# Law of Remand u/s 167 CrPC

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1. **No mechanical grant of remand by magistrate u/s 167 CrPC** : The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner. See : **Manubhai Ratilal Patel Tr. Ushaben Vs. State of Gujarat and Others, AIR 2013 SC 313.**

2. **Directions dated 11-10-11 issued by Division Bench of the Hon'ble Allahabad High Court in Criminal Misc. Writ Petition No. 17410/2011 Shaukin Vs. State of UP & others regarding remand and bail of accused of offences punishable with imprison ment upto seven years:** The Hon'ble High Court (in para 20) of its above judgment has issued its directions thus : "We therefore direct the Magistrates that when accused punishable with upto 7 years imprisonment are produced before them remands may be granted to accused only after the Magistrates satisfy themselves that the application for remand by the police officer has been made in a bona fide manner and the reasons for seeking remand mentioned in the case diary are in accordance with the requirements of sections 41(1)(b) and 41 A CrPC and there is concrete material in existence to substantiate the ground mentioned for seeking remand. Even where the accused himself surrenders or where investigation has been completed and the Magistrate needs to take the accused in judicial custody as provided under section 170(1) and section 41(1)(b)(ii)(e) CrPC, prolonged imprisonment at this initial stage, when the accused has not been adjudged guilty may not be called for, and the Magistrates and Sessions Courts are

to consider the bails expeditiously and not to mechanically refuse the same, especially in short sentence cases punishable with upto 7 years imprisonment unless the allegations are grave and there is any legal impediment in allowing the bail, as laid down in Lal Kamlendra Pratap Singh V State of U.P., (2009) 4 SCC 437, and Sheoraj Singh @ Chuttan v State of U.P. and others, 2009(65) ACC 781. The facility of releasing the accused on interim bail pending consideration of their regular bails may also be accorded by the Magistrates and Sessions Judges in appropriate cases.

The Magistrate may also furnish information to the Registrar of the High Court through the District Judge, in case he is satisfied that a particular police officer has been persistently arresting accused in cases punishable with upto 7 year terms, in a mechanical or mala fide and dishonest manner, in contravention of the requirements of sections 41(1)(b) and 41 A, and thereafter the matter may be placed by the Registrar in this case, so that appropriate directions may be issued to the DGP to take action against such errant police officer for his persistent default or this Court may initiate contempt proceedings against the defaulting police officer."

**3.** **Remand u/s 167 CrPC without application from IO :** Even in the absence of an application or request by Investigating Officer seeking further remand, a Magistrate can grant further remand of the accused under Section 167 CrPC. See :

**(i) Ramesh Kumar Ravi Vs. State of Bihar, 1987 CrLJ 1489 (Patna)(Full Bench).**
**(ii) Kuli Singh Vs. State of Bihar, 1978 CrLJ 1575 (Patna)(Full Bench)**

**4.** **Non-production of accused on date of remand & its consequences :** Though the physical production of the accused before the Magistrate is desirable yet the failure to do so would not per se vitiate the order of remand if the circumstances for non-production were beyond the control of the prosecution or the police. Remand order passed under Section 167 or 309 CrPC in the event of non-production of the accused would not be illegal. See…

**(i) Raj Narain Vs. Superintendent, Central Jail, New Delhi, AIR 1971 SC 178 (Seven-Judge Bench)**
**(ii) Gauri Shankar Jha Vs. State of Bihar, AIR 1972 SC 711**
**(iii) Sandeep Kumar Dey Vs. the Officer-In-charge, AIR 1974 SC 871**
**(iv) Ramesh Kumar Ravi Vs. State of Bihar, 1987 CrLJ 1489 (Patna)(Full Bench).**

**5.** **Presumption in favour of validity of remand order u/s 167 CrPC :** Where the Magistrate had granted remand under Section 167 CrPC after perusing case diary, application and the case property (counterfeit currency notes), it has been held by the Hon'ble Allahabad High Court that it cannot be said that the same were not considered by the Magistrate while passing the remand order. Presumption would lie in favour of the Magistrate u/s 114(e) of the Evidence Act that judicial act of the

Magistrate was done in accordance with the provisions of law. Discretion of the Magistrate to see whether remand be allowed or refused, cannot be interfered with at the stage when investigation was going on. Prayer for quashing of proceedings and the remand order was refused by the Hon'ble High Court u/s 482 CrPC. See : **Sanjeev Awasthi Vs. State of UP, 2011 (3) ALJ (NOC) 247 (Allahabad).**

**6.** **Police remand after expiry of 15 days not permissible u/s 167 CrPC :** After expiry of period of 15 days of police remand, order for police remand for a further period of 7 days was held as violative of Section 167 CrPC. See :

**(i) Budh Singh Vs. State of Punjab, (2000) 9 SCC 266 (Three Judge Bench)**
**(ii) CBI Vs. Anupam J. Kulkarni, (1992) 3 SCC 141**

**7.** **Special Judge competent to grant remand u/s 167 CrPC :** A Special Judge under Criminal Law (Amendment) Act, 1952 can exercise powers of Magistrate u/s 167 CrPC. See : **State of T.N. Vs. V.K. Naidu, AIR 1979 SC 1255**

**8.** **An illegal order of remand u/s 167 not to affect the decision during trial :** A remand order cannot affect the progress of the trial or its decision in any manner. See : **State of T.N. Vs. NMT Joy Immaculate, AIR 2004 SC 2282.**

**9.** **Subsequent remand order cures previous illegality in remand** : Any illegality committed by the court in passing the remand order stands cured if subsequently a legal remand order is passed. The custody of the accused is not illegal. See :

**(i). Umakant Yadav Vs. Superintendent, District Jail, Azamgarh, 1995 CrLJ 906 (Allahabad)(DB).**
**(ii). Mohd. Daud alias Mohd. Saleem Vs. Superintendent Jail, Moradabad, 1993 ALJ 430 (Allahabad)(DB)**

**10.** **Magistrate can add/alter new Sections in remand order ?** : After perusal of the case diary the Magistrate can alter or add new penal sections in the remand order to be pass under Section 167 CrPC as the Magistrate is not bound by the opinion of the IO. See :

