**Reserved on : 23.03.2026**
**Pronounced on : 10.04.2026**

**R**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.5248 OF 2026 (GM - RES)

**BETWEEN:**

GOVINDA
S/O MUDURANGAPPA
AGED ABOUT 27 YEARS
RESIDING AT: SUCHITHRA'S HOUSE
NEAR ASHWINI SCHOOL, PIPELINE ROAD
MATTHIKERE, BENGALURU – 560 054.

PERMANENT RESIDING ADDRESS:
RESIDING AT: BUDDINNI VILLAGE
JAGATKAL, RAICHUR - 584 126 (IN JC).

... PETITIONER

(BY SRI ABHISHEK A., ADVOCATE)

**AND:**

1 . STATE OF KARNATAKA
YESHWANTHPURA POLICE STATION
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR
BENGALURU.

2 . SMT. SHIVAMMA
W/O BHEEMAPPA
AGED ABOUT 34 YEARS
RESIDING AT NO. 41/11
PIPELINE ROAD, D CROSS
NETAJI NAGAR, MATTHIKERE
BENGALURU – 560 054.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL. SPP FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 OF BNSS, PRAYING TO QUASH THE ORDER DATED 23.12.2025 AND 27.01.2026 PASSED IN SPL.C. NO. 35/2026 ON THE FILE OF HON'BLE ADDL. CITY CIVIL AND SESSION JUDGE, (FTSC-II) AT BENGALURU, WHICH IS ARISING OUT OF CRIME NO.337/2025 OF YESHWANTHPURA POLICE STATION, FOR THE PUNISHABLE OFFENCES UNDER SECTION 64, 108, OF BNS-2023, SECTION 3(2), (V-A), 3(1)(W)(II) OF SC/ST ACT AND SECTION AND 3, 4, 5(J)(II), (I) AND 6 OF POCSO ACT-2012 AND CONSEQUENTLY RELEASE THE PETITIONER ON STATUTORY BAIL.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.03.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CAV ORDER**

The petitioner is at the doors of this Court calling in question orders dated 23-12-2025 and 27-01-2026 passed in Special Case No.35 of 2026 by the Additional City Civil and Sessions Judge (FTSC-II) at Bangalore arising out of crime in Crime No.337 of 2025 registered for offences punishable under Sections 64 and 108 of the BNS, Sections 3(2)(v-a), 3(1)(w)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 3, 4, 5(j)(ii), (l) and 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short), which deny release of the petitioner on grant of statutory bail.

2. Facts, in brief, germane, are as follows: -

2.1. The deceased is the daughter of the 2nd respondent, the informant. She worked as a housing keeping staff in M.S. Ramaiah Hospital for about a year and thereafter quit her job and began to work as domestic help in the house of one Shamila. On 10-10-2025

the daughter of the 2nd respondent committed suicide. The 2nd respondent, informant files a complaint before the jurisdictional police and an unnatural death report is registered in UDR No.70 of 2025. A crime is registered separately by the 2nd respondent against the petitioner in Crime No.337 of 2025 for offences punishable under Sections 3, 4 and 5 of the POCSO Act and Section 64 of the BNS. It is the allegation in the complaint that the petitioner/accused was also a house keeping staff in M.S. Ramaiah Hospital and he and the deceased were in love. The accused is said to have had physical relationship with the deceased despite knowing that she was under-aged. The deceased was found to be pregnant at the time of her death. This forms the fulcrum of the crime in Crime No.337 of 2025. On registration of crime, the petitioner is arrested at 6.30 p.m. on 14-10-2025 after following all the arrest protocols. On 15-10-2025 the petitioner is remanded to judicial custody where he remains even today.

2.2. On 17-12-2025 i.e., after two months of his arrest, the petitioner files an application under Section 187(3)(ii) r/w Section 193 of the BNSS seeking default bail on the ground that charge

sheet has not been filed within 60 days, as mandated under Section 193 of the BNSS. The concerned Court, in terms of its order dated 23-12-2025, rejects the application of statutory bail on the ground that the petitioner/accused has no right to seek default bail prior to the expiry of 90 days in terms of Section 187(3)(i) of the BNSS, since the offences alleged are the ones punishable with imprisonment of 10 years or more. On 07-01-2026, the 1st respondent/Officer in-charge of the Police Station files the charge sheet on the 84th day from the date of arrest of the petitioner. The charge sheet was laid for the offences afore-mentioned. After laying down of the charge sheet, the petitioner again files a statutory bail application under Section 187(3)(i) r/w Section 193 of the BNSS, seeking default bail, on the ground that charge sheet filed is grossly incomplete. This also comes to rejected by the concerned Court on 27-01-2026. It is these orders that have driven the petitioner to this Court in the subject petition.

3. Heard Sri Abhishek A, learned counsel appearing for petitioner and Sri B N Jagadeesha, learned Additional State Public Prosecutor appearing for respondent No.1.

**SUBMISSIONS:**

**PETITIONER:**

4. The learned counsel appearing for the petitioner would vehemently contend that Section 193(2) of the BNSS mandates that the charge sheet should be filed within 60 days for offences punishable under Section 64 of the BNS or for offences under the POCSO Act. In terms of Sections 187(3)(ii) and 193(2) of the BNSS the concerned Court ought to have set the petitioner at liberty on grant of statutory bail. The learned counsel would further submit that the charge sheet filed by the Officer in-charge of the Police Station is incomplete. It is without FSL report, DNA report, CDRs or retrieval of mobile phone contents. He would highlight that FSL report is required to be filed before the Court within one month from the date of collection of samples, which is not done. On these scores, he would submit that incomplete charge sheet cannot mean that the accused would be denied default bail. It is his further contention that grant of statutory bail is a limb of Article 21 of the Constitution of India and if the charge sheet is not filed within the time stipulated, the accused would be entitled to the grant of statutory bail. He would also touch upon merit of the matter stating

that there is no evidence against him in the suicide note or in any other material linking him to the alleged offences.

**STATE:**

5. Per contra, the learned Additional State Public Prosecutor Sri B.N.Jagadeesha would contend that a defective charge sheet or an incomplete charge sheet being filed would not mean that the petitioner becomes entitled to grant of statutory/default bail. Section 193(2) of the BNSS does not mandate that non-filing of charge sheet within 60 days would lead to statutory bail. He would contend that the time limit to file charge sheet in POCSO cases is a mandate that is beneficial to the victim and not the accused. The petitioner can claim statutory bail only under Section 187(3) of the BNSS and not by invoking Section 193. The petitioner cannot be granted statutory bail solely on the ground that the charge sheet is not filed within 60 days as obtaining under Section 193(2) of the BNSS.

**REJOINDER – PETITIONER:**

6. The learned counsel for the petitioner would join issue in contending that a coordinate Bench of this Court in Criminal Revision Petition has considered the purport of Section 193(2) and has granted the relief to the petitioner therein. He would also seek to place reliance upon two other judgments – one of the Division Bench of this Court and the other, of the Apex Court all of which would bear consideration *qua* their relevance in the course of the order.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the following issues would arise for my consideration:

**(i) Whether non-completion of investigation within 60 days under Section 193(2) of the BNSS entitles an accused to statutory bail?**

**(ii) Whether the filing of an allegedly incomplete charge sheet can clothe the accused with such a right – grant of statutory bail?**

**CONSIDERATION:**

**ISSUE NO.1:**

**Whether non-completion of investigation within 60 days under Section 193(2) of the BNSS entitles an accused to statutory bail?**

8. The afore-narrated facts and link in the chain of events are all a matter of record. The petitioner is remanded to judicial custody on 15-10-2025. On 17-12-2025 the petitioner files an application seeking default bail, on the score that the charge sheet has not been filed within 60 days as mandated under Section 193 of the BNSS. This comes to be rejected on 23-12-2025 by the following order:

> "Accused not produced from J.C.
>
> The counsel for the accused filed this application U/sec. 187(3)(ii) of BNSS to release the accused on default bail/statutory bail stating that after arresting the accused he was remanded to JC on 14.10.2025 since then he is in custody. Already 60 days lapsed, but till today I.O has not filed the Charge sheet. Hence, accused is entitled for statutory bail/default bail, since investigation is not completed
>
> 2) Though the copy of application received by the incharge PP, but prosecution has not filed written objections, but orally objected the said application.

3) Heard the arguments and perused the materials before the court.

4) The order sheet reveals that after arresting the accused he was produced before this court on 15.10.2025, accordingly he was remanded to J.C since then accused is in J.C. Further record reveals that I.O has not Charge sheet.

