

Raj Kumar Aggarwal Vs. Director General, Central Excise and anr.

Raj Kumar Aggarwal Vs. Director General, Central Excise and anr.

SooperKanoon Citation : sooperkanoon.com/682592

Court : Delhi

Decided On : Jan-23-2008

Reported in : 147(2008)DLT1; 2008(229)ELT350(Del)

Judge : Vikramajit Sen and; P.K. Bhasin, JJ.

Acts : [Central Excise Act, 1944](#) - Sections 9 and 9AA; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 145, 167, 167(2), 437, 437(1), 437(2), 437(3), 437(5), 438(1), 438(2), 439, 439(2), 441, 442(1) and 445; TADA Act - Sections 20(4); [Narcotic Drugs and Psychotropic Substances Act, 1988](#); Delhi Rent Control Act - Sections 25B; [Constitution of India](#)

Appeal No. : WP(Crl.) 1686/2007 and Crl. MB 1777/2007

Appellant : Raj Kumar Aggarwal

Respondent : Director General, Central Excise and anr.

Advocate for Def. : Mr. Aggarwala

Advocate for Pet/Ap. : S.S. Gandhi, Sr. Adv. and; Pradeep Jain, Adv; Satish Aggarw

Judgement :

Vikramajit Sen, J.

1. The Petitioner prays for the issuance of a writ of habeas corpus for his release on such terms and conditions as the Court may deem fit and proper.

2. Earlier, the Petitioner had filed a bail application under Section 439 of the Code of Criminal Procedure, 1973 (Cr.PC) which came to be decided by a learned Single Judge of this Court in terms of the Orders dated 4.12.2007. It was decided that the Petitioner be admitted to bail on his depositing a sum of Rs. 1,00,00,000/- in two installments, initially Rs. 50,00,000/- to be deposited after one month from the date of his release, and the remainder Rs. 50,00,000/- after three months of the first deposit. On these conditions the Petitioner was admitted to bail on his furnishing a Personal Bond in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of the Trial Judge. In the event, this Bail Order has not been availed of by the Petitioner. Instead, he had assailed the Order dated 4.12.2007 by way of a Special Leave Petition (SLP), which has been withdrawn on 7.1.2008. The contention of Mr. S.S. Gandhi, learned Senior Counsel for the Petitioner before us, is that the Apex Court had clearly enunciated that conditions in the nature of a deposit could not be passed while enlarging an accused on bail. We are not concerned with the legal propriety of the Order dated 4.12.2007 of the learned Single Judge.

3. A Bail Application under Section 167(2) of the Cr.PC was filed in the Court of ACMM on 24.12.2007. The learned ACMM issued notice on the application, returnable for 4.1.2008. In the interregnum, on 26.12.2007, the present Writ Petition was filed in this Court. We have heard detailed arguments.

4. Mr. Aggarwala, learned counsel for the Respondents, has attacked the very maintainability of the present Petition on the ground that the Petitioner had already been ordered to be enlarged on bail. If any orders favorable to the Petitioner are passed in these proceedings it would tantamount to a second bail order, which, according to counsel, is beyond the contemplation of law. It is contended that if the Petitioner was aggrieved by the imposition of any condition for the grant of bail under Section 439 of the Cr.PC (Order dated 4.12.2007) the Petitioner's only recourse was to challenge it by way of an Appeal. Mr. Aggarwala contends that this avenue has, in fact, been traversed by the Petitioner inasmuch as he had filed

an SLP in the Supreme Court which now stands withdrawn. If the Petitioner was unable to comply with the conditions imposed by the learned Single Judge in the Order dated 4.12.2007 he could have approached that Bench with a prayer for modification, pleading that the terms were either too onerous or could not be complied with for any reason thereby perpetuating the continued incarceration of the accused/petitioner.

5. In the criminal jurisprudence prevailing in all common law countries, every person is presumed to be innocent until proved to the contrary. The consequence that logically follows is that an accused ought not to be detained or imprisoned, that the personal liberty even of an accused should not be interfered with, until he is convicted by due process of law. Several offences are notified as being bailable and even in the remainder, that is non-bailable offences, the accused can be enlarged on bail by orders of the Court. Bail is the rule; Jail is the exception. This is what Sections 437/439 of the Cr.PC in terms postulate, viz. that when any person accused of or suspected of the commission of any non-bailable offence is arrested or detained he may be released on bail. However, an exception has simultaneously been prescribed, namely, that such a person shall not be so released unless it appears to the Court, on reasonable grounds, that he has been guilty of an offence punishable with death or imprisonment for life.

