 07.06.2022 but was received on 27.05.2022 as reported by the Office. This aspect of the matter makes it apparent that it was for the first time on 07.06.2022 that charge-sheet in question was placed before the Court of the Special Judge, Karimganj. The subsequent orders dated 15.06.2022 and 20.06.2022 were based upon the verbal intimation being given by the Office and the order dated 07.06.2022 that the charge-sheet was submitted in the Office of the Court on 27.05.2022.

25. Now the question therefore arises as to whether the submission of the charge-sheet to the Office would be substantial compliance to Section 173 (2) of the Code so as to deprive the accused of the default bail under Section 167 (2) of the Code read with Section 36A (4) of the Act of 1985? To answer the said question, it is relevant to read Section 167 (2) of the Code vis-à-vis the fundamental rights to life and personal liberty as enshrined under Article 21 of the Constitution of India.

26. The Supreme Court in the case of Uday Mohanlal Acharya vs. State of Maharashtra, reported in (2001) 5 SCC 453 observed that that personal liberty is one of the cherished objects of Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provision thereof as stipulated under Article 21 of the Constitution. It was further observed that when the law provides that the Magistrate could authorize the detention of an accused in custody upto a maximum period as indicated under the proviso to sub-section (2) of Section 167 of the Code, 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 provision of the Code and as such be violative of Article 21 of the Constitution. In the judgment of the Supreme Court rendered in the case of Rakesh Kumar Paul (supra), the Supreme Court has dealt with the historical background which led to the enactment of Section 167 of the Code and the subsequent amendments. In the said judgment, the opinion of Justice Madan B. Lokur, J in paragraph Nos. 11 to 15 the said historical background can be seen. From the said opinion, one can cull out that the letter and spirit behind the enactment of Section 167 of the Code as it stands thus mandates the investigation ought to be completed within the period prescribed. Ideally, the investigation, going by the provision of the Code, ought to be completed within the first 24 hours itself. Further in terms with sub-section (1) of Section 167 of the Code, if "it appears that the investigation cannot be completed within the period of 24 hours fixed by the Section 57", the Officer concerned ought to transmit the entries in the diary relating to the case and at the same time forward the accused to such Magistrate. Thereafter it is for the Magistrate to consider whether the accused be remanded to custody or not. Sub-section (2) of the Code then prescribes certain limitations on the exercise of the power of the Magistrate and the proviso stipulates that the Magistrate cannot authorize detention of the accused in custody for the total period exceeding 90 or

60 days as the case may be. It is further stipulated that on expiry of such period of 90 days and 60 days, as the case may be, the accused person shall be released on bail, if he is prepared to furnish bail. Therefore, the said provision has a definite purpose. It thus clearly indicated that the period of investigation ought to be confined in 90 days of 60 days as the case may be and thereafter the issue relating to the custody of the accused ought to be dealt with by the Magistrate on the basis of the investigation. As already observed herein above, in terms with Section 36A (4) of the Act of 1985 in respect to some of the offences, the period would be 180 days and further enlargement of the period by the Magistrate on the basis of the proviso to the said Section upto 1 (one) year. It is also to be seen that the matters and issues relating to liberty and whether the person accused of the charge ought to be confined or not must be decided by the Magistrate and not by the police. In this regard, this Court would like to refer to the judgment of the Supreme Court in the case of M. Ravindran (supra) wherein the Supreme Court had dealt with the issue as regards the interplay between Section 167 (2) of the Code with Article 21 of the Constitution. Paragraph Nos.17.7 to 17.10, being relevant are quoted herein below:-

"17.7. Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three-Judge Bench of this Court in Rakesh Kumar Paul v. State of Assam, which laid down certain seminal principles as to the interpretation of Section 167(2) CrPC though the questions of law involved were somewhat different from the present case. The questions before the three-Judge Bench in Rakesh Kumar Paul¹⁰ were whether, firstly, the 90-day remand extension under Section 167(2)(a)(i) would be applicable in respect of offences where the maximum period of imprisonment was 10 years, though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under Section 167(2) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90-day limit is only available in respect of offences where a minimum ten year' imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in lieu of a written application. This was based on the reasoning that the court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows:

"29. Notwithstanding this, the basic legislative intent of completing investigations within twenty-four hours and also within an otherwise time-bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete investigations, the legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a

prolonged or indefinite period. It is for this reason and also to hold the investigating agency accountable that time-limits have been laid down by the legislature. ...