**5) As already stated above this application is filed U/sec. 187(3)(iii) of BNSS bail/statutory bail as required U/Sec. 187(3)(ii) of BNSS the counsel for the accused has to convince the court that already 90 days expired from the date of detention of the accused. Because, it is alleged that accused has committed the offences U/sec. 3 of POCSO Act which is punishable U/sec. 4 of POCSO Act and the offence U/sec. 5(j) of POCSO which is punishable U/sec. 6 of POCSO Act and Sec. 64 of BNS. The punishment prescribed U/sec. 4 of POCSO Act is *"imprisonment for a term which shall not be less than 20 but which may extend to imprisonment of life, which shall mean imprisonment for the reminder of natural life of that person and shall also be liable to fine*". The punishment prescribed for offence punishable U/Sec. 6 of POCSO Act is: "*Rigorous imprisonment for a* term *which shall not be less than 20 years, but which may extend to imprisonment for life, which shall mean imprisonment for the reminder of natural life of that person and shall also be liable to fine or with death*". The punishment provided to Sec. 64 of BNS is "*rigorous imprisonment of either description for a term which shall not be less than 10 years, but which may extend to imprisonment for life and shall also be liable to fine*".**

**6) So, in case of offences which are punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years or more there is no bar to detain for 90 days.**

**7) In this background, considering the date of remand i.e. 15.10.2025 it can't be said that accused was in custody for more than 90 days. So in view of Sec. 187(3)(i) of BNSS accused is not entitled for default bail.**

8) During the course of arguments, the counsel for the accused submitted that as per Sec. 193 (2) of BNSS I.O has to file the Charge sheet within 60 days though the offences are heinous in nature punishable U/sec, 4, 6, 8 or 10 of POCSO Act. When I.O has not filed the Charge Sheet within 2 months from the date of registration of the crime the accused is entitled for default bail/statutory bail.

**9) It is true, I.O has to submit the charges sheet for the offences punishable U/Sec. 4, 6, 8 or 10 of POCSO Act also Sec. 64 of BNS within 2 months from the date of registration.**

**10) But on that ground accused has no right to seek default bail/statutory bail in view of Sec. 187(3) (i) of BNSS. Only after 90 days of detention right accrued to the accused to seek default bail/statutory bail since the offences alleged against the accused are punishable with not less than 10 years imprisonment for the offence punishable U/Sec. 4, 6, 8 or 10 of POCSO Act and also Sec, 64 of BNS**

**11) So Sec. 187(3)(ii) of BNSS no applicable to the accused. The section is applicable to the offences other than the offences which provided U/sec. 187(3)(1) of BNSS.**

12) Further, during the course of arguments, the counsel for the accused relied the reportable judgment of Hon'ble High Court of Karnataka. Bengaluru passed in Crl. R.P NO. 100051/2025 stating that as I.O has not filed the charge sheet within 60 days as per Sec. 197(2) of BNSS accused is entitled for defualt bail in view of the principle laid down in the above said judgment.

13) I have gone through the above said judgment, first of all the facts and circumstances of the said judgment and case on hand or not one and the same. In the said judgment the I.O has already filed the Charge sheet within 60 days, further in the said judgment para No. 14 it is stated that "*On conjoint reading of the Sec. 193 and 187 of BNSS, it is incumbent on the part of investigating agency to file final report within a period of 60 days from the date of receipt of information (complaint) as*

*could be seen from Sec, 193 (2) of Cr.P.C."* Considering the said fact the learned counsel for the accused submitted that when I.O failed to file the charge sheet within 60 days accused is entitle for default bail. **There is no specified provision in BNSS to release the accused IO failed to file the charge-sheet within 6 days from the date of information in case of offences punishable U/Sec. 4, 6, 8, 10 of POCSO Act, as specifically stated U/Sec. 187(3) to release the accused after expiry of statutory period of 90 days where investigation relates to an offence punishable with death, imprisonment for life or for imprisonment for a term of ten years or more and 60 days where investigation relates to any other offence.**

14) Further the learned counsel for the accused relied the judgment reported in (2001) 5 SCC 453. I have gone through the said report. The principle laid down in the said judgment not helpful to the accused. Because, in the said judgment also the Hon'ble Supreme Court of India held the "*Accused has an indefeasible right to be released on bail when investigation is not complete within the specify period. IN order to avail of such accused is only required to file an application before the Magistrate seeking release on ball alleging that no challan has been filed within the period prescribed and he is prepared to offered to bail on being directed by the Magistrate".*

15) Further, he relied the judgment reported in (1992)3 SCC 141. I have gone through the same. In the said Judgment, it is held that: "*Proviso to Sec. 167(2) of Cr.P.C clearly laid down that, total period of detention should not exceed ninety days in cases where the investigation relates to serious offences mentioned therein and sixty days in other cases".* Further, it is held that*, "Period of ninety days or sixty days has to be computed from the date of detention and not from the date of arrest*".

So, the principles laid-down in the above-said judgments not helpful to the accused. In the above-said two judgments, it is held that: "*In case of heinous offence, where the punishment is not less than 10 years, only after expiry of 90 days from the date of detention, right accrues to the accused for statutory bail/ default bail".*

**16) Though U/Sec. 193(2) of BNSS, it is stated that, the IO has to file the charge-sheet within two months from the date on which information was received by the officer in-charge of the Police Station, but in view of Sec. 187(3) (i) of BNSS, right accrued to the accused only after 90 days from date of detention.**

**17) For the afore-said reasons, in view of Sec. 187(3) (ii) of BNSS and in absence specific provision in respect of failure file to charge sheet within stipulated period by the I.O. the application filed by the learned counsel for the accused U/Sec. 187(3)(iii) of BNSS. 2023 is not sustainable in the eyes of law. Accordingly, it is dismissed.**

18) Further, the IO has filed requisition to permit him for taking the voice sample of the accused stating that, the mother of the victim girl in her statement stated that, on 10.10.2025, at about 9.30 a.m.. at the time of committing suicide by the victim girl, the victim girl has talked with the accused through her mobile. So. it is just and necessary to collect the voice sample of the accused to send the same for FSL.

19) For that, the learned counsel for accused filed objections in length contending that, extraction of a voice sample is an intrusive violation of his right to privacy and compelling the accused to provide a voice sample violates his fundamental right against self-incrimination guaranteed under Article 20(3) of the Constitution of India.

20) But, as already stated above, the IO intends to collect the voice samples of the accused since at the time of committing suicide, the victim girl talked with the accused through the mobile of her mother, which was recorded in the mobile of the mother of the victim girl. During the course of investigation, the IO has right to collect the voice sample for collecting the evidence. Though the learned counsel for the accused contended that, collecting of voice sample violates the fundamental right of the accused against self-incrimination guaranteed under Article 20(3) of the Constitution of India. But, the same cannot be accepted. Because, they are considered non-testimonial identification data and they have not violated the right against self-incrimination. Primarily for comparison

> with evidence like recorded conversations or for scientific analysis, though there is no specific provision, but when the samples are necessary for investigation, it is just and necessary to permit the IO collect the voice sample of the accused.
>
> 21) Giving a voice sample is seen as providing basic characteristic, not revealing personal knowledge, similar to providing finger print or hand-writing samples, though not compelling self-incrimination So, the court has power to direct the accused to give voice sample. Primary accused to goal is identification, comparing the samples of voice recording or for scientific voice spectrography. So, for proving the guilt or innocence, it is just and necessary to permit the IO to collect the voice samples of the accused. Even the court has power to direct the accused persons to provide voice samples for the purpose of investigation, even without his consent So, providing voice samples does not violate the Article 20(3) of the Constitution of India, as contended by the learned counsel for the accused. Because, voice sample is considered material evidence for comparison rather than testimonial evidence where the accused is forced to speak his personal knowledge. So, the objections raised by the learned counsel for the accused has no substance in the eyes of law.
>
> 22) Hence by setting-aside the objections of the learned counsel for the accused, the IO is permitted to collect the voice samples of the accused.
>
> Office to issue intimation to the Jail Authorities to produce the accused on 06.01.2026."