**(i) Arshad Vs. State of UP, 2008 (61) ACC 863 (All)**
**(ii) Harihar Chaitanya Vs. State of UP, 1990 CrLJ 2082 (All)**
**(iii) Dinesh Kumar Vs. State of UP, 1997 UP CrR 776 (All)**
**(iv) Anil Kumar Vs. State of UP, 1992 ACrR 520 (All)**

**11.** **Magistrate when not to add/alter new Section in remand order ?** : Where on voluntary surrender by the accused by moving an application before the Magistrate, the Magistrate added a new Section (Section 308 IPC) in the remand order, it has been held by the Hon'ble Allahabad High Court that the Magistrate u/s 167 CrPC was required only to pass an order of remand in respect of the offences cited in police report and adding a new Penal Section at such stage was without authority of

law for the Magistrate. See : **Rakesh Vs. State of UP, 2006 (6) ALJ (NOC) 1355 (Allahabad).**

12. **Distinction between remand orders passed u/s 167, 267, 209, 309 CrPC :** A production warrant issued u/s 267 CrPC does not constitute a detention order authorizing detention of a person in prison. Sections 267 and 270 CrPC read together contain a clear legislative mandate that when a prisoner already confined in a prison is produced before another criminal court for answering to a charge of an offence and is detained in or near such court for the purpose, on the court dispensing with his further attendance, has to be conveyed back to the prison from where he has been brought for such attendance. The word 'custody' in Section 309 CrPC embraces both legal as well as illegal custody. Section 309 CrPC does not envisages or permit remand for an indefinite period. The remand order thereunder has to coincide with the duration of adjournment and not beyond it. The court is required to record its reasons under Section 309 CrPC for postponement or adjournment of the trial and not for remanding the accused. It is because a remand under Section 309 CrPC stands on a quite different footing than one under Section 167 CrPC where remand is sought pending investigation and the Magistrate or Judge is required to apply his judicial mind to consider whether on the materials collected, remand is necessary and justified. See : **Mohd. Daud alias Mohd. Saleem Vs. Superintendent Jail, Moradabad, 1993 ALJ 430 (Allahabad…DB)**

**Note :** *The decision in Mohd. Daud's case has been circulated by the Hon'ble Allahabad High Court for observance by the judicial officers in the State of UP vide C.L. No. 58/1992 dated 23.11.1992.*

13. **Production of accused before Magistrate beyond 24 hours of detention :** If the Police Officer is forbidden from keeping an arrested person beyond 24 hours without order of a Magistrate, what should happen to the arrested person after the said period ? It is a constitutional mandate under Article 21 of the Constitution that no person shall be deprived of his liberty except in accordance with the procedure established by law. Close to its heels Article 22(2) of the Constitution directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours of such arrest. The only time permitted by Article 22(2) of the Constitution to be excluded from the said period of 24 hours is "the time necessary for going from the place of arrest to the court of Magistrate." Only under two contingencies can said direction be obviated. One is when the person arrested is an 'enemy alien'. Second is when the arrest is under any law for 'preventive detention'. In all other cases, the Constitution has prohibited pre-emtorily that no

such person shall be detained in custody beyond 24 hours without the authority of a Magistrate. See : **Manoj Vs. State of M.P., AIR 1999 SC 1403.**

**14.** **Remand in Hospital :** Remand order can be passed under Section 167 CrPC by the Magistrate and surrender can be taken even in hospital. See…**Smt. Rahmat Jahan Vs. State of UP, 1998 (37) ACC 718 (All).**

**15(A).** **Order rejecting police custody remand not interlocutory** : Order rejecting police custody remand is not interlocutory. But police custody may be granted only during first 15 days after arrest or detention and not thereafter. See : **2011 CrLJ 515 (Bombay).**

**15(B).** **Police remand u/s 167(2) CrPC can be sought even after filing of charge-sheet :** Police remand u/s 167(2) CrPC can be sought even after filing of charge-sheet. See : **Central Bureau of Investigation Vs. Rathin Dandapath, AIR 2015 SC 3285.**

**15(C).** **Order refusing default bail u/s 167(2) CrPC is revisable**: An order refusing to release the accused on bail under the provisions of Section 167(2) CrPC is a final order and not an interlocutory order. Hence revision lies against such an order. See : **Ratan Mandal Vs. State of Jharkhand, 2006 CrLJ 781.**

**16(A).** **Accused in jail beyond local territorial jurisdiction of court--- Sec. 267 CrPC& Bail :** Relying upon the Supreme Court decision in **Niranjan Singh Vs. Prabhakar Rajaram Kharote, AIR 1980 SC 785**, the Allahabad High Court, while interpreting the provisions of Sec. 267 r/w. 439 Cr.P.C., has held that where the accused was arrested by the police at Allahabad in relation to some crime registered at Allahabad and was detained in jail at Allahabad and the accused was also wanted for offences u/s 302, 307 IPC at Mirzapur, the Sessions Judge, Mirzapur had got jurisdiction to hear the bail application of the accused treating him in custody of the Court of Sessions Judge at Mirzapur. Physical production of the accused before the Court at Mirzapur or his detention in jail at Mirzapur was not required. See---

1. **Billu Rathore Vs. Union of India, 1993 L.Cr.R. 182 (All)**
2. **Chaudhari Jitendra Nath Vs. State of U.P., 1991(28) ACC 497 (All)**

Note: For other cases on Sec. 267 Cr.P.C., see---

1. **Ranjeet Singh @ Laddu Singh Vs. State of U.P., 1995 A.Cr.R. 523 (L.B.)**
2. **Mohd. Dawood Quareshi Vs. State of U.P., 1993 (30) ACC 220**

3. **Mohd. Daud Vs. Supdt. of Distt. Jail, Moradabad, 1993 ALJ 430 (All—D.B.)**--- This judgment has been circulated amongst the judicial officers of the State of U.P. by the Allahabad High Court vide C.L. No. 58/23-11-1992 for observance.