* * *

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

* * *

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

(emphasis supplied)

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

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

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

17.10. With respect to the CrPC particularly, the Statement of Objects and Reasons (*supra*) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature, namely, ensuring a fair trial, expeditious investigation and trial, and setting down

a rationalised procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21.”

27. In the above judgment of the Supreme Court, another important facet was dealt with as regards the right of the Prosecutor under Section 167 (2) of the Code read with Section 36A (4) of the Act of 1985, more particularly in view of the proviso to the said sub-section. In paragraph No.20 and its sub-paragraphs, the Supreme Court dealt with the said aspect which this Court taking its relevance to the facts of the instant case, reproduces herein below:

“20. There also appears to be some controversy on account of the opinion expressed in *Hitendra Vishnu Thakur* that the Public Prosecutor may resist grant of default bail by filing a report seeking extension of time for investigation. The Court held that:

“30. ... It is, however, permissible for the Public Prosecutor to resist the grant of bail by seeking an extension under clause (bb) by filing a report for the purpose before the court. However, no extension shall be granted by the court without notice to an accused to have his say regarding the prayer for grant of extension under clause (bb). In this view of the matter, it is immaterial whether the application for bail on ground of “default” under Section 20(4) is filed first or the report as envisaged by clause (bb) is filed by the Public Prosecutor first so long as both are considered while granting or refusing bail. If the period prescribed by clause (b) of Section 20(4) has expired and the court does not grant an extension on the report of the Public Prosecutor made under clause (bb), the court shall release the accused on bail as it would be an indefeasible right of the accused to be so released. Even where the court grants an extension under clause (bb) but the charge-sheet is not filed within the extended period, the court shall have no option but to release the accused on bail if he seeks it and is prepared to furnish the bail as directed by the court.”

(emphasis in original and supplied)

This was affirmed by the Constitution Bench in *Sanjay Dutt*, wherein it was held that the grant of default bail is subject to refusal of the prayer for extension of time, if such a prayer is made. This seems to have given rise to the misconception that *Sanjay Dutt* endorses the view that the prosecution may seek extension of time (as provided for under the relevant special statute) for completing the investigation or file a final report at any time before the accused is released on bail, notwithstanding the fact that a bail application on ground of default has already been filed.

20.1. The observations made in *Hitendra Vishnu Thakur* and *Sanjay Dutt* to the effect that the application for default bail and any application for extension of time made by the Public Prosecutor must be considered together are, in our opinion, only applicable in situations where the Public Prosecutor files a report seeking extension of time prior to the filing of the application for default bail by

the accused. In such a situation, notwithstanding the fact that the period for completion of investigation has expired, both applications would have to be considered together. However, where the accused has already applied for default bail, the Prosecutor cannot defeat the enforcement of his indefeasible right by subsequently filing a final report, additional complaint or report seeking extension of time.

20.2. It must also be added and it is well settled that issuance of notice to the State on the application for default bail filed under the proviso to Section 167(2) is only so that the Public Prosecutor can satisfy the court that the prosecution has already obtained an order of extension of time from the court; or that the challan has been filed in the designated court before the expiry of the prescribed period; or that the prescribed period has actually not expired. The prosecution can accordingly urge the court to refuse granting bail on the alleged ground of default. Such issuance of notice would avoid the possibility of the accused obtaining default bail by deliberate or inadvertent suppression of certain facts and also guard against multiplicity of proceedings.