The concerned Court rejects the claim of the petitioner on the score that the offences alleged against the petitioner were all punishable with imprisonment of 10 years or more and merely because charge sheet is not filed within 60 days, he was not entitled to statutory bail. The charge sheet is filed on 07-01-2026 for the afore-quoted

offences. On filing of the charge sheet springs the second application. The second application also comes to be rejected by the following order:

> "**REASONS**
>
> 6. The record revels that after taking cognizance for the offences punishable U/sec. 3, 4, 5, (J)(ii), (I), 6 of POCSO Act and sec. 3(2)(v-a), 3(1)(w)(ii) of SC/ST POA Act, before furnishing copies of charge-sheet to the accused, the counsel for the accused has filed this second application U/sec.187(3)(i) r/w Sec.193 of BNSS for statutory bail.
>
> 7. This is the second application filed by the counsel for the accused after filing of charge sheet for statutory bail stating that, the charge sheet filed by the IO is an incomplete charge sheet, investigation officer without completing the investigation filed preliminary charge sheet, which is half-cooked/incomplete/piecemeal/preliminary charge-sheet against the accused without conducting the proper and complete investigation with an intention to deprive the rights of the accused. Hence petitioner is entitle statutory bail U/Sec. 187(3)(i) r/w Sec. 193 of BNSS.
>
> 8. But, U/Sec.187 of BNSS statutory bail can be granted if IO not filed the charge sheet within stipulated period of 60 days and 90 days. Under said section bail cannot be grated after filing of charge sheet on the ground that charge sheet filed by the IO is an incomplete charge sheet. Once IO has filed the charge sheet is filed, the right of accused for statutory bail ceases Moreover, already cognizance of the offences taken on the basis of material produced along with the charge sheet.
>
> 9. It is further contended that the very charge-sheet reflects that without FSL report, DNA report, CDR, CAF, SDR and mobile phone retrieve for mirror image I.O has submitted the final report. So, the incomplete or half cooked charge-sheet is not deprive the rights of the accused which is indefensible right protected and guaranteed under article 21 of The Indian Constitution and also relied judgments of Apex court in the case of M. Ravindran Vs. Directorate of Revenue Intelligence,

Satendar Kumar Antil Vs CBI @ Anr, Ritu Chhabaria Vs Union of India and Ors.

10. It is true. As already stated above IO has filed the charge sheet against the accused alleging that accused has committed the offenses punishable U/sec.3, 4, 5, (J)(ii), (I), 6 of POCSO Act and sec. 3(2)(v-a), 3(1)(w)(ii) of SC/ST POA Act. Further, the foot note of charge sheet revels that IO has not produced FSL report, DNA report, CDR, CAF, SDR and mobile phone retrieve.

**11. In view of foot note appearing in the charge sheet, the counsel for the accused contended that still investigation is going on, the charge sheet already submitted by the IO is not the final report but it is a preliminary report, hence the petitioner is entitled for statutory bail and relied the above said judgments.**

**12. But, the said contention of the counsel for the accused can not be accepted. Because, for production of some documents not available at the time of filing of chargesheet neither vitiate the chargesheet, nor it entitle the accused to claim right to get default bail on the ground that the chargesheet was incomplete chargesheet or that the chargesheet was not final report.**

**13. In number of cases, the Hon'ble Supreme Court of India, more particularly in the case of Central Bureau of Investigation vs Kapil Wadhawan reported "*pendency of the further investigation qua the other ascused or for production of some documents not available at the time of filing of chargesheet would neither vitiate the chargesheet. nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was an incomplete charge sheet or that the chargesheet was not filed in terms of Sec. 173(2) of Cr.P.C."***

**Further it is held that "*Though ordinarily all documents relied upon by the prosecution should accompany the chargesheet, nonetheless for some reasons, if all the documents are not filed along with the chargesheet, that reason by itself would not invalidate or***

***vitiate the chargesheet. It is also well settled that the court takes cognizance of the offence and not the offender. Once from the material produced along with the chargesheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of chargesheet would neither vitiate the chargesheet, nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was an incomplete chargesheet or that the chargesheet was not filed in terms of Section 173(2) of Cr.P.C."***

**So, in view of the principles laid down in the above said judgment the grounds urged by the counsel for the accused for statutory bail can not b accepted.**

14. In the above said judgments relied by the counsel for the accused, the Hon'ble Supreme Court of India after elaborate discussion in respect of provisions of bail, default bail U/Sec.167 of Cr.P.C. Article 21 of the Constitution of India, stated the object and reasons for statutory bail when the investigation officer failed to submit the charge-sheet or final report within the stipulated period as provided U/sec. 167 of Cr.P.C., that, "without completion of investigation of a case, the charge sheet or prosecution complaint can not be filed by the investigation agency only to deprive a arrested accused of his right to default bail U/sec.167(2) of Cr.P.C. If such a charge-sheet is filed by an investigating authority without first completing the investigation, would not distinguish the right to default bail U.Sec 167(2) of Cr.P.C and in such cases the court cannot continue to remand an arrested person beyond the maximum stipulated time without offering the arrested person default bail".

**15. But, in the instant case. I.O has already filed final report alleging that accused has committed the offences punishable U/sec.3, 4, 5. (J)(ii), (I), 6 of POCSO Act and sec. 3(2)(v-a), 3(1)(w)(ii) of SC/ST POA Act. The said report purports to be an opinion of the investigating**

**officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statement of witnesses as required U/sec.175(5) of Cr.P.C. accordingly I.O has submitted charge-sheet/Final report for the above as said alleged offenses, stated in the case of Central Bureau of Investigation v/s Kapil Wadhawan reported, 2024 INSC 58.**

16. The learned PP during the course of arguments relied the Judgment of the Hon'ble High Court of Delhi passed in Bail Application No. 1713/2025 dated 25.6.2025 stating that, in the said case, IO has filed the charge-sheet without obtaining the sanction as required under Sec. 39 of Arms Act. But the Hon'ble Court after elaborate discussion and the Judgment of the Hon'ble Supreme Court of India held that "Charge sheet filed without sanction under Sec.39 of the Arms Act, does not render the charge sheet as an incomplete charge-sheet as required under Sec. 193 (3) of BNSS, hence default bail petition rejected.

**17. I have gone through the same. The principle laid down in the above-said judgment aptly applicable to the case in hand. Further more, when FSL report DNA report, CDR, CAF, SDR and mobile phone retrieve are not available to produce the same along with charge sheet, it is inevitable for the investigating officer to submit the charge-sheet within the stipulated period, permitting him to *produce the said FSL report. DNA report, CDR, CAF, SDR and mobile phone retrieve, later When the final report submitted by the investigating officer prima facie shows the allegations made by the investigating officer against the accused the said report can be said final report. Mere on the ground that investigating officer submitted charge-sheet without FSL report, DNA report, CDR, CAF, SDR and mobile phone retrieve it cannot be said this it is an incomplete c/s Further in another judgment relied by the learned pp, Hon'ble High Court of Delhi stated that charge-sheet submitted by the investigating officer without sanction U/sec.39 of Arms Act, does not render the and said charge sheet, is an incomplete U/sec.193(3) of BNSS". So the above said***

***citation relied by the learned council by Hon'ble Apex Court will not helpful to entertain his application.***

***15. Further the records reveals that, before filing of the charge-sheet also the learned counsel for the accused has filed similar application to grant statutory bail, the same got dismissed on merits by order dated 23.12.202. Now after filing of the charge-sheet, this second application has been filed by the counsel for the accused on the ground that the charge-sheet without competition of investigation. But he has failed to convince the court. On the contrary the entire materials placed by the prosecution is sufficient to show that it is a final report/chargesheet. Mere on the ground that investigating officer has not produced FSL report, DNA report, CDR, CAF, SDR and mobile phone retrieve it can not be said that it is incomplete charge sheet/final report as contended by the counsel for the accused. Hence I answer point No.1 in Negative and proceed to pass the following:***

***ORDER***

***Application filed by the counsel for the accused U/sec. 187(3)(i) r/w Sec. 193 of The BNSS-2023 is hereby dismissed."***

(Emphasis added at each instance)

The first of the application comes to be rejected on the score that the offences alleged against the petitioner are punishable with imprisonment of 10 years or more. Therefore, the time to complete investigation was 90 days and not 60 days. The second application comes to be rejected on the score that mere filing of an incomplete charge sheet by the prosecution would not lead to grant of

statutory bail. It, therefore, becomes necessary to consider the interplay between Section 187(3) and 193(2) of the BNSS.

9. Section 187 of the BNSS reads as follows:

> "**187. Procedure when investigation cannot be completed in twenty-four hours**.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.
>
> (2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), 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.
>
> **(3) The Magistrate may authorise the detention of the accused person, 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 sub-section 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 ten years or more;**

**(*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 XXXV for the purposes of that Chapter.**

(4) 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 audio-video electronic means.

(5) 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 sub-section (3), 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 sub-section (4), 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 audio-video electronic means, as the case may be:

Provided 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:

Provided further that no person shall be detained otherwise than in police station under police custody or in prison under judicial custody or a place declared as prison by the Central Government or the State Government.