**16(B).<u>Accused to be conveyed back to the prison from where he was brought on production warrant issued u/s 267 Cr PC</u> :** Sec. 267 & 270 of the Cr Pc read together contain a clear legislative mandate that when a prisoner already confined in a prison is produced before another criminal court for answering to a charge of an offence, and is detained in or near such court for the purpose, on the court dispensing with his further attendance, has to be conveyed back to the prison from where he was brought for such attendance. See--- **Mohammad Daud @ Mohammad Saleem Vs. Superintendent of District Jail, Moradabad, 1993 Cr LJ 1358 (All—DB)** *(paras 69 & 70)*

**Note---The ruling in Mohammad Daud @ Mohammad Saleem Vs. Superintendent of District Jail, Moradabad, 1993 Cr LJ 1358 (All—DB) has been circulated by the Hon'ble Allahabad High Court amongst the Judicial Officers of the State of UP Vide C.L. No. 58/23-11-1992 for observance.**

**16(C). <u>Accused to be released if no fresh production warrant u/s 267 Cr PC is issued after expiry of date mentioned in the earlier production warrant</u> :** Where no fresh production warrant u/s 267 of the Cr PC was issued by the court after the expiry of the date mentioned in the earlier production warrant, it has been held that the accused is liable to be released from custody as the production warrant issued u/s 267 Cr PC cannot be treated as custody warrant for purposes of Sec. 167 of the Cr PC. See--- **Nabbu Vs State of UP, 2006 Cr LJ 2260 (All-DB)**

**16(D).<u>Mere issuance of production warrant u/s 267 Cr PC not sufficient to entertain bail application unless the accused is in the custody of the court</u> :** Only that court can consider and dispose of the bail application either u/s 437 or u/s 439 Cr PC in whose custody the accused is for the time being and mere issuance of production warrant u/s 267 Cr PC is not sufficient to deem the custody of that court which issued such warrant unless the accused is actually produced in that court in pursuance of such production warrant. See---

1. **Pawan Kumar Pandey Vs. State of UP, 1997 Cr LJ 2686 (All--L B)**
2. **Pramod Kumar Vs. Ramesh Chandra, 1991 Cr LJ 1063 (All)**

**16(E).<u>Accused summoned on production warrant u/s 267 CrPC not to be released even when granted bail</u>**---An accused detained in one case and produced before another court in pursuance of production warrant and granted bail in the case pending before the transferee court is not entitled to be released despite grant of bail. See--- **Mohammad Daud @ Mohammad Saleem Vs. Superintendent of District Jail, Moradabad, 1993 Cr LJ 1358 (All—DB)** *(paras 73)*

**Note :** *The ruling in Mohammad Daud @ Mohammad Saleem Vs. Superintendent of District Jail, Moradabad, 1993 Cr LJ 1358 (All—DB) has been circulated by the Hon'ble Allahabad High Court amongst the Judicial Officers of the State of UP Vide C.L. No. 58/23-11-1992 for observance.*

**16(F). Production warrant issued u/s 267 CrPC must be endorsed by an Executive Magistrate or a Police Officer not below the rank of SHO with in whose jurisdiction :**

**17(A). Bail u/s 167(2) CrPC--- when can be granted** : Where charge sheet is not filed within a period of 60 or 90 days and the accused moves application for being released on bail u/s 167(2), Proviso (a) of the CrPC and offers to furnish bail, he can be said to have availed of indefeasible right for being released on bail. If the application of the accused moved u/s 167(2) CrPC is erroneously rejected by the Magistrate and the accused then approaches higher forum for bail and the charge sheet is filed in the meantime, it does not extinguish the accrued right of the accused to be released on bail u/s 167(2) CrPC. See---

1. **Uday Mohanlal Acharya Vs. State of Maharashtra, AIR 2001 SC 1910**
2. **Dinesh Kumar Jain Vs. State of U.P., 2001 Cr.L.J. 2847 (All)**

**17(B). Merits not to be considered while granting bail u/s 167(2) CrPC** : It is well settled that when an application for default bail is filed u/s 167 (2) CrPC, the merits of the matter are not to be gone into. See ....

(i) **Pragyna Singh Thakur Vs. State of Maharashtra, (2011) 10 SCC 445**
(ii) **Union of India Vs. Thamisharasi, (1995) 4 SCC 190**

**17(C). Imprisonment for a term of not less than ten years in Sec. 167(2)(a)(i) & its meaning---** In the matter of a criminal case involving offence u/s 386 of the IPC, the Supreme Court has clarified the meaning of the expression "Imprisonment for a term of not less than ten years in Sec. 167(2)(a)(i)" as under---

Sec. 386 IPC reads as under--- "Extortion by putting a person in fear of death or grievous hurt--- Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."

The Supreme Court has clarified that it is apparent that pending investigation relating to an offence punishable with imprisonment for a term "not less than 10 years", the Magistrate is empowered to authorize the detention of the accused in custody for not more than 90 days. For rest of the offences, period prescribed is 60 days. Hence in case, where offence is punishable with imprisonment for 10 years or more, accused could be detained up to a period of 90 days. In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which

punishment could be imprisonment for a clear period of 10 years or more. U/.s 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider Clause (i) or Proviso (1) to Section 167(2) it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not lsess than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. U/s 386 of the IPC imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years. See--- **Rajeev Chaudhary Vs. State (NCT) of Delhi, AIR 2001 SC 2369**

**17(D-1). <u>Sec. 306 IPC & application of 60 or 90 days</u>**--- Where in a criminal case the investigation related to the offences u/s 306 and 498-A IPC it has been held that an offence u/s 306 IPC may extend to ten years and it cannot be said that the offence u/s 306 IPC is not punishable for a term of not less than ten years. Sec. 498-A does not pose any problem, the period of detention which is permissible in the present case where the applicant is charged for the offences u/s 498-A and 306 IPC is set aside. See--- **Sohan Lal Vs. State of U.P., 1991 A.Cr.R. 383 (All).**

**17(D-2)."<u>Day"….When commences and when ends</u> ? :** The day of birth of a person must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birth day. Legal day commences at 12 O’ Clock midnight and continues until the same hour the following night. See-- **Erati Laxman vs. State of A.P., (2009) 2 SCC (Criminal) 15**

**17(D-3).<u>First day to be excluded in computing period of time for legal purposes</u>**

**:** The Section 9 of General Clause Act says that in any Central Act or Regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any period of time, to use the word 'to'. The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word 'from' is used indicating the beginning, the opening day is to be excluded and if the last day is to be excluded the word 'to' is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. See :

(i) **Tarun Prasad Chatterjee Vs. Dinanath Sharma, AIR 2001 SC 36 (Three-Judge Bench).**