20.3. However, Public Prosecutors cannot be permitted to misuse the limited notice issued to them by the court on bail applications filed under Section 167(2) by dragging on proceedings and filing subsequent applications/reports for the purpose of "buying extra time" and facilitating filling up of lacunae in the investigation by the investigating agency."

28. The Supreme Court in the said judgment, i.e. M. Ravindran (supra) has laid down the conclusion as regards default bail under Section 167 (2) of the Code read with Section 36A (4) of the Act of 1985, which being relevant are quoted herein below:-

"25. Therefore, in conclusion:

25.1. Once the accused files an application for bail under the proviso to Section 167(2) he is deemed to have "availed of" or enforced his right to be released on default bail, accruing after expiry of the stipulated time-limit for investigation. Thus, if the accused applies for bail under Section 167(2) CrPC read with Section 36-A(4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the court must release him on bail forthwith without any unnecessary delay after getting necessary information from the Public Prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigating agency.

25.2. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the charge-sheet or a report seeking extension of time by the prosecution before the court; or filing of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher court.

25.3. However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a charge-sheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.

25.4. Notwithstanding the order of default bail passed by the court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the court, his continued detention in custody is valid.”

29. From the above quoted paragraphs, it would be seen that the right for default bail is an indefeasible statutory right of the accused and this very right is integrally connected with the right to life and personal liberty as enshrined under Article 21 of the Constitution. This very right, in the opinion of this Court, cannot be negated if the accused applies for default bail when it accrues to him/her subject to filing the default bail application before submission of the charge-sheet, additional complaint or a report seeking extension of time in terms with the proviso to Section 36A (4) of the Act of 1985.

30. In the backdrop of the above, let this Court take up the question which arises for consideration before this Court is as to whether the submission of the charge-sheet to the Office would be sufficient compliance to Section 173(2) of the Code read with Rule 38 and 69 of the Assam Police Manual Part-IV. As already stated herein above, Section 173(2)(i) mandates that the Officer-in-charge of the Police Station as soon as the investigation is complete shall forward to a Magistrate empowered to take cognizance of an offence on a police report, in the form prescribed by the State Government.

31. Now, the question therefore arises as to whether forwarding the report to the Office of the Magistrate/the Court competent to take cognizance of the offence would be sufficient compliance. The answer to the same can be found in Rule 38 of the Assam Police Manual Part-IV which is quoted herein below:

“38. First information reports and Final Report Forms by whom to be laid before the Magistrate-

First information reports and final report forms must be laid as they come in, before the District Magistrate or Magistrate in charge of police cases at headquarters and before the sub-divisional officer at sub-divisions by such officers as are detailed below:

(1) First information reports. By the 2nd Court officer (Sub-Inspector or Assistant Sub-Inspector) both at headquarters and sub-divisions.

(2) Charge-sheets- By the officer who prosecutes or watches the case.

(3) Final report forms.-By the 2nd Court officer (Sub-Inspector or in his absence assistant sub-inspector) at the headquarters and at sub-divisions where there is a Court Inspector. At the headquarters and sub-divisions where the officer-in-charge of the Court office is a sub-inspector this duty will devolve on him. The final report forms will not be submitted for the orders of the Magistrate until they have been subjected to the scrutiny of the circle Inspector.

The officer putting up these forms before the Magistrate is responsible for obtaining the latter's initial or order either on the forms or on the Magistrate's general register as the case may be."

32. A perusal of the said Rule 38 clearly mandates that the First Information Report and the Final Report forms must be laid as they come in before the District Magistrate or the Magistrate-in-charge of the police cases at the headquarters and before the Sub-Divisional Officer at Sub-Divisions by such officers as mentioned therein. In case of charge-sheet, the same has to be laid before the Magistrate by the Officer who prosecutes or watches the case. It is also seen from the said Rule that the Officer putting up these forms before the Magistrate is responsible for obtaining the Magistrate's initial or order either on the forms or on the Magistrate's General Register as the case may be. This clearly goes to show that it is the Magistrate/the Court, who has to make an endorsement on the forms and it is the responsibility of the Officer who prosecutes or watches the case to obtain the said endorsement by taking the initials of the Magistrate. The Form mentioned in Rule 38 is Form No.11 which contains the details of the result of police investigation, the date of final report, the date of submission to the Magistrate. It is also seen from the said Form No.11 that there is a requirement of the Magistrate's initials.