(6) Notwithstanding anything contained in sub-section (1) to sub-section (5), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Magistrate have been conferred, a copy of the entry in the diary hereinafter specified relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in sub-section (3):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(7) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

> (8) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.
>
> (9) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.
>
> (10) Where any order stopping further investigation into an offence has been made under sub-section (9), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (9) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

**The statutory scheme unfolds with clarity. Section 187(3) of the BNSS delineates the contours of default bail drawing a distinction based on gravity of offences, 60 days for lesser offences which are punishable up to 10 years and 90 days for those punishable with 10 years or more. In the present case, the offence alleged is the one punishable under Section 64 of the BNS – rape and provisions of the POCSO Act, both of which carry punishments extending to life imprisonment.**

**Therefore, the charge sheet filed on the 84th day, falls well within the statutory window as delineated in 187(3).**

10. The other provision is Section 193 of BNSS, it reads as follows:

> "**193. Report of police officer on completion of investigation**.—(1) Every investigation under this Chapter shall be completed without unnecessary delay.
>
> **(2) The investigation in relation to an offence under Sections 64, 65, 66, 67, 68, 70, 71 of the Bharatiya Nyaya Sanhita, 2023 or under Sections 4, 6, 8 or Section 10 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012) shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.**
>
> (3) (*i*) As soon as the investigation is completed, the officer in charge of the police station shall forward, including through electronic communication to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form as the State Government may, by rules provide, stating—
>
> (*a*) the names of the parties;
>
> (*b*) the nature of the information;
>
> (*c*) the names of the persons who appear to be acquainted with the circumstances of the case;
>
> (*d*) whether any offence appears to have been committed and, if so, by whom;
>
> (*e*) whether the accused has been arrested;

(*f*) whether the accused has been released on his bond or bail bond;

(*g*) whether the accused has been forwarded in custody under Section 190;

*(h)* whether the report of medical examination of the woman has been attached where investigation relates to an offence under Sections 64, 65, 66, 67, 68, 70 or Section 71 of the Bharatiya Nyaya Sanhita, 2023;

(*i*) the sequence of custody in case of electronic device;

(*ii*)the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;

(*iii*) the officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(4) Where a superior officer of police has been appointed under Section 177, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(5) Whenever it appears from a report forwarded under this section that the accused has been released on his bond or bail bond, the Magistrate shall make such order for the discharge of such bond or bail bond or otherwise as he thinks fit.

(6) When such report is in respect of a case to which Section 190 applies, the police officer shall forward to the Magistrate along with the report—

(*a*) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

*(b)* the statements recorded under Section 180 of all the persons whom the prosecution proposes to examine as its witnesses.

(7) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(8) Subject to the provisions contained in sub-section (7), the police officer investigating the case shall also submit such number of copies of the police report along with other documents duly indexed to the Magistrate for supply to the accused as required under Section 230:

Provided that supply of report and other documents by electronic communication shall be considered as duly served.

(9) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (3) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (8) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (3):

> Provided that further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be completed within a period of ninety days which may be extended with the permission of the Court."

Section 193(2), though couched in mandatory language, operates in a distinct domain. It is a legislative exhortation to ensure alacrity in investigation, particularly in heinous offences - in relation to an offence under Sections 64, 65, 66, 67, 68, 70 and 71 of the BNS or Sections 4, 6, 8 and 10 of the POCSO Act. Yet, it does not, in its text or spirit, confer upon the accused a right to default bail upon its breach. To construe it otherwise, would render Section 187 nugatory – a consequence that must be eschewed.

11. The offences alleged against the petitioner, one is under Section 64 of the BNS, which is rape punishable for life and the other is, Section 108 of BNS, abatement to suicide which is punishable up to 10 years. The offences under the POCSO Act are under Sections 3, 4, 5 and 6, sexual assault and penetrative sexual assault on a child which is punishable with 20 years or life. Therefore, one factor is clear that the offences alleged against the petitioner are all punishable with imprisonment beyond 10 years

and in such circumstances, the mandate of sub-section (3) of Section 187 is that the charge sheet should be filed within 90 days. The charge sheet was filed on 84th day of the petitioner being taken into custody. Therefore, it is in complete compliance with the mandate of sub-section (3) of Section 187 of the BNSS. The petitioner cannot claim that the charge sheet was filed on 84th day and, therefore, he is entitled to the grant of statutory bail, owing to the analogous provision under Section 193 of BNSS.

12. The learned counsel for the petitioner has placed reliance on the judgment of the coordinate Bench in the case of **MOULALI v. STATE OF KARNATAKA**[1]. The reliance placed is entirely misplaced as the coordinate Bench holds as follows:

> "…. …. ….
>
> 26. In the light of the above disputed fact of date of filing of the charge sheet, this Court bestowed it's best attention to the material placed on record. As could be seen from the endorsement made by the learned Special Judge on charge sheet, charge sheet is received by the learned Special Judge and he has made an endorsement 'check and then put up', the said endorsement is dated 24.01.2025.
>
> 27. After the charge sheet is field, the power to remand exists in the Court till the ministerial act of verification of the

**[1] Crl.R.P.No.100051 of 2025 decided on 04-03-2025**

charge sheet papers are carried out and till the date of taking of the cognizance is under Section 346 of the BNSS (Section 309 of Cr.P.C.).

28. In other words, power to remand in the interregnum of filing of the charge sheet and actual date of taking the cognizance is inherent in the trial Court.

29. View of this Court in this regard is supported by the judgement of Hon'ble Apex Court in the case of Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and another reported in (2013) 1 S.C.R 1037. Relevant paragraphs of the said decision are culled out hereunder for ready reference:

> 1.2. The scheme of the Cr.P.C. is that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. Once cognizance is taken, the power to remand shifts to the provisions of s.309 Cr.P.C., under which the trial court is empowered to postpone or adjourn proceedings and, for the said purpose, to extend the period of detention from time to time. However, the provisions of s.309 Cr.P.C. have no application to the facts of the instant case. [para 15 and 18] [1047 G-H; 1048-B; 1052-A]

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**30. Applying the principles of law enunciated in the aforesaid judgments of the Hon'ble Apex Court relied on by the parties as referred supra, there cannot be any iota**

**of doubt in the principles enunciated by the Hon'ble Apex Court in the case of Udaya Mohanlal Acharya and Anupam J. Kulkarni supra, that accused enjoys indefeasible right to seek for grant of statutory bail if there is no filing of the charge sheet within the prescribed period. It is also to be noted that filing of Charge Sheet subsequently would not take away the right already accrued.**

**31. As already observed supra, filing of the charge sheet as is contemplated under Section 193(2) of Cr.P.C. could be treated as mandatory even in case where the accused is not arrested is to be discussed in an appropriate case.**

**32. For the purpose of disposing of the present case, since the accused-petitioner is arrested on the very next day on 26.11.2024, filing of the charge sheet on 24.01.2025 is well within the ambit of Section 193(2)of the BNSS in the case on hand which is sufficient compliance of the said provision.**

**33. It is needless to emphasise that once the charge sheet is filed ticking of the clock with regarding to statutory right which is carved out in the Statute would automatically stop. As could be seen from the material on records, in the charge sheet dated 24.01.2025 and actual cognizance has been taken on 29.01.2025 as referred supra and thereafter necessary endorsements has been carried out in the relevant registers wherein, the pending FIR is culminated in filing a charge sheet and a special case came to be registered.**

**34. In view of the principles of law enunciated in the case of Suresh Kumar Bhikamchand Jain supra, this Court is of the considered opinion that rejection of the petitioner seeking grant of statutory bail is justified though not the order of the learned Special Judge is not happily worded.**

> 35. In view of the foregoing discussion, following order is passed:
>
> **ORDER**
>
> Petition is merit less, and is hereby dismissed. However, dismissal of the present petition would not come in the way of petitioner seeking regular bail in accordance with law."

The coordinate Bench holds that the charge sheet was filed within 60 days though the investigation could have gone on up to 90 days. In the light filing of the charge sheet within 60 days, the discussion of the interplay between Sections 187 and 193(2) is not elaborated. Therefore, the said judgment on the face of it, is inapplicable to the case at hand. In the case at hand, the charge sheet is filed on the 84$^{th}$ day. The mandate of Section 193(2) is for benefit of the victim and not to be taken as benefit to the accused for statutory bail. Statutory bail/default bail can be sought only under Section 187 of the BNSS and non-filing of the charge sheet under Section 193(2) cannot mean that the accused would be entitled to seek statutory bail, even for offences which are punishable with imprisonment of 10 years or more and the prosecution's period of investigation is 90 days.