(ii) **Manmohan Anand Vs. State of UP, (2008) 3 ADJ 106 (All).**

**17(D-4).<u>Fraction of a day or a Legal Day when complete?</u> :** The day of birth of a person must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birth day. Legal day commences at 12 O' Clock midnight and continues until the same hour the following night. See--**Erati Laxman vs. State of A.P., (2009) 2 SCC (Criminal) 15.**

**17(E-1).<u>60 / 90 days u/s 167(2) begin from the date of order of first remand and not from the date of arrest</u> :** Period of 60 / 90 days u/s 167(2), proviso (a) CrPCbegins to run from the date of order of remand and not from the date of arrest. See---

**(i) Pragyna Singh Thakur Vs. State of Maharashtra, (2011) 10 SCC 445**

**(ii) Chaganti Satyanarayana Vs. State of A.P., AIR 1986 SC 2130**

**17(E-2).<u>In computing 60 / 90 days u/s 167 (2) CrPC, the day on which the accused was remanded to judicial custody should be excluded and the day on which challan is filed in the court should be included</u> :** In the case noted below, the accused had surrendered before the Cheif Judicial Magistrate, Kaimur on 05.07.2013 in connection with the FIR relating to offences punishable u/s 302, 120-B of the IPC and u/s 27 of the Arms Act, 1959 and was remanded to judicial custody till 19.07.2013. His remand was extended u/s 167 CrPC from time to time and the last remand was granted till 03.10.2013 i.e. the 90th day from the date of first remand and the charge-sheet was filed in the court on 03.10.2013 itself. The question arose whether on 90th day i.e. on 03.10.2013, the accused was entitled to be released on bail u/s 167(2) CrPC ? In the backdrop of the said facts of the case, the Hon'ble Supreme Court ruled thus : "In the State of MP Vs. Rustam and Others, this Court has laid down the law that while computing period of ninety days, the day on which the accused was remanded to the judicial custody should be excluded, and the day on which challan is filed in the court, should be included. That being so, in our opinion, in the present case, date 05.07.2013 is to be excluded and, as such, the charge-sheet was filed on ninetieth day, i.e. 03.10.2013. Therefore, there is no infringement on Section 167(2) of the CrPC. For the reasons, as discussed above, in our opinion, the High Court has not erred in law in dismissing the petition under Section 482 of the CrPC, and upholding the refusal of bail to appellant prayed by him under Section 167(2) of the Code. See : **Ravi Prakash Singh Vs. State of Bihar, AIR 2015 SC 1294 (paras 12 & 13).**

**17(E-3).<u>In computing 60 / 90 days u/s 167 (2) CrPC, the day on which the accused was remanded to judicial custody should be excluded and the day on which challan is filed in the court should be included</u> :** In the case of Rustam, the Supreme Court has clarified the manner of computing the period of 60 or 90 days u/s 167(2) proviso. The facts of the case were thus--- "Accused was detained in jail for the offence u/s 302 IPC, he was remanded to judicial custody on 3.9.1993, charge sheet was submitted in the court on 2.12.1993. For purposes of computing the period of 90 days u/s 167(2) CrPCthe Supreme Court held "period of 90 days would instantly commence either from 4.9.1993 (excluding from it 3.9.1993) or 3.12.1993 (including in it 2.12.1993). Clear 90 days have to expire before the right begins. Plainly put, one of the days on either side has to be excluded in computing the prescribed period of 90 days. Sections 9 and 10 of the General Clauses Act warrant such an interpretation in computing the prescribed period of 90 days. The period of limitation thus computed on reckoning 27 days of September, 31 days of October and 30 days of November would leave two clear days in December to compute 90 days and on which date the challan was filed, when the day running was the 90$^{th}$ day. The High Court was, thus, obviously in error in assuming that on 2.12.1993 when the challan was filed, period of 90 days had expired. See : **State of MP Vs. Rustam, 1995 Suppl (3) SCC 221**.

**17(E-4).<u>In computating 60/90 days u/s 167(2) CrPC, one day can be excluded on either side</u> :** Relying upon the Supreme Court decision in State of M.P. Vs. Rustam, 1995 SCC (Cri) 830, it has been held by the Allahabad High Court that in counting 60 or 90 days u/s 167(2) CrPC, one day can be excluded on either side. See : **Tinnu Vs. State of UP, 1999 AOR 201 (All),** AOR = Allahabad Offence Reporter

**17(F).<u>Computation of 90 days u/s 167(2) CrPC</u> :** Where the first remand of the accused was granted on 20-10-2010 and no charge sheet was filed by IO till 17-01-2011 and the charge sheet was filed on 18-01-2011 and the accused sought bail u/s 167(2) CrPC on 17-01-2011 on the ground that 90 days had completed on 17-01-2011, it has been held that the first date of remand i.e. 20-10-2010 is liable to be excluded for purpose of calculation of 90 days. According to Sec. 9 of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time to use the word "or". In view of the aforesaid provision, the period of 90 days commenced from the next date of remand i.e. 21-10-2010 and not from the date of remand i.e. 20-10-2010 and a such the period of 90 days from 21-20-2010

completed on 18-01-2011 and till 18-01-2011 the accused was not entitled to claim the benefit of the provisions u/s 167(2) CrPC. See... **Irfan Ahamad v/s State of U.P., 2011(2) ALJ 527 (All)(LB).**

**17(G).<u>Computation of 60/90 days u/s 167(2) when accused released on interim bail on date of surrender</u> :** Day on which accused surrendered was released on interim bail. That date of surrender shall not be deemed to be the date of remand to judicial custody. Unless the accused is remanded either to judicial or to police custody by court, it will not be the date of remand within the meaning of Section 167(2) CrPC an accused on bail cannot be deemed to be in custody. An accused released on interim bail or regular bail by court cannot be deemed to be in custody when a person is not in actual physical control of the court, he cannot be remanded either to judicial custody or to police custody if not in actual physical control of the court. Transfer of custody from judicial custody to police custody falls within the domain of the Court concerned. It would not be necessary that the accused should be brought first before Magistrate or Court. In the case noted below police custody remand of the accused was granted from 9 a.m. of 17.02.2013 to 9 a.m. of 18.02.2013, bail application of the accused was rejected on 02.02.2013, application for police custody remand was moved on 05.02.2013, after several adjournments, remand application was fixed for disposal on 16.02.2013 and was allowed on 16.02.2013 itself and the police custody remand of the accused was granted from 9 a.m. of 17.02.2013 to 9 a.m. of 18.02.2013, it has been held by the Lucknow Bench of the Hon'ble Allahabad High Court that the said order remanding the accused to police custody from 9 a.m. of 17.02.2013 to mid night i.e. till 12 a.m. would be valid but police custody remand from zero hours to 9 a.m. on 18.02.2013 would be illegal and the aforesaid impugned order dated 16.02.2013 passed by the Magistrate granting police custody remand of the accused was partly set aside. See : **Chandra Dev Ram Yadav & Another Vs. State of UP & Another, 2013 (83) ACC 350 (All).**