6. The presumption of the innocence of an accused can easily be defeated if the investigation is not constrained by time, is open-ended and protracted. It is for this reason that the legislature has wisely provided that the investigation of an accused should reach its culmination by the filing of a Chargesheet within sixty days, or 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. We may immediately record that Mr. Aggarwala has correctly confirmed that the appropriate period in the present case is sixty days since the offence for which the Petitioner is charged is punishable for a maximum period of seven years under Section 9 and 9AA of the [Central Excise Act, 1944](#).

7. The effect of Section 167(2) of the Cr.PC is that where the investigation is not concluded even within the period of sixty days or ninety days, as the case may be,

the accused has a statutory right to be released on bail if he is prepared to and does furnish bail. In other words, his personal liberty must be restored forthwith. However, there is always a clear and present danger of an accused absconding or rendering himself untraceable with a view to frustrating the Trial. It is for this reason that he is required to comply with the terms of bail. When law prescribes the furnishing of sound sureties it does so not by way of penalty but entirely to ensure that an accused participates in the Trial; so that he can be imprisoned or made to serve his sentence if he is eventually found guilty of the offences for which he stands charged.

8. However, even within the period of sixty days or ninety days, as the case may be, it is not necessary that an accused must perforce languish in jail. Chapter-XXXIII of the Cr.PC enables him to apply for bail even during the currency of the investigation. The presumption of innocence for this period is not totally eclipsed but is in a penumbral state. When any accused is brought before Court his personal liberty can be restored provided adequate safeguards for ensuring his presence at the Trial are put in place, in the form of bail bonds, and sound sureties etc. and he does not interfere with or impede the investigation. The exception is in the case of a person's alleged involvement in a heinous offence punishable with death or imprisonment for life, in which case such person shall not be released if there appears reasonable grounds for believing in his involvement.

9. It seems to us that the presumption of innocence is fortified and strengthened in the event that the investigation is not completed within the prescribed period. Since Section 167(2) employs the words 'shall be released on bail if he is prepared to and does furnish bail', no discretion is available to the Court at this juncture; the only discretion is for the fixation of 'terms' (being synonymous to 'conditions') calculated only to ensure the availability of the accused at the time of Trial. We cannot do better than to extract these paragraphs from *Mohamed Iqbal Madar Sheikh v. State of Maharashtra* : [1996]1SCR183 which perspicuously encapsulate the law on this conundrum:

10. It was then submitted that in the present case the appellants have been denied the benefit of proviso (a) to Section 167(2) of the Code of Criminal Procedure

(hereinafter referred to as the ``Code') of their being released on ground of default in submission of the charge-sheet within the statutory period specified. Sub-section (4) of Section 20 of TADA makes the provision of Section 167 of the Code applicable in respect of offences under TADA except that the periods prescribed for the authorised detention in respect of such offences during which the investigation should be completed are different. After the expiry of periods which have been specified in Section 20(4)(b) and Section 20(4)(bb), the accused for an offence under TADA acquires the right to be released on bail, in terms of Proviso (a) to Section 167(2) of the Code. It need not be pointed out or impressed that in view of series of judgments of this Court, this right cannot be defeated by any Court, if the accused concerned is prepared and does furnish bail bonds to the satisfaction of the Court concerned. Any accused released on bail under proviso (a) to Section 167(2) of the Code read with Section 20(4)(b) or Section 20(4)(bb), because of the default on the part of the investigating agency to conclude the investigation, within the period prescribed, in view of proviso (a) to Section 167(2) itself, shall be deemed to have been so released under the provisions of Chapter XXXIII of the Code. It cannot be held that an accused charged of any offence, including offences under TADA, if released on bail because of the default in completion of the investigation, then no sooner the charge-sheet is filed, the order granting bail to such accused is to be cancelled. The bail of such accused who has been released, because of the default on the part of the investigating officer to complete the investigation, can be cancelled, but not only on the ground that after the release, charge-sheet has been submitted against such accused for an offence under TADA. For cancelling the bail, the well settled principles in respect of cancellation of bail have to be made out. In this connection, reference may be made to the case of *Aslam Babalal Desai v. State of Maharashtra* : 1992 CriLJ3712 . The majority judgment has held that in view of deeming provision under proviso (a) to Section 167(2), the order granting bail shall be deemed to be one under Section 437(1) or Sub-section (2) or Section 439(1) and that order can be cancelled, when a case for cancellation is made out under Sections 437(5) and 439(2) of the Code. But for that, the sole ground should not be that after the release of such accused, the charge-sheet has been submitted. The same view was expressed by this Court in the case of *Raghubir Singh v. State of Bihar* : 1987