13. It becomes apposite to refer to the judgment of the Division Bench of this Court in **HANUMANTHA MOGAVEERA v. STATE OF KARNATAKA BY WOMEN POLICE STATION**[2] wherein the Division Bench holds that the provision for completion of investigation under sub-section (2) of Section 35 of the POCSO Act is to the benefit of the victim and cannot be taken as shield for the accused to seek his release on bail or otherwise. The Division Bench holds as follows:

> "…. …. …..
>
> **SUBMISSIONS:**
>
> **5.** It was the submission of petitioner/accused No. 1 that, in the instant cases, the charge-sheet has already been filed and accused No. 1 is in custody. That cognizance of offences was taken by the Trial Court on 13.05.2019. As per Section 35(1) of POCSO Act evidence of the child had to be recorded within a period of thirty days of taking cognizance of the offence by the Trial Court. If the same is not so recorded, the reasons for the delay has also to be recorded by the said Court. Further, as per Section 35(2) of the POCSO Act, the Trial Court, having not completed the trial within a period of one year from the date of taking cognizance of the offences, petitioner/accused No. 1 was entitled to be released on bail.
>
> … … …
>
> **7.** In this regard, reliance was also placed on the decision in *Sushila Aggarwal* v. *State (Nct of Delhi)* [2020 SCC OnLine SC 98.], (Sushila Aggarwal). It was also submitted that liberty of the petitioner/accused No. 1 had to be protected and if he was not going to be released on bail, his personal liberty was under jeopardy and his fundamental right enshrined in Article 21 of

[2] **ILR 2021 KAR 3469**

the Constitution was in violation. It was contended that if the petitioner/accused No. 1 was released on bail on certain conditions being imposed, the same would be complied with and he would abide by the same.

… … …

**9.** Learned Single Judge on considering Idnayrelied upon by the petitioner/accused No. 1 has observed that the expression "as far as possible" used in Section 35 (2) of the POCSO Act has to be borne in mind and hence, doubting the order of this Court in Vinay, the Reference has been made in the aforesaid terms. However,Learned Single Judge on merits held that no case was made out to release petitioner/accused No. 1 on bail and hence, the petition was dismissed. Nevertheless, in order to answer the Reference, a Special Bench has been constituted by Hon'ble the Chief Justice.

… … …

**16.** … … …

**d) Section 35 of the POCSO Act consists of two parts :firstiy, it deals with the period for recording of evidence of the child and disposal of case. Sub-Section (1) of Section 35 states that the evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court. Secondly, sub-Section (2) prescribes the period of one year from the date of taking cognizance of the offence for the purpose of completion of the trial. Of course, the said period prescribed is to be complied with, as far as possible, by the Special Court.**

… … …

***SECOND POINT:***

**39. As far as the second point of reference is concerned, the same relates to sub-Section (2) of Section 35 of the POCSO Act which mandates that the Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence. The reasons for prescribing a period of one**

**year for completion of the trial are not far to see. The main reason being, the victim child must not only be rendered speedy justice but, at the same time, it is necessary to get over the legal proceeding at the earliest, so that the child could concentrate on rehabilitation and get on with his or her life. Prolonging the trial before the Special Court for years together, like any other sessions case, would be futile and frustrate the intention of the parliament as well as the object of POCSO Act. It must be remembered that the object and purpose of the said Act being child-centric, all efforts must be made by all stake-holders under the said Act, including the Special Court, to complete the trial within a period of one year from the date of taking cognizance of the offence under the said Act. But, the Parliament, while having such a noble intention, at the same time, has not lost sight of the reality and technical difficulties faced by Criminal Courts including the Special Courts, in particular and criminal justice system, in general. Therefore, the use of the expression, "as far as possible" in the provision. But, the said expression does not in any way permit any recalcitrant attitude, nor does it countenance a slow and tardy trial or envisage a re-living of the trauma by the victim child for years together. The expression *"as far as possible"*, is used by the Parliament, having regard to the genuine difficulties faced in the conclusion of a trial concerning a victim child under the provisions of the POCSO Act. If the evidence of the child is to be recorded within a period of thirty days from the date of taking cognizance of the offence, the trial under the provisions of the POCSO Act being a sessions trial, would mean that all provisions of Cr.P.C., which are not inconsistent with the provisions of the POCSO Act would apply and hence, there may be reasons beyond the control of the Special Court, for not being able to complete the trial under the POCSO Act within a period of one year from the date of taking cognizance of the offence.**

… … …

**41.** Be that as it may. The second point of reference is, whether, the accused is entitled to be released on bail if the

evidence of the child has not been recorded within a period of thirty days of taking cognizance of the offence or if the Special Court does not complete the trial within a period of one year from the date of taking cognizance. Such an interpretation would be an additional clause under the said provision and giving an additional right to the accused. Even under Section 309 of Cr.P.C., the trial of the proceedings has to be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded. The proviso thereto has been amended with effect from 03.02.2013 and the proviso thereto deals with trial relating to offence under Section 376 and related Sections of the Penal Code, 1860, wherein the trial has to be completed within a period of two months from the date of filing of the charge-sheet, as far as possible. Thus, the expression 'as far as possible' is also found in proviso to sub-Section (1) of Section 309 of Cr.P.C. Section 309 of Cr.P.C., also speaks about the circumstances under which no adjournment could be granted. The use of the expression "as far as possible" is also on account of the fact that under Section 37 of the POCSO Act, the trial has to be conducted in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence. But, if the Special Court is of the opinion that the child needs to be examined at the place other than the Court, it shall proceed to issue a commission in accordance with the provisions of Section 284 of Cr.P.C. In such a case, the circumstances under which commission for examination of witness is issued under Section 284 of Cr.P.C., would apply, namely that if the child cannot be procured without an amount of delay, expense or inconvenience, but in the circumstances of the case, would be unreasonable, then the Special Court may dispense with such attendance and may issue a commission for the examination of witness in a place other than the Court. **The provisions dealing with Commission for the examination of witness *mutatis mutandis* apply when the Special Court orders examination of the child at a place other than the Court. Therefore, in such circumstances, there may be delay in recording the evidence of the child within a period of thirty days of taking cognizance of the offence by the Special Court or even delay in completion of trial within a period of one year from the date of taking cognizance of the offence. In such an event, it cannot be**

**treated to be a default, which would enure to the benefit of the accused so as to give the accused a right to be released on bail.**

**42. It is observed that the object and purpose of Section 35 of the POCSO Act is for the benefit of the child victim and is not to be considered as an additional clause for the purpose of granting bail to the alleged perpetrator or the accused.**

**43. As discussed above, there may be various reasons and circumstances beyond the control of the Special Court under which the conclusion of the proceedings within a period of one year may not happen. As already noted, the reasons for the same have been discussed above. Under such circumstances, the accused cannot enforce the right to be released on bail. No such right is envisaged under the said provisions of the Act and the same cannot be read into it by way of an interpretation which may go against the interest of the child victim. If the aforesaid interpretation is to be made then, there would be every attempt made to delay the proceedings before the Special Court beyond the period of one year and seek release of accused on bail. Such a position cannot be encouraged nor is it envisaged under the POCSO Act.**

… … …

**49. If for reasons beyond the control of the Special Court, the evidence of the child is not recorded within the period of thirty days of the Special Court taking cognizance of the offence, or if the trial itself is not completed within a period of one year from the date of cognizance of the offence, the same cannot lead to the accused being released on bail. The object and purpose of Section 35 of the POCSO Act is to ensure that the victim child is secured from the trauma of trial of the case at the earliest so that she or he could be rehabilitated and reintegrated into society at the earliest. The said provision is not to be interpreted in favour of the accused so as to mandate release of the accused, if for any reason, evidence is not recorded**

> **within a period of thirty days of taking cognizance of the offence or the Special Court not completing the trial within a period of one year from the date of taking cognizance of the offence.**
>
> **50. In our view, non-compliance of Section 35 of the POCSO Act cannot be the basis for releasing the accused on bail as that would be a misreading of the provision**. One has to bear in mind the fact that the docket explosion under the POCSO Act is not commensurate with the sufficient number of Special Courts being constituted with the requisite human resources as well as infrastructure. It may be practically impossible for the Trial Court to conclude the trial within one year from the date of cognizance by the said Court in a majority of the cases. But, that does not give a right to the accused to seek bail for the reason that the mandate under Section 35 of the POCSO Act has not been completed."

The Division Bench clearly holds that no right is envisaged under the provisions of the Act – POCSO Act and it is not only in the interest of the accused for completion of investigation within a time frame, but is in the interest of the victim child also. The accused cannot enforce the right to be released on bail.