**17(H-1).<u>Bail u/s 167(2) CrPC after filing of charge sheet</u> :** The Supreme Court has held that the statutory rights of accused to bail u/s 168(2) CrPC should not be defeated by keeping the application for bail pending till the charge-sheet is submitted. The Magistrate has to dispose of such application forthwith. Once charge sheet is filed and cognizance of the offence is taken, the court cannot exercise its power u/s 167(2) CrPC See :

1. **Mithabhai Pashabhai Patel Vs. State of Gujarat, 2009 (4) Supreme 368**
2. **Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three-Judge Bench)**

3. **Mohamed Iqbal Madar Sheikh Vs. State of Maharashtra, 1996(1) Crimes 4 (SC—Three-Judge Bench).**

17(H-2).**Application by accused claiming accrued right of bail u/s 167(2) CrPC not to be defeated after submission of charge sheet :** The court should not keep an application filed under Section 167(2) CrPC pending after expiry of the statutory period to enable the investigating agency to file the charge-seet to defeat the indefeasible right of an accused. If a case is adjourned by the court granting time to the prosecution not adverting to the application filed on behalf of the accused, it would be a violation of the legislative mandate. When the charge-sheet is not filed and the right under Section 167(2) CrPC has ripened earning the status of indefeasibility, it cannot be frustrated by the prosecution on some pretext or the other. The accused can avail his liberty only by filing application stating that the statutory period for filing of the charge-sheet has expired, the charge-sheet has not yet been filed and an indefeasible right has accrued in his favour and further he is prepared to furnish the bail bond. Once such a bail application is filed, it is obligatory on the part of the cort to verify from the records as well as from the Public Prosecutor whether the time has expired and the charge-sheet has been filed or not or whether an application for extension which is statutory permissible, has been filed. See : **Union of India Vs. Nirala Yadav, (2014) 9 SCC 457.**

17(I).**No bail u/s 167 (2)(a)(ii) CrPC when bail application and charge-sheet are filed the same day** : Where the accused was detained in jail for offences under Section 363, 366, 504 IPC & no chage-sheet was filed within 60 days and the accused had filed his application for bail under section 167 (2)(a)(ii) CrPC on 09.05.2011 and the charge-sheet was also filed in the court on the same day, it has been held by the Hon'ble Allahabad High Court that the right of the accused to be released on bail u/s 167 (2)(a)(ii) CrPC came to an end as soon as the challan was filed. See : **Sukhai and another Vs. State of UP and another, 2011 (75) ACC 134 (All)(L.B.).**

17(J).**No bail u/s 167 (2)(a)(ii) CrPC when bail application and charge-sheet are filed the same day** : When charge-sheet and the bail application are filed on the same day and the charge-sheet was filed within 90 days from the date of remand and cognizance on charge-sheet had been taken, right of accused to be released on bail u/s 167(2) CrPC stood extinguished. See : **Pravin Kasana Vs. State of UP, 2013 CrLJ (NOC) 427 (All).**

17(K). **Cancellation of bail granted u/s 167(2) Cr.P.C.**--- Grant of bail to an accused u/s 167(2) CrPCis different from bail granted o merits us. 437 or 439

CrPCCancellation of bail u/s 437(5) or 439(2) CrPCis different from refusal to grant bail. Cancellation involves review on merits of the decision granting bail. Therefore, unless there are strong grounds for cancellation of bail once granted u/s 167(2) Cr.P.C., the same cannot be cancelled on mere production of charge-sheet. The ratio of Rajnikant Jivanlal Patel Vs. Intelligence Officer, NCB, New Delhi, (1989) 3 SCC 532 to the extent it was inconsistent with the law laid down in Aslam Babalal Desai Case have been held not to state the correct law and has been overruled. See---

1. **Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three Judge Bench)**
2. **Aslam Babalal Desai Vs. State of Maharashtra, (1992) 4 SCC 272 (Three Judge Bench)**
3. **Ram Murti Vs. State of U.P., 1976 Cr.L.J. 211 (All)**

**17(L).<u>Bail granted u/s 167(2) CrPCnot to be cancelled after submission of charge sheet</u> :** Bail granted u/s 167(2) CrPCis to be deemed to have been granted under chapter XXXIII of the Cr.P.C., i.e. u/s 437 or 439 CrPCand the same will remain valid till it is cancelled u/s 437(5) or 439(2) CrPCThe receipt of charge sheet in court after grant of bail u/s 167(2) CrPCcan by itself be no ground for cancellation of bail. Bail once granted u/s 167(2) CrPCcannot be cancelled merely for subsequent filing of charge sheet and the same can be cancelled only u/s 437(5) & 439(2) CrPCfor the reasons like abuse etc. of the bail. See---

1. **Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three Judge Bench)**
2. **Aslam Babalal Desai Vs. State of Maharashtra, (1992) 4 SCC 272 (Three Judge Bench)**
3. **Ram Pal Singh Vs. State of U.P., 1976 Cr.L.J. 288 (All).**

**17(M).<u>Application must for bail u/s 167(2) CrPC</u>:** An accused must file application for bail u/s 167(2), Proviso (a) CrPCfor being released on bail. See---

1. **Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three Judge Bench)**
2. **Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three Judge Bench)**