11. So far the facts of the present case are concerned, the appellant Nos. 1 to 6 were taken into custody on 16.1.1993. The charge-sheet was submitted on 30.8.1993; obviously beyond the statutory period under Section 20(4)(b). There is nothing on record to show that provisions of Section 20(4)(bb) were applied in respect of appellants. They had become entitled to be released on bail under proviso (a) to Section 167(2) of the Code read with Section 20(4)(b) of the TADA. But it is an admitted position that no application for bail on the said ground was made on behalf of the appellants. Unless applications had been made on behalf of the appellants, there was no question of their being released on ground of default in completion of the investigation within the statutory period. It is now settled that this right cannot be exercised after the charge- sheet has been submitted and cognizance has been taken, because in that event the remand of the accused concerned including one who is alleged to have committed an offence under TADA, is not under Section 167(2) but under other provisions of the Code. This has been specifically considered by a Constitution Bench of this Court in the case of Sanjay Dutt v. State through C.B.I. (II), : 1995 CriLJ477 . It was said:

The 'indefeasible right' of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage.

As such now it is not open to the appellants to claim bail under proviso (a) to Section 167(2) of the Code. Admittedly charge-sheet has been submitted against the appellants, and they are in custody on the basis of orders of remand passed under other provisions of the Code and at this stage proviso (a) to Section 167(2) shall not be applicable.

12. During hearing of the appeal, it was pointed out by the counsel appearing on behalf of the appellants that some courts in order to defeat the right of the accused to be released on bail under proviso (a) to Section 167(2) after expiry of the statutory period for completion of the investigation, keep the applications for bail pending for some days so that in the meantime, charge- sheets are submitted. Any such act on the part of any court cannot be approved. If an accused charged with any kind of offence, becomes entitled to be released on bail under proviso (a) to Section 167(2) that statutory right should not be defeated by keeping the applications pending till the charge-sheets are submitted, so that the right which had accrued is extinguished and defeated. So far the present case is concerned, we are informed by the counsel for the appellants that a petition for grant of bail on merit had been filed which was rejected on 22.3.1993. But admittedly no petition for grant of bail after the expiry of the statutory period for the submission of the charge-sheet had been filed. There is no statement that any application for grant of bail had been filed on behalf of the appellants under proviso (a) to Section 167(2) after the expiry of the statutory period which application was kept pending till 30th August 1993. Now the appellants have forfeited their right to be released on bail under proviso (a) to Section 167(2) as they are in custody on basis of orders for remand passed under other provisions of the Code. In such a situation, we are left with no option, but to dismiss these appeals. However, we direct that the trial of the appellants be expedited.

10. Raghbir Singh v. State of Bihar : 1987 CriLJ157 lucidly observes thus:

20. The effect of the new proviso is to entitle an accused person to be released on bail if the investigating agency fails to complete the investigation within 60 days. A person released on bail under the proviso to Section 167(2) for the default of the investigating agency is statutorily deemed to be released under the provisions of

Chapter 33 of the Code for the purposes of that chapter. That is provided by the proviso to Section 167(2) itself. This means, first, the provisions relating to bonds and sureties are attracted. Section 441 provides for the execution of bonds, with or without sureties, by persons ordered to be released on bail. One of the provisions relating to bonds is Section 445 which enables the court to accept the deposit of a sum of money in lieu of execution of a bond by the person required to execute it with or without sureties. If the bond is executed (or the deposit of cash is accepted), the court admitting an accused person to bail is required by Section 442(1) to issue an order of release to the officer-in-charge of the jail in which such accused person is incarcerated. Sections 441 and 442, to borrow the language of the Civil Procedure Code, are in the nature of the provisions for the execution of orders for the release on bail of accused persons. What is of importance is that there is no limit of time within which the bond may be executed after the order for release on bail is made. Very often accused persons find it difficult to furnish bail soon after the making of an order for release on bail. This frequently happens because of the poverty of the accused persons. It also happens frequently that for various reasons the sureties produced on behalf of accused persons may not be acceptable to the court and fresh sureties will have to be produced in such an event. The accused persons are not to be deprived of the benefit of the order for release on bail in their favor because of their inability to furnish bail straightway. Orders for release on bail are effective until an order is made under Section 437(5) or Section 439(2)....