14. If the observations of the Division Bench are paraphrased to the case at hand as well, what would unmistakably emerge is, that the petitioner cannot place reliance upon Section 193(2) of the BNSS to contend that he is entitled to a statutory bail, if the investigation is not complete within 60 days as obtaining under

Section 193(2). **The jurisprudence consistently underscores that timelines under special statutes like the POCSO Act, are victim centric, intended to ensure swift justice, not to furnish escape routes for the accused.** Thus, the issue must be answered in the negative. **The petitioner cannot draw sustenance from Section 193(2) of the BNSS to claim statutory bail.**

**ISSUE NO.2:**

**Whether the filing of an allegedly incomplete charge sheet can clothe the accused with such a right – grant of statutory bail?**

15. **The second contention, though ingeniously advanced, cannot withstand the weight of settled law.** The Apex Court interpreting sub-section (2) of Section 167 of the Cr.P.C. which is now Section 187(3) of the BNSS, has in **CENTRAL BUREAU OF INVESTIGATION v. KAPIL WADHAWAN**[3] held as follows:

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**[3] (2024) 3 SCC 734**

"21. In our opinion, the Constitution Bench in ***K. Veeraswami v. Union of India*** [K. Veeraswami v. Union of India, (1991) 3 SCC 655 : 1991 SCC (Cri) 734] has aptly explained the scope of Section 173(2) : (SCC p. 716, para 76)

> "76. **The charge-sheet is nothing but a final report of police officer under Section 173(2) of the CrPC. The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. As observed by this Court in *Satya Narain Musadi v. State of Bihar* [Satya Narain Musadi v. State of Bihar, (1980) 3 SCC 152 : 1980 SCC (Cri) 660] that the *statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court.* In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. *The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated*. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence**."

(emphasis supplied)

22. In view of the above settled legal position, there remains no shadow of doubt that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. **The report under Section 173 is an intimation to the court that upon investigation into the cognizable offence, the investigating officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). As settled in the aforestated case, it is not necessary that all the details of the offence must be stated.**

23. **The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a charge-sheet is not filed and the investigation is kept pending against him. Once however, a charge-sheet is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a charge-sheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the charge-sheet, nonetheless for some reasons, if all the documents are not filed along with the charge-sheet, that reason by itself would not invalidate or vitiate the charge-sheet.It is also well settled that the court takes cognizance of the offence and not the offender. *Once from the material produced along with the charge-sheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of charge-sheet would neither vitiate the charge-sheet, nor would it entitle the accused to claim right to get default bail on the ground that the charge-sheet was an incomplete charge-sheet or***

***that the charge-sheet was not filed in terms of Section 173(2)CrPC."***

16. In a later judgment in **DABLU KUJUR v. STATE OF JHARKHAND**[4] the Apex Court has held as follows:

"…. …. ….

"14. It may be noted that though there are various reports required to be submitted by the police in charge of the police station before, during and after the investigation as contemplated in Chapter XII CrPC, **it is only the report forwarded by the police officer to the Magistrate under sub-section (2) of Section 173CrPC that can form the basis for the competent court for taking cognizance thereupon. A charge-sheet is nothing but a final report of the police officer under Section 173(2)CrPC It is an opinion or intimation of the investigating officer to the court concerned that on the material collected during the course of investigation, an offence appears to have been committed by the particular person or persons, or that no offence appears to have been committed.**

15. When such a police report concludes that an offence appears to have been committed by a particular person or persons, the Magistrate has three options:

(*i*) he may accept the report and take cognizance of the offence and issue process,

(*ii*) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report, or

(*iii*) he may disagree with the report and discharge the accused or drop the proceedings.

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**[4] (2024) 6 SCC 758**

If such police report concludes that no offence appears to have been committed, the Magistrate again has three options:

(*i*) he may accept the report and drop the proceedings, or

(*ii*) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process, or

(*iii*) he may direct further investigation to be made by the police under sub-section (3) of Section 156 [*Bhagwant Singh* v. *CBI*, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] .

16. The issues with regard to the compliance of Section 173(2)CrPC, may also arise, when the investigating officer submits police report only qua some of the persons-accused named in the FIR, keeping open the investigation qua the other persons-accused, or when all the documents as required under Section 173(5) are not submitted. In such a situation, the question that is often posed before the court is whether such a police report could be said to have been submitted in compliance with sub-section (2) of Section 173CrPC.

17. In this regard, it may be noted that **in *Satya Narain Musadi* v. *State of Bihar* [*Satya Narain Musadi* v. *State of Bihar*, (1980) 3 SCC 152 : 1980 SCC (Cri) 660] , this Court has observed that statutory requirement of the report under Section 173(2) would be complied with if various details prescribed therein are included in the report. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). In *Dinesh Dalmia* v. *CBI* [*Dinesh Dalmia* v. *CBI*, (2007) 8 SCC 770 : (2008) 1 SCC (Cri) 36] , however, it has been held that even if all the documents are not filed, by reason thereof the submission of the charge-sheet itself would not be vitiated in law.**

18. **Such issues often arise when the accused would make his claim for default bail under Section 167(2)CrPC**

**and contend that all the documents having not been submitted as required under Section 173(5), or the investigation qua some of the persons having been kept open while submitting police report under Section 173(2), the requirements under Section 173(2) could not be said to have been complied with. In this regard, this Court recently held in *CBI* v. *Kapil Wadhawan* [*CBI* v. *Kapil Wadhawan*, (2024) 3 SCC 734 : (2024) 2 SCC (Cri) 300] that : (SCC p. 748, para 23)**

> ***"23. … Once from the material produced along with the charge-sheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of charge-sheet would neither vitiate the charge-sheet, nor would it entitle the accused to claim right to get default bail on the ground that the charge-sheet was an incomplete charge-sheet or that the charge-sheet was not filed in terms of Section 173(2)CrPC.***".″

17. In **NAGARAJ v. STATE OF KARNATAKA**[5] wherein an identical contention was projected, this Bench following the Full Bench judgment of the Bombay High Court has held as follows:

"…. …. …

7. The afore-narrated facts are not in dispute. They, in fact, lie in a narrow compass. What requires consideration is, whether the petitioner/accused No.1 could be enlarged on bail, when an application is filed under sub-section (2) of Section 167 of the Cr.P.C. Section 167 of the Cr.P.C. reads as follows:

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**[5] Crl.P.No.102126 of 2023 decided on 20-12-2023**

"167. ***Procedure when investigation cannot be completed in twenty-four hours***.— *(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating; to the case, and shall at the same time forward the accused to such Magistrate.*

***(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no 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 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 injudicial 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 paragraph (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."*

*(Emphasis supplied)*

8. In terms of Section 167(2)(a) of the Cr.P.C., an accused will be entitled to bail in the event the final report is not filed within 90 days from the date on which the accused was

sent to judicial custody. Filing of charge sheet is dealt with under Section 173 of the Cr.P.C. which reads as follows:

> *"**173. Report of police officer on completion of investigation**.—(1) Every investigation under this Chapter shall be completed without unnecessary delay*
>
> *(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.*
>
> ***(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—***
>
> ***(a) the names of the parties;***
> ***(b) the nature of the information;***
> ***(c) the names of the persons who appear to be acquainted with the circumstances of the case;***
> ***(d) whether any offence appears to have been committed and, if so, by whom;***
> ***(e) whether the accused has been arrested;***
> ***(f) whether he has been released on his bond and, if so, whether with or without sureties;***
> ***(g) whether he has been forwarded in custody under section 170.***
> **(h) *whether the report of medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C, 376D or section 376E of the Penal Code, 1860.***
>
> *(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.*
>
> *(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.*

*(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.*

***(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—***

***(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;***

***(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.***

*(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.*

*(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).*

***(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”***

*(Emphasis supplied)*

9. Section 173 of the Cr.P.C. *(supra)* deals with filing of final report by the Police after investigation. Section 173(2) of the Cr.P.C. mandates that once investigation is completed the officer in-charge of a Police Station shall forward the report to the Magistrate empowered to take cognizance of the offence on the final report, indicating the factors that are narrated in sub-Section (2) of Section 173. Section 173(5) mandates that when such report is in respect of a case to which Section 170 applies, the Police Officer shall forward to the Magistrate along with the report all documents or relevant extract thereof on which the prosecution proposes to rely on, other than those already sent to the Magistrate during investigation and the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses. Section 173(8) of the Cr.P.C. deals with power of the Magistrate to direct further investigation to be conducted in a given case. Therefore, it is open for the Police to conduct further investigation in terms of Section 173(8) of the Cr.P.C. This is the frame work on which release on bail of an accused and filing of charge sheet are dealt with. It is these that are germane to be noticed in the case at hand.