33. Now, coming to Rule 69, it would be seen that as soon as the final papers of a case are received by the Court Officer, whether it is a charge-sheet or the final report form, he will fill in Columns 10 to 14 of the Register and again submit it with the final report or the charge-sheet to the Magistrate. The Magistrate thereupon, if a charge-sheet has been submitted, will either take the case to his own file or will pass orders, to be entered in column No.15 as to which Magistrate is to try the case. This Rule 69 also would show that it is the duty of the Court officer to place it before the Magistrate concerned and upon a conjoint reading of Rule 38 and 69, it would show that the Assam Police Manual categorically mandates that it is the Magistrate who has to put the initial as regards the receipt of the charge-sheet and in the General Register and not the ministerial stuff of the Office of the Court/Magistrate. At this stage, this Court finds it relevant to refer to a decision of the Division Bench of this Court rendered in the case of Priyolal Barman Vs. the State reported in AIR 1970 Assam & Nagaland 137 (1970) SCC Online Gau 9) wherein this Court observed about the importance of compliance to the provisions of the Assam Police Manual. Paragraph Nos.22 & 23 being relevant are quoted herein below:

22. Further, it does not give us the Impression that the learned Sessions Judge perused the case diary of the police which he was entitled to do under the law. We have thought it our duty to go through the same and found to our surprise that Rule 188 of the Assam Police Manual, Part V (1968 Edition) does not seem to be complied with. That Rule requires as follows:—

"..... The forms of case diary are issued in bound books of 100 forms each. Carbon paper is separately supplied and a the slab to write on.

Each form has a separate printed number running consecutively through the book so that no two forms will bear a same number. Investigating officers will write their case diaries on these forms, placing one or two sheets of carbon paper, underneath the original according to the number of copies required. On the conclusion of an investigation the sheets of the original diary will be removed from the book and filed together..... The present case diary of such a serious case has no pagination and is not at all maintained in conformity with Rule 188. While going through the same, we find the seizure of the seizure list Ext. 2 being noted as Item VI at 3 P.M. on 19-4-69, on the reverse of a certain page in carbon, although the reverse of the succeeding page contains endorsement No. V at 5 P.M. the same day. It is further intriguing that after five pages there is another endorsement VI at 7 P.M. of the identical day. These various stages of the investigation, which have to be recorded faithfully, do not give the impression of being correctly entered and one may naturally feel suspicious particularly because the seizure list Ext. 2 which has not been even exhibited in this case has been entered in the case diary in such dubious manner.

23. The case diary is a very important document which has to be maintained in a faithfully regular manner. The contents of the diary cannot be treated as evidence in a trial but the Court is entitled to peruse the same under Section 172(2) of the Cr PC to aid it in the trial. This duty is incumbent upon a Public Prosecutor and almost always so upon a Court trying a serious offence of this nature. Where prosecution and defence are both inadequate, it will enable the Court to rise up to the occasion and discover for itself the material facts and circumstances from the case diary, which can be brought to light through the witnesses examined in the case to arrive at the truth in the interest of justice.