11. On the strength of these decisions it is palpably clear that Section 167 is a pandect of its own; it operates independently of any other provision of the Cr.PC until bail is granted. It is only at this stage that bail will be deemed to have been granted under Chapter-XXXIII, that is, for the purposes of furnishing of bail bonds for modification of the terms on which bail has been granted, for cancellation of bail etc.-etc. Section 167 would be rendered otiose if the grant of bail on its invocation would have to meticulously meet all the provisions in Chapter-XXXIII. There would be no reason, purpose or justification for its separate existence. The purpose of the deeming clause is to avoid prolixity in prescribing these other provisions in two places within the Cr.PC. It is for this reason that bail granted under Section 167(2) is referred to as an indefeasible right and is commonly

termed as Bail-on-Default.

12. Although the question does not arise before us in these proceedings, we may briefly record our humble approval of the Single Bench decision in *Om Prakash v. State (NCT of Delhi)* 2005 VI AD (Delhi) 493. After analysing the ratio of *Sanjay Dutt v. State* : 1995 CriLJ477 , *Dr. Bipin Shantilal Panchal v. State of Gujarat* : 1996 CriLJ1652 , *Mohd. Iqbal and Uday Mohanlal Acharya v. State of Maharashtra* : 2001 CriLJ1832 our learned Brother, Badar Durrezz Ahmed, J. concluded that the subsequent filing of a Chargesheet would not constitute cause to reject the plea for bail, which is in the nature of an indefeasible right once the period of sixty/ninety days elapses. Rejecting or postponing a decision in 'bail-on-default' cases is indeed an unhealthy practice. The Court concerned must realize that when this genre of bail is granted, the fault, cause, reason or responsibility for the release of the accused from incarceration rests on and is attributable solely to the prosecution. 'The right of an accused to be released on bail after expiry of the maximum period of detention provided under Section 167 can be denied only when an accused does not furnish bail, as is apparent from Explanation I to the said Section. The proviso to Sub-section (2) of Section 167 is a beneficial provision for curing the mischief of indefinitely prolonging the investigation and thereby affecting the liberty of a citizen' (*Uday Mohanlal Acharya*). The aspect with which we are directly concerned is the impact that the Bail Order dated 4.12.2007 passed by the learned Single Judge has or does not have on the Bail Application under Section 167 and the relevance of the words 'availed of'.

13. In *Dr. Bipin* the plea for ordinary bail had been refused up to the High Court. The Petitioner was arrested under the [Narcotic Drugs and Psychotropic Substances Act, 1988](#) on 8.11.1993 and the Chargesheet was filed on 23.5.1994. The Appeal assailed the rejection of bail by the High Court on 19.4.1994. Section 167 was sought to be relied upon in hearings before the Apex Court in January, 1996. It was in those circumstances that the Court had formulated the query as to whether the accused who was entitled to be released on bail under proviso to Sub-section (2) of Section 167 of the Code, not having made an application when such a right accrued, can exercise that right at a later stage of the proceedings. Their Lordships opined that where an accused fails to exercise his right to be released

on bail for the failure of the prosecution to file the Chargesheet within the maximum time allowed by the law he cannot claim this indefeasible right after the Chargesheet is filed. The Apex Court clarified that 'if an accused person fails to exercise his right to be released on bail for the failure of the prosecution to file the charge- sheet within the maximum time allowed by law, he cannot contend that he had an indefeasible right to exercise it any time notwithstanding the fact that in the meantime the charge-sheet is filed. But on the other hand if he exercises the right within the time allowed by law and is released on bail under such circumstances, he cannot be rearrested on the mere filing of the charge-sheet, as pointed out in Aslam Babalal Desai v. State of Maharashtra : 1992 CriLJ3712 .