10. It is an admitted fact that FSL report was not accompanying with the charge sheet when the prosecution filed its final report before the Court on 08-01-2023. The issue whether the petitioner would get a right to get himself enlarged on bail in the absence of a FSL report in the charge sheet need not detain this Court for long or delve deep into the matter. A Division Bench of Bombay High Court in the case of ***MANAS KRISHNA T.K. v. STATE***[6] was answering a reference to the Division Bench in view of conflicting views of two Learned Single Judges on the very issue of an accused becoming entitled to enlargement on default bail on the ground that FSL report did not accompany the final report. The Division Bench answering the question holds as follows:

> *"2. The main issue which falls for determination in this reference is whether, in a case under the NDPS Act, the investigation can be said to be complete within the period prescribed under Section 167 (2) of the Criminal Procedure Code (Cr.PC),* ***when a police report under Section 173 (2)***

[6] *2021 SCC OnLine Bom.2955*

***is filed before the Special Court without any CA/FSL report along. If, based upon such a police report, an investigation is held as incomplete, then, the accused will be entitled to default bail. However, if the investigation is held as complete, no question of default bail would arise.***

3. *This reference arose on the account of the following*:—

(a) *On 07.01.2020, FIR No. 5/2020 was registered at the Anjuna Police Station against the applicant/accused alleging commission of an offense under section 20 (C) of the NDPS Act, 1985. The FIR alleged that the accused was found in possession of a commercial quantity (0.5 gms) of L.S.D. contraband under the NDPS Act. The accused was arrested on the same date i.e. 07.01.2020. The accused's bail application No. 76/2020 was rejected by the Special Court 29.06.2020.*

*(b) The Investigating Officer (10) filed a report under Section 173 (2) Cr. P.C. (Charge-sheet) before the Special Court on 04.07.2020. This was the 179th day since the arrest of the first remand. This means that the charge-sheet was filed within the 180 days time limit provided in Section 167 (2) Cr. P.C. r/w Section 36(A)(4) of the Narcotic Drugs & Psychotropic Substances Act (NDPS Act).*

*(c)* ***Along with the charge-sheet, the 10 also filed before the Special Court on 04.07.2020 itself several documents in terms of Section 173 (5) of Cr. P.C. This included a Panchanama in which it was recorded that a field test was conducted at the spot where the accused was apprehended and that the results suggested that the substance recovered from the shoulder bag carried by the accused, was indeed L.S.D. However, the 10, along with the charge sheet, did not file any Chemical Analyser (CA)/FSL report concerning the sample attached and sent to the laboratory. Such CA/FSL report was ultimately filed beyond the period prescribed in section 167(2) Cr. P.C. confirming that the substance recovered was indeed L.S.D.***

*(d) The accused had applied for bail before this Court on 07.07.2020 but withdrew this application on 07.08.2020 with liberty to apply before the Special Court. Such bail application was filed on 22.09.2020 but was rejected on 21.11.2020. The accused then applied for bail before this Court vide Criminal Misc. Application (Bail) (Filing) no. 88 of 2021 (the present application).*

*(e) Mr. Poulekar relied on the following set of decisions which according to him, support the aforesaid position urged by him: (i) Sunil Vasantrao Phulbande v. State of Maharashtra, (2002) 3 Mah LJ 689, (ii) Punjaram v. State of Maharashtra, 2005 Cri LJ 4658, (iii) Ranjeet Manohar Machrekar v. State of Maharashtra, Criminal Bail Application No. 509/2014 (Bombay), (iv) Manik Sahebrao Chaugule v. State of Maharashtra, Criminal Bail Application No. 241/2017 (Bombay), (v) Seema Raju Panchariya v. State of Maharashtra, Criminal Bail Application No. 65/2018 (Aurangabad), (vi) SagarParshuram Joshi v. State of Maharashtra, Bail Application (ST) No. 4761/2020 (Bombay).*

*(f) On the other hand, the Learned Public Prosecutor (PP) pointed out to the Learned Single Judge, a set of judgments that might invite a finding that the decisions relied on by Mr. Poulekar are either 'per incuriam 'or at any rate, in direct conflict. The decisions relied on by the learned Public Prosecutor included the following : (i) Balaji Vasantrao Suwarnkar v. State of Maharashtra, 1992 Mah LJ 159, (ii) State of Maharashtra v. Sharadchandra Vinayak Dongre, (1995) 1 SCC 42, (iii) Babu s/o Rakhmanji Khamkar v. State of Maharashtra, (1995) 4 Bom CR 335, (iv) Rohini Mahavir Godse v. State of Maharashtra, (1996) 2 Mah LJ 492, (v) Rafael Palafox Garcia v. Union of India, 2008 All M.R. (Cri) 3031, (vi) Sheikh Shabbirs/o Mohd Shafi v. State of Maharashtra, Criminal Application no. 143/2011 (Nagpur Bench), (vii) Srihari Mahadu Valse v. State of Maharashtra, Criminal Bail Application No. 3284/2018, (viii) Dheeraj Wadhawan v. C.B.I. - 2020 SCC OnLine Bom 9461.*

*(g) Confronted with the rival sets of judgments, the Learned Single Judge, by her order dated 07.07.2021 opined that the following questions arise and can be more*

*advantageously considered by the Division Bench of this Court:—*

*i. Whether the presentation of a report under Section 173(2) Cr. P.C. by the police without the report of Chemical Analyser/FSL amounts to incomplete challan and in the absence of any extension of time under Section 36-A (4) of the NDPS Act, whether the accused is entitled to bail under Section 167(2) Cr. P.C.?*

*ii. Whether, in a charge-sheet under NDPS Act, accompanied by a field testing report which is a part of the record, can be labelled as an incomplete report, simply because it is not accompanied by a report of Chemical Analyser/FSL*

*iii. What is the legal efficacy of "Drug Law Enforcement, Field Officers 'Handbook' issued by the Narcotics Control Bureau, Ministry of Home Affairs, Government of India?*

*(h) Based on the above opinion, the Registrar (Judicial-I) at Bombay, vide letter dated 22.07.2021 informed the Registrar (Judicial) at Goa that the Hon 'ble the Chief Justice has been pleased to approve the constitution of Division Bench for answering the questions raised by the Hon 'ble Court (Coram : M.S. Jawalkar, J.) in Criminal Miscellaneous Application (Bail) (Filing) No. 88/2021 and to place the same before this Division Bench for consideration.*

…. …. ….

***42. Therefore, on the analysis of the statutory provisions, as also the decisions that have analyzed various shades of such statutory provisions, we believe that a police report or a charge sheet containing the details specified in Section 173(2), if filed within the period prescribed under Section 167(2) is not vitiated or incomplete simply because the same was not accompanied by a CA/FSL report and, based thereon, there is no question of the accused insisting on default bail.***

…. …. ….

*61. In the precise context of cases under the NDPS Act, there is a long line of decisions delivered by the learned Single Judges of our Court in Suwarnkar (supra), Rafael Palafox Garcia (supra), Aleksander Kurganov (supra), Shrihari Valse (supra), and Sheikh Shabbir (supra) that have taken the view that a charge-sheet unaccompanied by a CA/FSL report is not incomplete and therefore, where the same is filed within the prescribed period, the accused, cannot insist on default bail. These decisions according to us, reflect the legal position correctly, and therefore, we endorse them.*

*62. The contention similar to what is now raised was rejected in Rafael Palafox Garcia (supra). Besides**, there can be no general rule that the Magistrate or the Special Court can never take cognizance of any offense under the NDPS Act in the absence of a CA/FSL report. Ultimately, that will be a matter which will have to be decided on the facts of each case by the Magistrate or the Special Court as the case may be.***

***63. Further, the contention that a Magistrate or the Special Court, in any NDPS case, is not even competent to take cognizance of any offense based only on a field testing report as reflected in the Panchanama or otherwise in the absence of CA/FSL report is again, too wide a proposition to commend acceptance. Ultimately a Magistrate or the Special Court will have to assess the charge sheet and, if necessary, the documents and the statements produced under Section 173(5) and thereafter decide whether any case is made out for taking cognizance of the offense.***

***64. For example, in Jagdish Purohit v. State of Maharashtra, (1998) 7 SCC 270, the Hon 'ble Supreme Court after rejecting the CA/FSL report sustained the conviction by accepting the evidence of the members of the raiding party to prove that the powder which was found from the factory was methaqualone. The witnesses had stated that they had carried a kit to the field and had received sufficient training and had sufficient knowledge of narcotic substances and methods of testing them. This evidence was found sufficient to sustain a conviction even after ignoring CA/FSL report. Therefore, if a conviction could be sustained on such evidence, surely, cognizance of the offense can also be taken based on such material produced along with the charge sheet. All this will have to be assessed on a case-to-case basis and***

***therefore, the general proposition as urged on behalf of the accused cannot be accepted.***

*65. There is and there can perhaps never be any dispute with the proposition that the right of a default bail in terms of Section 167(2) is a very valuable right that is now even elevated to the status of a fundamental right under Article 21 of the Constitution of India. The several decisions like M. Ravindran (supra), Rakesh Paul (supra), relied on behalf of the accused, in this regard, therefore, need not even be discussed because there is and there can be no quarrel with the proposition laid down therein. However, as was explained by the Hon 'ble Supreme Court itself in Dinesh Dalmiya (supra), such a right of default bail, although is a valuable right, the same is a conditional one. The condition precedent being pendency of the investigation. Therefore, once the investigation is complete with the filing of a police report containing the details specified under Section 173(2), the question of a claim or grant for default bail does not arise.*

***66. For all the aforesaid reasons, we hold that the presentation of a police report under Section 173(2) unaccompanied by a CA/FSL report does not amount to any incomplete police report or any incomplete charge sheet/challan even in the absence of an extension of time under Section 36-A(4) of the NDPS Act. Based thereon therefore the accused cannot insist upon a default bail.***

***67. Similarly, we hold that a police report under Section 173(2) or a charge sheet/challan accompanied by field testing reports as reflected in the Panchanama or otherwise also cannot be labeled as an incomplete police report/charge sheet/challan simply because the same was not accompanied by a CA/FSL report.***

*68. Question no. (i) and (ii) in this reference are answered accordingly.*

…. …. ….