**17(N).<u>Accrued right of bail u/s 167(2) Cr.P.C.----How long survives? No bail u/s 167(2) CrPCafter filing of charge sheet</u> :** Right of the accused to bail u/s 167(2) CrPCensues on default of the I.O. in submitting the charge sheet within the statutory period of 60/90 days and is enforceable by the accused only from the time of default in the submission of charge sheet till the filing of the challan and it does not survive or remain enforceable on the challan being filed as after submission of charge sheet Sec. 167 CrPCceases to apply and the custody of the accused is not governed by Sec. 167 CrPCbut by different provisions in the CrPCIf the right to be

released on bail u/s 167(2) CrPChad accrued to the accused but it remained un-enforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment the challan is filed. If after expiry of 60 or 90 days, the charge sheet is filed and the accused is in custody on the basis of order of remand then the accused cannot be released on bail on the ground that charge sheet was not submitted within the statutory period of 60 or 90 days. The bail application filed by the accused after the submission of charge sheet would be decided on merits and not u/s 167(2) CrPC. See---

1. **Pragyna Singh Thakur Vs. State of Maharashtra, (2011) 10 SCC 445**
2. **Dinesh Dalmia Vs. CBI, AIR 2008 SC 78**
3. **Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 – Three Judge Bench (Also held that Sec. 37 of the NDPS Act, 1985 does not exclude applicability of Proviso (a) to Sec. 167(2) Cr.P.C.)**
4. **Hitendra Vishnu Thakur Vs. State of Maharashtra, (1994) 4 SCC 602**
5. **Sanjay Dutt Vs. State Through CBI, Bombay, (1994) 5 SCC 410—Five Judge Bench**
6. **Mustaq Ahmed Mohammed Isak Vs. State of Maharashtra, (2009) 7 SCC 480**
7. **Hari Om Vs. State of U.P., 1992 Cr.L.J. 182 (All)**

**17(O).<u>Sec. 173(8) CrPC& Bail u/s 167(2) CrPC</u>:** Right to bail u/s 167(2) CrPCis available only till investigation is pending and no police report u/s 173(2) CrPCis submitted within the statutory period of 60/90 days. But this right is lost once charge sheet is filed. Such right to bail u/s 167(2) CrPCdoes not get revived only because further investigation u/s 173(8) is pending. See--- **Dinesh Dalmia Vs. CBI, AIR 2008 SC 78**

**17(P).<u>Submission of charge sheet before filing of bail bonds after bail u/s 167(2) CrPC</u>**--- An order for release on bail granted u/s 167(2) CrPCis not defeated by lapse of time, the filing of charge sheet or by remand to custody u/s 309(2) CrPCThere is no limit of time within which the bond may be executed after the order for release on bail u/s 167(2) CrPCis made. See--- **Raghubir Singh Vs. State of Bihar, (1986) 4 SCC 481**

**17(Q).<u>Magistrate to inform the accused of his accrued right to bail u/s 167(2) CrPC</u>:** It is the duty of Magistrate to inform the accused of his accrued right to be released on bail u/s 167(2) CrPC. See---

1. **Sudhakar Vs. State of U.P., 1985(1) Crimes 582 (All)**
2. **Hussainara Khatoon Vs. Home Secretary, State of Bihar, AIR 1979 SC 1377 (Three Judge Bench)**

**17(R).<u>No bail u/s 167(2) CrPCduring extended period of investigation beyond 60 / 90 days</u>** : Where the court extends time to complete investigation before expiry of 60 / 90 days, the court is empowered to remand accused to judicial or police custody during extended period and the right of the accused to be released

on bail u/s 167(2) CrPCis lost. See--- **Ateef Nasir Mulla Vs. State of Maharashtra, 2005 (53) ACC 522 (SC)**

**17(S). <u>Revision against order u/s 167(2) CrPC</u>**: Where after expiry of 90 days, the accused moved application for bail u/s 167(2) CrPCbut the Magistrate postponed the disposal of the application to next day when police filed charge sheet, it has been held that the Magistrate acted in violation of the provisions u/s 167(2) CrPCand revision lies against such an order. Where the court concerned adopts dilatory tactics to defeat the right of the accused accrued u/s 167(2) Cr.P.C., it is open to the accused to immediately move the superior court for appropriate direction. See---

1. **Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three Judge Bench)**
2. **Sudhakar Vs. State of U.P., 1985(1) Crimes 582 (All)**

**17(T).<u>Accused to be released on bail u/s 167(2) CrPCwhen after filing of the application by the accused charge sheet is filed</u>** : Magistrate is obliged to grant bail to accused u/s 167(2) CrPCeven if after filing of the application by the accused, a charge sheet is filed by the investigating officer. See---

**(i) Pragyna Singh Thakur Vs. State of Maharashtra, (2011) 10 SCC 445**

**(ii) Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three Judge Bench)**

**17(U).<u>Bail u/s 167(2) CrPCafter submission of charge sheet during the pendency of proceedings before the higher forum against the magisterial order rejecting the application u/s 167(2) CrPC</u>**: Where the application of the accused has been erroneously rejected by the Magistrate u/s 167(2) CrPCand the accused then moves the higher forum but during the pendency of the matter before that forum, a charge sheet is filed, the indefeasible right of the accused is not affected. However, if the accused fails to furnish the bail as directed by the Magistrate, his right to be released on bail would be extinguished. See--- **Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three Judge Bench)**

**17(V).<u>Submission of charge sheet after grant of bail u/s 167(2) CrPCbut before furnishing of bail bonds</u> :** If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proiso to sub-sec. (2) of Sec. 167 Cr.P.C., the continued custody of the accused even beyond the specified period in para (a) will not be unauthorized, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so called indefeasible right of the accused would stand extinguished. The Constitution

Bench decision in the matter of Sanjay Dutt Vs. State through CBI, (1994) 5 SCC 410 should be understood in that sense. See--- **Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three Judge Bench)**

**17(W).<u>Presiding Officers to write to SSP against the Investigating Officers failing in submitting police report u/s 173(2) CrPCwithin 60 or 90 days</u> :** Vide C.L. No.52/2007Admin(G), dated 13.12.2007, the Allahabad High Court has issued following directions for compliance by the Judicial Officers of the State of U.P.---

"The Hon'ble Court has noticed that the delay takes place in submission of Police Report before the Magistrate on account of various reasons such as the investigating officer being biased in favour of accused, investigating officer being transferred from one police officer to another on account of their transfer. Such delay at times results in the <u>accused getting undue advantage of being set at liberty due to non filing of Police report within the time stipulated u/s 167(2)(b) CrPC</u>The Hon'ble Court has been pleased to recommend that all the criminal courts shall write to SP/SSP. Concerned for necessary action against an investigating officer if he is found to be wanting in discharge of his duties deliberately in submitting the Police report within time as per mandate u/s 167(2)(C) of Cr.P.C."