34. Coming to the facts of the instant case and from the report so submitted by the Special Judge, Karimganj on 26.09.2022 and the enclosures therewith, it would be seen that Special Judge, Karimganj concerned have not put any initial in the Register maintained by the P.I. Court or the Court itself. All have been done by a Dealing Assistant which is not inconformity with Rule 38 read with Rule 69 of the Assam Police Manual Part-IV. From the enclosures to the report dated 26.09.2022, there seems to be various discrepancies as have been pointed by the learned counsel appearing on behalf of the Applicant to which this Court would not like to go into details taking into account that the P.I. Register as well as the Register maintained by the Court does not contain any endorsement of the Presiding Officer of the Court for which this Court cannot take any judicial

notice of the same. However, it is observed that if the provisions of Rule 38 and 69 of the Assam Police Manual would have been followed that too in a case of such serious nature, it would not have resulted in such a situation as in the present one. It is also relevant to mention that it is a well established principle of law that when a statute directs a thing to be done in a particular way, it has to be done in that way and any deviation which results in effecting the life and liberty cannot be accepted.

35. This Court further would like to observe herein that it shocks and surprises this Court the manner in which the default bail application was taken into consideration. The said default bail application was filed on 30.05.2022 which ought to have been taken up forthwith by the Court instead it was put up for consideration on 07.06.2022. It further surprises this Court that in the orders dated 07.06.2022 and 15.06.2022, the court took into consideration the receipt of the charge-sheet on verbal intimation by the office which the Court ought not to have done taking into account the valuable statutory infeasible right of the accused for grant of a default bail. If the Court would have taken up the default bail application on 30.05.2022 itself, all the complications which have arisen in the instant case would not have occurred taking into account that if the charge-sheet would have been filed prior thereto, the default bail application would have been not maintainable. But postponing the consideration of the said default bail application to a subsequent period on 07.06.2022 have resulted in this malady. Further to that, this Court feels distressed to take note of that the Court below rejected the bail application on the ground that it was filed on 07.06.2022 after filing of the charge-sheet whereas the said bail application was filed on 30.05.2022.

36. At this stage, this Court would like to refer two paragraphs of the opinion of Madan B. Lokur (J) in the case of Rakesh Kumar Paul (*supra*) which are Paragraph No.43 and 44 are quoted herein below:

43. This Court and other constitutional courts have also taken the view that in the matters concerning personal liberty and penal statutes, it is the obligation of the court to inform the accused that he or she is entitled to free legal assistance as a matter of right. In *Khatri (2) v. State of Bihar* the Judicial Magistrate did not provide legal representation to the accused since they did not ask for it. It was held by this Court that this was unacceptable and that the Magistrate or the Sessions Judge before whom an accused appears must be held under an obligation to inform the accused of his or her entitlement to obtain free legal assistance at the cost of the State. In *Suk Das v. UT of Arunachal Pradesh* the accused was tried and convicted without legal representation, due to his poverty. He had not applied for legal representation but notwithstanding this, this Court held that the trial was vitiated and the sentence awarded was set aside, particularly since the accused was not informed of his entitlement to free legal assistance, nor was an inquiry made from him whether he wanted a lawyer to be provided at State expense. In *Rajoo v. State of M.P.* the High Court dismissed the

appeal of the accused without enquiring whether he required legal assistance at the expense of the State even though he was unrepresented. Relying on Khatri and Suk Das this Court remanded his appeal to the High Court for rehearing after giving an opportunity to the accused to take legal assistance. Finally, in Mohd. Ajmal Amir Kasab v. State of Maharashtra this Court relied on Khatri and held in para 474 of the Report as follows: (Mohd. Ajmal case, SCC p. 186)

"474. ... it is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the Magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the Magistrate concerned liable to departmental proceedings."

44. Strong words indeed. That being so we are of the clear opinion that adapting this principle, it would equally be the duty and responsibility of a court on coming to know that the accused person before it is entitled to "default bail", to at least apprise him or her of the indefeasible right. A contrary view would diminish the respect for personal liberty, on which so much emphasis has been laid by this Court as is evidenced by the decisions mentioned above, and also adverted to in Nirala Yadav."