*80. For all the aforesaid reasons we hold that the Drug Law Enforcement Field Officers' Handbook issued by the NCB has no legal efficacy, in the sense that the handbook has no statutory flavor or the handbook is not a set of executive instructions issued by the Central Government as contended by Mr. Gaonkar. Question No. (iii) is answered accordingly.*

***81. Resultantly, we answer this reference by holding the following:***

***(a) Question no. (i) is answered by holding that even in an NDPS case a police report containing the details prescribed under Section 173(2) Cr. P.C. is a complete police report or a charge sheet or a challan even if it is unaccompanied by a CA/FSL report. If such police report is filed within the period stipulated under Section 167(2) Cr. P.C. r/w. Section 36-A(4) of the NDPS Act, the accused cannot insist upon a default bail.***

***(b) Question no. (ii) is answered by holding that in an NDPS case, a charge sheet accompanied by a Geld testing report as reflected in the Panchanama or otherwise also cannot be labelled as an incomplete police report/charge sheet/challan simply because the same was not accompanied by a CA/FSL report.***

***(c) Question no. (iii) is answered by holding that the Drug Law Enforcement Field Officers` Handbook issued by the NCB has no legal efficacy, in the sense that the handbook has no statutory flavour or the handbook is not a set of executive instructions issued by the Central Government. ”***

*(Emphasis Supplied)*

**The Division Bench in the afore-mentioned judgment has delineated inter-play between Section 167(2) and Section 173 of the Cr.P.C. and has finally held that even if the charge sheet is not accompanied by a field testing report it cannot be labeled as incomplete police report simply because it was not accompanied by FSL report. Resultantly, the accused would not become entitled to default bail for the reason that it was not accompanied by FSL report.**

**11. The afore-quoted judgment of the Division Bench of Bombay High Court was concerning a case of offences punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985. The allegations in the case at hand are for the offences as afore-quoted. But,**

**the stream of law that is laid down is that mere non-filing of FSL report would not vitiate the final report nor the accused would get entitlement of seeking enlargement on statutory/default bail. To the charge sheet in the case at hand, except the FSL report, every other trait has accompanied. It has accompanied the statement of prosecutrix, her father, the birth certificate, clothes, other medical reports of the victim as well as other incriminating material. Though FSL report is not yet received it would not lead to the petitioner becoming entitled to seek and be granted default bail under Section 167 of the Cr.P.C., The FSL report can be used only to corroborate the version of the prosecution. The Court can take cognizance of the offence on the final report filed by the Police. Therefore, there is no gainsaying that non-filing of FSL report has resulted in defective charge sheet and the defective charge sheet is no charge sheet in the eye of law and, therefore, he would become entitled to default bail. No fault can be found with the well reasoned order passed by the learned Sessions Judge browsing through entire spectrum of law laid down by the Apex Court and several other High Courts. The order does not warrant any interference, as the petitioner does not have any right to get himself enlarged on default bail for the reason of non-filing of FSL report."**

18. In the light of the judgment of the Apex Court and this Bench as quoted *supra*, mere filing of an incomplete charge sheet or the post-script in a charge sheet by reserving a right to file supplementary charge sheet, cannot mean that the accused can be released on grant of statutory bail. The High Court of Delhi, in a later judgment, in **YASH MISHRA v. STATE OF NCT OF DELHI**[7]

[7] **2025 SCC OnLine Del.5684**

considers the issue regarding whether further investigation under Section 193(9) of the BNSS camouflages the right of the accused to statutory bail and holds as follows:

"…. …. ….

**12. As per the afore-quoted provision of BNSS 2023, further investigation in respect of an offence is permissible even after a report under Section 193(3) is filed before the Magistrate. The provision further provides that if, on further investigation, any further evidence is to be obtained, the same is to be forwarded to the Magistrate with further report/reports regarding such evidence.**

**13. The proviso appended to sub-section 9 of Section 193 of the BNSS 2023, provides for further investigation that may be conducted during trial with the permission of the Court trying the case and that such further investigation is to be completed within 90 days, which may further be extended with the permission of the Court. Thus, what we find is that the power to conduct further investigation as conferred on the investigating agencies under Section 193(9) is not unfettered; the proviso appended thereto contains adequate safeguards on the arbitrary use of the power for further investigation, for the reason that further investigation during trial can be conducted only with the permission of the Court. We may also note that such further investigation to be conducted with the permission of the Court is to be completed within 90 days, which, though, is extendable; however, such extension is permissible only with leave of the Court. Thus, it is difficult to hold that Section 193(9) of BNSS 2023 contains a provision which is unfettered and, therefore, it is arbitrary.**

**14. So far as the submission that provision of 'further investigation' as contained in Section 193(9) is camouflage to defeat the right of the accused person to**

**seek 'default bail' under Section 187(3) of BNSS 2023, we may only observe that the provision contained in Section 193(9) and those of Section 187(3), operate in different fields and further that Section 193(9) does not in any manner acts as a camouflage to such right.**

**15. So far as the submission of the petitioner that Section 193(9) does not contain any time period for completion of further investigation is concerned, we may indicate that Section 193(1) mandates that investigation shall be completed without unnecessary delay, and as already pointed out above the proviso clearly stipulates 90 days period for completion of further investigation that too with the permission of the Court, which is extendable only if the Court permits such extension.**

**16. Accordingly, we are unable to agree with the submission of the petitioner that adequate safeguards have not been provided to the accused persons to make them realise their right of seeking a 'default bail' in a situation where further investigation is undertaken by the investigating agencies. Even otherwise, any possible potential misuse of a statutory provision is not a ground available to challenge the same and to term it unconstitutional."**

(Emphasis supplied at each instance)

19. On a blend of the judgments rendered by the Apex Court, this Court and the High Court of Delhi what would unmistakably emerge is, that in the absence of certain reports or the pendency of further investigation, does not vitiate the charge sheet, nor does it resurrect the right of default bail. Once a charge sheet is filed within the stipulated period, with all material barring the reports,

the right to statutory bail stands extinguished. **The criminal process is not a ritual of perfection at its inception; it is an evolving inquiry where additional evidence may surface in the fullness of time. To insist upon absolute completeness, at the stage of filing of the charge sheet, would be to impose an impracticable burden upon the investigative machinery,** a *caveat*, this would be *qua* the facts obtaining in each of the cases.

**CONCLUSION:**

**In the final analysis, the petitioner's plea fails to find anchorage in law. The statutory framework read harmoniously leaves no room for ambiguity. The charge sheet having been filed within 90 days and its alleged incompleteness being of no legal consequence to the claim of default bail, the petitioner cannot be enlarged or set at liberty on the said ground.**

**SUMMARY OF FINDINGS:**

(i) The statutory architecture of BNSS reveals with unmistakable clarity, that Section 187 (3) of the BNSS

stands as the sole fountainhead from which the right to default or statutory bail flows. This right, though indefeasible in its nature, is circumscribed by the temporal boundaries ordained therein – 60 days in cases where alleged offences are punishable with imprisonment up to 10 years and 90 days while the punishment extends to 10 years or beyond. Only upon the prosecution's failure to present the final report within these statutory prescribed intervals does the accused acquire the right to seek liberty on this ground.

(ii) Section 193(2) of the BNSS which mandates filing of charge sheet within 60 days for certain offences cannot mean that it can be made use of by the accused seeking statutory/default bail. It is for the purpose of completion of investigation in offences of rape and POCSO. It is at best for the benefit of the victim and cannot mean the accused can take benefit to seek enlargement on bail.

(iii) The filing of charge sheet without accompanying reports as those from the FSL or the CDR does not denude it of its character as a final report in the eye of law nor does it revive or confer upon the accused, a right to claim statutory bail.

20. For the aforesaid reasons, finding no merit in the petition, the petition stands **rejected.**

**Sd/-**
**(M.NAGAPRASANNA)**
**JUDGE**

bkp
CT:MJ