14. Mr. Aggarwala, learned counsel for the respondent has drawn our attention to decision in Sri Prasanta Kumar Das v. Republic of India 2005(1) Crime 561. In that case the Complainant had challenged the Bail Order on the ground that the Special CJM had not imposed any condition while granting bail. The Division Bench did not find any error in the Order. En passant, it had also been observed that while releasing an accused on bail, the Court may impose conditions in exercise of powers under Section 437(3) of the Cr.PC. The reasoning on which this conclusion is predicated is not forthcoming from the Judgment. We do not subscribe to this view. We also fail to discern any relevance of the Judgment of the Single Judge in Bhulabai v. Shankar 1999(3) Crime 347 on the conundrum before us which essentially is whether Section 167(2) is a distinct fasciculous of the Cr.PC, which operates independent of Chapter- XXXIII thereof. This is not an unknown feature of legislation; Section 25B of the Delhi Rent Control Act readily comes to mind; it often occurs where a provision is introduced into a statute to cater to a cause which cries out for change. In our considered opinion the interregnum between the 61st/91st day and the filing of the Chargesheet is a regime all of its own, upon which no previous bail orders passed under Chapter XXXIII of the Cr. PC shall have any relevance.

15. The legal nodus before us had also arisen in Ram Singh Batra v. the State 2005 III AD Delhi 425 which was cited by the Petitioner before the learned ACMM. Our learned Brother, Badar Durezz Ahmed, J. noted that investigation had continued beyond the expiry of the mandatory period prescribed under Section

167(2). The bail application under Section 167(2) was allowed by the Metropolitan Magistrate. The Complainant intervened by filing an application for cancellation of bail, apprising the Court of the fact that a regular bail application had been previously declined. Our learned Brother observed that 'rejection of an application for bail which has been moved under Section 439 is quite different from releasing the Petitioner in terms of the statutory provisions under Section 167(2). As we have already articulated, Section 167 is a canon complete in itself insofar as Bail-on-Default is concerned, and upon its being given by a deeming fiction, Chapter XXXIII kicks into operation. We cannot subscribe to the view taken in the Order of the Metropolitan Magistrate passed on 8.1.2008 to the effect that Batra does not apply for the reason that regular bail under Chapter-XXXIII, Cr.PC had been granted by the learned Single Judge of this Court in terms of the Order dated 4.12.2007. If bail under Section 167(2) could have been granted despite its previous rejection under Section 439 in Batra, a fortiori it should be granted with added leniency when a Bail-on-Default came into consideration before the Metropolitan Magistrate in the facts of the case in hand.

16. The present Petition prays for the issuance of a writ of habeas corpus, which will be granted only if the detention of the Petitioner is illegal. It has been argued on behalf of the Respondents that this is not the situation which prevails in the present case since bail orders had been granted under Section 439 and had not been availed of by the Petitioner because of certain conditions imposed therein. Does this fact obfuscate or negate the indefeasible rights of an accused to claim his release under Section 167(2) from restraint and detention, is the question which needs to be addressed. In our opinion, once a Bail Order is passed by a competent Court, the continued incarceration because of the failure of the accused to comply with the terms of bail, will not result in its being viewed as illegal. But this has no bearing whatsoever on the situation which would come into existence on the 61st day or 91st day, as the case may be, if the investigation has not been concluded by them. The nature of incarceration undergoes a metamorphosis on this day, in that the presumption of innocence can be seen as being further fortified. When the Court considers an application under Section 167(2) it does not have to go into the dialectics of the prima facie guilt of the accused. It simply lets him free because the prosecution or the appropriate authority has failed to

crystalise the case against him. In this respect it is not the Court which allows the accused his liberty. It is, in fact, the prosecution or the appropriate authority concerned which is responsible for setting the accused free because of either their ineptitude and dereliction of duty, or their failure to conclude the investigation within the time prescribed by the Legislature. It would be most unfortunate and wholly unacceptable for the Fundamental Rights of a citizen to be abridged even where the prosecution fails to present a Chargesheet in consonance with the expectations of law. Our conclusion is that regardless of the rejection or the grant of regular bail previous to the relevant period under Section 167(2), an accused must be enlarged on bail on his applying for bail under this provision at the earliest.

