

# Pragyna Singh Thakur v. State of Maharashtra, (2011) 10 SCC 445

Criminal Procedure Code, 1973

S. 167(2) proviso (a)(i) - Default bail - Non-filing of charge-sheet within 90 days - Prayer to enlarge on bail on ground of - Arrest and detention - What are - Date of arrest/detention - Determination of - Appellant alleged that she was under detention from 10-10-2008 and charge-sheet was filed on 20-1-2009, which was beyond period of 90 days - Appellant also contended ill-treatment in police custody and non-compliance with Ss. 50-A and 160 CrPC - Held, appellant was called for interrogation on 10-10-2008 which is not equivalent to her arrest and detention - Nor did she suffer any confinement or restriction on her movement till 23-10-2008 - Appellant did not raise objections about her illegal detention from 10-10-2008 to 23-10-2008 on 24-10-2008 or 3-11-2008 when she was produced before Magistrate - Bail application under S. 167(2) was moved after filing of charge-sheet - Appellant was arrested for the first time only on 23-10-2008, and on 24-10-2008 was produced before Magistrate which was the day of her first remand - Charge-sheet having been filed on 20-1-2009, which was within 90 days from 24-10-2008, default bail application under S. 167(2) not maintainable - In any case, right under S. 167(2) is not indefeasible, and once charge-sheet has been filed, bail has to be claimed on merits, (2011) 10 SCC 445-A

Criminal Procedure Code, 1973

Ss. 167, 57, 41, 44 & 46 and Ss. 160 to 163 - Arrest and detention, held, not the same as interrogation or questioning by police, especially if there is no confinement or restriction on movement, (2011) 10 SCC 445-B

Criminal Procedure Code, 1973

S. 167(2) proviso (a)(i) - Default bail under - Relevant date of counting 90 days for filing charge-sheet is date of first order of remand and not date of arrest - Charge-sheet was filed within 90 days from date of first order of remand in present case, (2011) 10 SCC 445-C

Criminal Procedure Code, 1973

S. 167(2) proviso (a)(i) - Default bail under - Right under S. 167(2) CrPC is not an absolute or indefeasible - Said right would be lost if charge-sheet is filed and would not survive after filing of charge-sheet - Said right would be lost even if charge-sheet is filed before consideration of default bail or before being released on such bail, (2011) 10 SCC 445-D

Criminal Procedure Code, 1973

S. 167(2) - Default bail under - Merits of the matter are not to be gone into, (2011) 10 SCC 445-E

Criminal Procedure Code, 1973

Ss. 160 to 163 and Ss. 167, 57, 41 & 44 - Non-compliance with S. 160 - Absence of a written notice requiring attendance for interrogation - Whether amounts to illegal custody or detention - Interrogation from time to time, but no restriction on movement nor any confinement - Held, does not amount to illegal custody or detention - Though appellant being interrogated by police from time to time in period concerned, but once it is established that applicant's movements were not restricted nor was she confined to ATS office after interrogation, then it is difficult to hold that in garb of interrogating and questioning her she was taken into custody by ATS - Every single act and movement during the period concerned was of her own volition and no force was used to confine or restrict her, (2011) 10 SCC 445-F

Criminal Procedure Code, 1973

Ss. 167, 57, 41, 44 & 46 and 160 to 163 - Arrest and detention - Essence of - Confinement and restriction on movement against one's will, (2011) 10 SCC 445-G

Criminal Procedure Code, 1973

Ss. 160, 167(2) and 439 - Non-compliance with - Technical breach - Bail cannot be automatically granted irrespective of merits of matter - Bail application not argued on merits - Held, bail cannot thus be granted on basis of alleged non-compliance with S. 160, (2011) 10 SCC 445-H

Criminal Procedure Code, 1973

Ss. 439, 437 and 167(2) - Bail - Grant of bail after charge-sheet is filed - No entitlement to default bail under S. 167(2) surviving - Only technical pleas under S. 167(2) and Art. 22(2) of Constitution taken - No argument addressed on merits of case - Bail application rejected, (2011) 10 SCC 445-I

Constitution of India

Art. 22 - Right under Art. 22(2) is available only against illegal detention by police and does not apply once a person is in judicial custody - Appellant cannot seek to be set at liberty on ground that there had been non-compliance with Art. 22(2) or S. 167(2) CrPC by police, after she was produced before Magistrate, and remanded to custody by Magistrate, as S. 22(2) nor S. 167(2) grant any protection against judicial custody, (2011) 10 SCC 445-J

Constitution of India

Art. 22(2) - Bail on grounds of violation of Art. 22(2) - Remand orders not challenged - Relief under Art. 22(2), held, cannot be granted, (2011) 10 SCC 445-K