37. This aspect of the matter can be looked from another angle. The judgment of the Supreme Court in the case of M. Ravindran (supra) and the relevant paragraphs quoted hereinabove clearly shows that Section 167(2) of the Code is integrally linked with Article 21 of the Constitution of India and an obligation is cast upon the State under Article 21 of the Constitution of India to follow a fair, just and reasonable procedure prior to depriving any person of his personal liberty. This valuable right under Section 167(2) of the Code cannot be made nugatory at the hands of the Office of the Magistrate/the Court. It is also relevant herein to take note of allowing the Office of the Magistrate/the Court to receive on behalf of the Magistrate/the Court may lead to manipulations which would affect the rights of the prosecution as well as the accused as the case may be. It is therefore, the Magistrate/the Court competent to take cognizance of the offence who is required under law to put the initial with date and the seal of the Court on the register maintained in terms with the Assam Police Manual so that there is no scope of any manipulation.

38. In view of the above, this Court is of the opinion that submission of the charge sheet before the Office of the Magistrate/the Court would not be sufficient compliance in terms with Section 173(2) of the Code read with Rule 38 and 69 of the Assam Police Manual Part-IV and it is only when the Magistrate/the Court competent to take cognizance of the offence, puts the initials in the charge-sheet

as well as in the Register maintained with date and seal of the Magistrate/the Court, it would be that date on which the charge sheet has been deemed to have been submitted to the Magistrate/Court.

39. In the instant case, it is seen that it was only on 07.06.2022 when the charge sheet in question was placed before the Court and there is no materials available wherein the Special Judge, Karimganj had put an endorsement with initial and the date as regards the date of receipt of the charge sheet. Consequently, therefore, 07.06.2022 would be the date on which it would be deemed that the charge sheet was submitted before the Special Judge, Karimganj in the instant case.

40. Before further proceeding, this Court would also like to deal with one order referred by the learned P.P. in Bail Application No. 46/2021 (Bhargav Deka Vs. State of Assam). The said order was rendered in its facts and it was categorically observed that the 90th day fell on a holiday which was 01.01.2021 and applying the ratio in the case of Ravi Prakash Singh Vs. State of Bihar reported in (2015) 8 SCC 340, this Court had observed that the filing of the charge sheet on 02.01.2021 was within the stipulated period and there was no infringement of Section 167(2) of the Cr.P.C. Under such circumstances, the said order is not applicable to the present facts.

41. Considering the above, this Court therefore is of the opinion that the Applicant is entitled to grant of default bail on the facts and circumstances of the instant case. The Trial Judge i.e. the Court of the Special Judge, Karimganj shall release the Applicant on default bail on such terms and conditions as may be reasonable. However, it is made clear that this does not prohibit or otherwise prevent the arrest or re-arrest of the Applicant on cogent grounds in respect to the subject charge and upon arrest or re-arrest, the Applicant would be entitled to apply for grant of regular bail and such application should be considered on its own merit. This Court would further like to make it clear that this will not impact on the arrest of the Applicant in any other case.

42. This Court would further like to observe that the default bail is granted on the basis of the application filed by the wife of the applicant on 30.05.2022. The Court below shall verify before releasing the applicant as to whether the Petition No.506/14 was in fact filed on 30.05.2022. In doing so, the Court shall bear in mind that the date of filing of the bail application would be the date of filing the bail application before the Court and not the date on which the Court took up the bail application for consideration. (See Sarah Mathew Vs. Institute of Cardio Vascular Deseases reported in (2014) 2 SCC 62)

43. Before concluding, this Court further in exercise of powers under Article 227 of the Constitution of India would direct that whenever the Investigating Agency submits the charge sheet to the Office of the Magistrate/the Court competent to take cognizance of the offence, the Office of the said Magistrate/the Court shall on that very day itself, place the charge sheet along with the forms before the

Magistrate/the Court and thereupon the said Magistrate/the Court shall put the endorsement with his/her initials and date along with the seal of the Magistrate/the Court.

44. The Registry is further directed to circulate this order before the Sub-ordinate Courts for effective compliance.

45. With above observations and directions, the instant application stands disposed of.