17. Considerable arguments had been generated on the question of imposition of conditions by the learned Single Judge. Our attention has been drawn to the use of these words *inter alias* under Section 437(3) and 438(1)(b)(2) of the Cr.PC. We see no reason to make a distinction between the word conditions of bail or terms of bail either in the context of Section 167(2) or Chapter-XXXIII. They have been employed as synonymous of each other. In *Sreenivasulu Reddy v. State of Tamil Nadu* 7 (2000) CCR 96 the accused had already deposited a sum of Rupees 35 crore out of the Rupees 50 crore imposed in the Bail Order. Their Lordships had emphasised that while exercising jurisdiction under Section 438(2) of the Cr.PC, the Court ought only to impose such conditions/terms for enlarging an accused on bail as would ensure that the accused does not abscond. These conditions should not be intended or calculated to carry out and effect recoveries from the accused. In *Sandeep Jain v. State of Delhi* 1 (2000) SLT 368 a direction to deposit Rs. 2 lacs apart from furnishing of a bond of Rs. 50,000 with two solvent sureties was held to be unreasonable. In *Sheikh Ayub v. State of M.P.* (2004) 13 SCC 457 the Supreme Court deleted the direction to deposit a sum of Rs. 2,50,000/- , which was the amount allegedly misappropriated by the accused. Similarly, in *Shyam Singh v. State* (2006) 9 SCC 169 the condition that the accused should make a payment of Rs. 1,00,000/- per month after his release on bail was found by the Apex Court not to be justified. Their Lordships observed that while it is of course open to a Court to grant or refuse bail it was impermissible for it to assume that an offence has been committed even at the stage of grant of bail and to direct

repayment of any amount is both onerous and unwarranted. The condition of depositing a sum of Rs. 1,00,000/- was struck down. In *Amarjit Singh v. State* (NCT of Delhi) 2002(61) DRJ 67, after adverting to Sandeep Jain, the Supreme Court had recorded that 'we have no hesitation in coming to the conclusion that the imposition of condition to deposit the sum of Rs. 15,00,000/- in the form of an FDR in the Trial Court is an unreasonable condition and, therefore, we set aside the condition as a condition precedent for granting anticipatory bail'. A Division Bench of this Court in *M.R. Narayanan v. State* 103(2003) DLT 434, applying the ratio in *Sreenivasulu Reddy* also concluded that conditions akin to deposit of money ought not to be imposed as a ground for grant of bail; that conditions/terms are imposed solely to ensure the presence of the accused at the time of trial. The only situation where money may be deposited in fact arises from the volition of the accused. This is where the required person by any Court to execute a bond instead elects, under Section 145 of the Cr. PC, to seek permission from the Court to deposit a sum of money or Government promissory notes in lieu of executing a bond. This is so because a mere deposit of money may in some cases prove to defeat the purpose behind sureties being made available since the source of the monetary deposit is untraceable and an accused can abscond if he finds the deposit to be trivially incommensurate to his freedom.

18. We shall now take up the Preliminary Objections that have been raised on behalf of the Respondents. The first one, pertaining to the passing of the Bail Order dated 4.12.2007 by the learned Single Judge has no relevance to an application under Section 167. We have already discussed this aspect above, and reiterate that Section 167 is in the nature of a pandect which regulates the grant of bail from the 61st/91st day as the case may be up to the presentation of the Chargesheet. If an application for bail is filed during this period it shall be dealt with entirely on its own. Since the law provides this remedy, a Habeas Corpus writ would be maintainable in very rare cases; such petition certainly cannot be used as a surrogate for a bail application under Section 167. If a party is dissatisfied with the Order passed under Section 167 the remedy is by way of an appeal and not by way of writ of Habeas Corpus, we clarify once again. Having said this, but mindful of the fact that we have extensively heard this Petition because of the legal complexities that have been raised before us, we do not consider it proper to

dismiss this Petition with a direction to the Petitioner to file an appeal against the Order dated 7.1.2008. We must perforce keep in perspective the fact that the personal liberty of a citizen is a Fundamental Right guaranteed under the [Constitution of India](#). Legal punctilio and procedure cannot defeat or delay such a right, especially when arguments have been addressed threadbare. In the present case, therefore, we think it proper to entertain this Petition even though it pertains to Bail-on- Default under Section 167, especially since this plea has been rejected by the Metropolitan Magistrate on a wrong appreciation of the law.

19. Finally, we have to determine the terms or conditions under which bail should be granted. We have already analysed the plethora of precedents on this point. We would be transgressing our jurisdiction in imposing any conditions which are not directly and solely concerned with ensuring the availability of the accused at the time of trial. The case against the Petitioner is for the alleged evasion of Excise Duty of approximately Rupees 22 crores. We accordingly direct that the Petitioner/Accused shall be admitted to bail on his furnishing a Personal Bond in the sum of Rs. 50,00,000/- with two Sureties in the like amount, to the satisfaction of the Trial Judge.

20. Writ Petition as well as the pending application stands disposed of in these terms.