**17(X). <u>Accused not entitled to bail u/s 167(2) CrPC when charge-sheet filed on the last day (90th day) without full set of documents</u> :** Where the police report i.e. charge-sheet u/s 173(2) CrPC was filed by the IO before the court on the last day i.e. 90th day and the accused claimed bail u/s 167(2) CrPC on the ground that the IO had not filed the complete documents with the police report u/s 173(2) CrPC, it has been held by the Hon'ble Supreme Court that on the said grounds the accused was not entitled to bail u/s 173(2) CrPC particularly when the cognizance taking order on such police report was not challenged by the accused. The provisions of Section 173(5) requiring filing of full set of documents with the police report/charge-sheet is only directory and not mandatory. See **: Narendra Kumar Amin Vs. CBI, (2015) 3 SCC 417.**

**17(Y). <u>Cancellation of bail granted u/s 167(2) CrPC</u>**--- Grant of bail to an accused u/s 167(2) CrPCis different from bail granted o merits us. 437 or 439 CrPCCancellation of bail u/s 437(5) or 439(2) CrPCis different from refusal to grant bail. Cancellation involves review on merits of the decision granting bail. Therefore, unless there are strong grounds for cancellation of bail once granted u/s 167(2) Cr.P.C., the same cannot be cancelled on mere production of charge-sheet. The ratio of Rajnikant Jivanlal Patel Vs. Intelligence Officer, NCB, New Delhi, (1989) 3 SCC 532 to the extent it was inconsistent with the law laid down in Aslam

Babalal Desai Case have been held not to state the correct law and has been overruled. See---

1. **Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three Judge Bench)**
2. **Aslam Babalal Desai Vs. State of Maharashtra, (1992) 4 SCC 272 (Three Judge Bench)**
3. **Ram Murti Vs. State of U.P., 1976 CrLJ 211 (All).**

**17(Z).** **Section 167(2) CrPC to apply to NDPS Act also** : The benefit of the proviso to Section 167(2) of the CrPC would extend to an accused involved in the offences under the NDPS Act as well where the charge-sheet is filed beyond the stipulated period of 60/90 days**.** See :

**(i)** **Uday Mohanlal Acharya Vs. State of Maharashtra, AIR 2001 SC 1910**

**(ii)** **Manoj Vs. State of MP, 1999 SCC (Criminal) 478**

**(iii)** **Union of India Vs. Thamisharasi, (1995) 5 SCC 327**

**18.** In compliance with the directions of Hon'ble Allahabad High Court (by Hon'ble Justice G.P. Srivastava) in the matter of Criminal Misc. Bail Application No. 5108 of 2006 Jagdish Vs. State of U.P., the Hon'ble Allahabad High Court has issued C.L. No. 36/2006/Admin 'G', dated 10.8.2006 which reads as under---

"It is hereby directed that all the recovered articles under NDPS Act as and when are recovered should be weighed either by the arresting officer or the S.H.O. of the Police Station concerned. In case both the authorities fail to discharge their duty, it is incumbent upon the Special Judge/Magistrate who grants first remand to the accused to get the recovered article weighed."

**19.** **Stage of raising plea of sanction :** Plea of sanction can be raised only at the time of taking cognizance of the offence and not against the registration of FIR, investigation, arrest, submission of police report u/s 173(2) CrPCor remand of accused u/s 167 CrPC. See--- **State of Karnataka Vs. Pastor P. Raju, AIR 2006 SC 2825**

**20.** **Defective release order & correction thereof :** The Allahabad High Court, vide C.L. No. 53 / VIII-a-18-Admin 'G', dated Allahabad, 7th August, 1986, has issued directions that release orders must be prepared by the court clerks and not by the court moharrirs (police constables) and the papers relating to cases such as FIR, bail bonds, remand papers, final reports etc. must be kept in the custody of court clerks and not in the custody of court moharrirs.

Vide C.L. No. 114 / VII-b-47, dated Allahabad 7th October, 1978, it has been directed that the release orders must contain correct entries relating to case number, name of the police station, name of the accused, his father's name, age, residential

address offences, crime number, Sections of IPC and other Acts, date of conviction etc.

Vide C.L. No. 124 / VII-b-47, dated Allahabad, 24th October, 1979 & C.L. No. 42 / VII-b-47, dated Allahabad 28th April, 1978, it has been directed that the remand order and the release orders passed by the courts of Magistrate and Judges must contain their full name, clear signature, designation and seal of the court as required under Rule 9, G.R. (Criminal).

**21. <u>Outlying Magisterial Courts & Bail & Remand in certain offences--- relevant C.L. thereon</u> :** Vide C.L. No. 19/2006, dated 10.5.2006, the Allahabad High Court has directed that the committal, remand and bail work in sessions triable cases and also in certain other penal sections should not be assigned to outlying courts where there is no sub jail. The abovenoted circular letter reads as under---

(i) The committal and remand/bail work in sessions triable cases should not be assigned to the outlying court where there is no sub-jail.

(ii) The work of committal of cases and remand/bail for offences punishable u/s 302, 304, 304-B and 396 IPC and under the NDPS Act should be retained at the District Headquarter.

(iii) Committal and remand/bail of the offences of lesser gravity (other than Sec. 302, 304, 304-B and 396 IPC and under the NDPS Act), triable by the court of sessions, may be assigned to the outlying courts where there is sub-jail.

(iv) A sub-copying section should be made functional under the senior most judicial officer of the outlying court for copying case diary/document in respect of cases, committal proceeding of which to be handled there.

(v) The scheme of assignment of committal and remand/bail work, as proposed hereinabove, in some measure, should be kept flexible in case some modification is required, keeping in view the condition of a particular district. In that eventuality, the District Judge may approach the High Court setting out the detailed exceptional and special reasons seeking modification in the above scheme for his district.

(vi) Such request of the District Judge concerned should be jointly examined by the Hon'ble Administrative Judge of that district and another Hon'ble Judge of the Administrative Committee, to be nominated by Hon'ble the Chief Justice. The report should then be placed before the Administrative Committee for appropriate orders as may be suggested by such two Hon'ble Judges.

22. **Bail during police custody remand** : Relying upon the Constitution Bench decision in the case of Shri Gur Vaksh Singh SibbiaVs. State of Punjab, AIR 1980 SC 1632, it has been held by the Bombay High Court that bail application u/s 439 of the CrPC is maintainable before the Sessions Court even if filed during the period of police remand of the accused granted by magistrate. Sessions Court can not reject application for bail on that ground. Bail application should be entertained and considered on merits even if there is order of police remand. See..... **Krushna Guruswami Naidu Vs. State of Maharashtra, 2011 CrLJ 2065 (Bombay).**

23. **Directions dated 11.10.11 issued by Division Bench of the Hon'ble Allahabad High Court in Shaukin Vs. State of UP, 2012 (76) ACC 159 (All…DB) regarding remand and bail of accused of offences punishable with imprisonment upto seven years :** The Hon'ble High Court (in para 20) of its above judgment has issued following directions :

"We therefore direct the Magistrates that when accused punishable with upto 7 years imprisonment are produced before them remands may be granted to accused only after the Magistrates satisfy themselves that the application for remand by the police officer has been made in a bona fide manner and the reasons for seeking remand mentioned in the case diary are in accordance with the requirements of sections 41(1)(b) and 41 A CrPC and there is concrete material in existence to substantiate the ground mentioned for seeking remand. Even where the accused himself surrenders or where investigation has been completed and the Magistrate needs to take the accused in judicial custody as provided under section 170(1) and section 41(1)(b)(ii)(e) CrPC, prolonged imprisonment at this initial stage, when the accused has not been adjudged guilty may not be called for, and the Magistrates and Sessions Courts are to consider the bails expeditiously and not to mechanically refuse the same, especially in short sentence cases punishable with upto 7 years imprisonment unless the allegations are grave and there is any legal impediment in allowing the bail, as laid down in Lal Kamlendra Pratap Singh V State of U.P., (2009) 4 SCC 437, and **Sheoraj Singh @ Chuttan Vs. State of U.P. and others, 2009(65) ACC 781.** The facility of releasing the accused on interim bail pending consideration of their regular bails may also be accorded by the Magistrates and Sessions Judges in appropriate cases.

The Magistrate may also furnish information to the Registrar of the High Court through the District Judge, in case he is satisfied that a particular police officer ha s been persistently arresting accused in cases punishable with upto 7 year terms, in a mechanical or mala fide and dishonest manner, in contravention of the requirements of sections 41(1)(b) and 41 A, and thereafter the matter may be

placed by the Registrar in this case, so that appropriate directions may be issued to the DGP to take action against such errant police officer for his persistent default or this Court may initiate contempt proceedings against the defaulting police officer."

**24.** **<u>Duty of Magistrates regarding remand and bail for offence u/s 498-A IPC and u/s 41(1)(b)(ii) CrPC and the guidelines of the Supreme Court</u>:** Where the offence is not punishable with imprisonment exceeding 07 years and the offence is one u/s 498-A IPC, the Hon'ble Supreme Court, while interpreting the provisions.

**(1)** All the State Government to instruct its police officers not to automatically arrest when a case u/s 498-A of the IPC is registered but to satisfy themselves about the necessity for arret under the parameters laid down above following from section 41, CrPC.

**(2)** .All police officers be provided with a check list containing specified sub-clauses u/s 41(1)(b)(ii);

**(3)** The police officer shall forward the check lit duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention:

**(4)** The Magistrate while authorizing detention of the accused shall persue the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention:

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy of the Magistrate which may be extended by the Suprintendent of police of the District for the reasons to be recorded in writing:

(6) Notice of appearance in terms of section 41-A of CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by th Suprintendent of Police of the District for the reasons to be recorded in writing:

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerened liable for departmental action, they shall also be liable to be punished for contempt of Court to be instituted before High Court having territorial jurisdiction:

(8) Authorising detention without recording reasons as aforesaid by the Judical Magistrate concerned shall be liable for the departmental action by the appropriate high Court.

(9) We hasten to add that the directions aforesaid shall not only apply to the cases u/s 498-A of the IPC or section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than even years: whether with or without fine.

(10). We direct that a copy of this judgement be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance. See : **Arnesh Kumar Vs. State of Bihar, 2014 (86) ACC 568 (SC).**

**Note :** *In compliance with the directions of the Hon'ble Supreme Court in Arnesh Kumar's case, the Govt. of UP has issued directions warning all the police officers of the State of UP to ensure compliance else they may be punished for contempt of the Hon'ble Supreme Court and also in departmental proceedings.*

**25.** **<u>Illegal remand, illegal custody or detention of accused & Bail</u> :** In the case noted below, the accused was into illegal judicial custody for the offences u/s 498-A, 304-B IPC as the Magistrate had not granted further remand of the accused u/s 167 Cr.P.C., cognizance of the offence was not taken by the Magistrate on receipt of charge sheet from the I.O., no remand order was passed u/s 209(b) Cr.P.C., no order was passed remanding the accused to judicial custody, case was committed by the Magistrate to Court of Sessions ordering the production of the accused before the Court of Sessions, no order by the Magistrate was passed even on that date u/s 209(b) Cr.P.C., there was no remand order though case was pending before the Sessions Court but custody of the accused was continuing, then it has been held by the Allahabad High Court that the custody/detention of the accused without there being any remand order was naturally illegal but no law recognizes grant of bail to accused on the basis of such illegal custody/detention and the bail was consequently refused. Custody includes both legal and illegal imprisonment and court can rectify its mistake and transform the illegal custody/imprisonment of the accused into legal custody/imprisonment. See---

1. **Sheo Kumar Vs. State of U.P., 2001 (1) JIC 7 (All)**
2. **Surjit Singh Vs. State of U.P., 1984 ALJ 375 (All—Full Bench)**

**26.** **<u>Revision not maintainable against order granting police remand</u> :** Order granting police custody remand u/s 167 CrPC is an interlocutory order and revision is barred u/s 397(2) CrPC. See : **State Vs. NMT Joy Immaculate, AIR 2004 SC 2282.**

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