

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Order reserved on: 04.09.2019
Order pronounced on: 30.09.2019.

+ **BAIL APPLN. 507/2019**

RAJAB ALI KHAN

..... Petitioner

Through Ms. Sugandha Anand,
Mr, Surinder Anand &
Mr. M.K. Khan, Advs

versus

THE STATE GOVT OF NCT OF DELHI Respondent

Through Mr. G.M. Farooqui, APP for
Ms. Neelam Sharma, APP for
State along with Insp. Rakesh
Rana, P.S. Welcome.

CORAM:
HON'BLE MR. JUSTICE BRIJESH SETHI

% **ORDER**

1. Vide this order I shall dispose of a bail application filed by the petitioner filed u/s. 167 (2) (a) (i) of the CrPC in FIR No. 420/2018 u/s. 363/302/201/328/109/34 IPC & 14 POCSO Act, P.S.Welcome, North-East.

2. Ld. Counsel for the petitioner has prayed for bail on the ground that petitioner is innocent and has been falsely implicated. It is submitted that one FIR No. 420/2018 was registered at PS Welcome u/s. 363 IPC on behest of one Sh. Abid S/o. Banney to the effect that his daughter namely Simran, aged about 13/14 years is missing from

her house and could not be traced. She was taking tuition from the wife of the petitioner. On 22.10.2018 she had gone to the house of the petitioner and left the said house at 10 AM. Thereafter, the petitioner was arrested illegally by the police officials of P.S. Welcome on 28.10.2018 at 2 PM and he was produced before the Duty Magistrate on 31.10.2018 at about 7 PM. Petitioner remained in the illegal custody of the respondent from 28.10.2018 till 31.10.2018. The father of the petitioner became worried and in the meanwhile, he came to know that the respondents have kept him under illegal detention and tortured him which resulted in permanent injuries on his body. It is further submitted that on 31.10.2018, being aggrieved by the conduct of the respondents, the father of the petitioner approached National Human Rights Commission by way of moving a written complaint and National Human Rights Commission issued notice upon the said complaint to the respondent.

3. The Ld. Counsel for the petitioner has argued that the chargesheet in this case was filed on 29.01.2019 at about 04.30 PM by the SHO/ IO, PS Welcome, Delhi. On the said day, the petitioner had already completed 90 days in JC and, is therefore, entitled to bail as per Section 167 (2) (a) (i) of IPC. It is, therefore, prayed that petitioner be released on bail, in the interest of justice.

4. Learned Counsel for the petitioner has also relied upon following case laws in support of his contentions:-

- i) Hari Chand And Raj Pal v. State, ILR 1977 Delhi 367.

- ii) **Manik Sanebrao Chaugule v. State of Maharashtra, 2017 SCC Online Bom 3402.**

5. Ld. APP for the state has opposed the bail application on the ground that allegations against the petitioner are grave in nature. Ld. APP further submitted that during the course of the investigation petitioner Rajab Ali was served notices u/s. 160 CrPC thrice on 28.10.2018, 29.10.2018 and 30.10.2018. He joined the investigation of the case and was relieved. The petitioner was arrested on 31.10.2018. On 29.01.2019 after completion of the investigation, the charge-sheet in the present case was filed in the Court. Ld. APP for the State further submitted that chargesheet has been filed well within the stipulated time. He has, therefore, prayed for dismissal of the bail application.

6. I have considered the rival submissions and perused the judgments filed by the Ld. Counsel for the petitioner. In the judgment of High Court of Delhi titled '**Hari Chand And Raj Pal v. State, ILR 1977 Delhi 367**', it is only mentioned that the charge-sheet was filed incomplete but the said judgment devoid of the fact as to how and in what manner charge-sheet was not complete, therefore, this judgment is distinguishable in terms of the facts of the present case. In another judgment of Hon'ble Bombay High Court titled '**Manik Sahebrao Chaugule. v. State of Maharashtra, 2017 SCC Online BOM 3402**' charge-sheet u/s. 8(c), 20 and 29 of the NDPS Act was filed without report of chemical analyzer and it was held that the charge-sheet was incomplete and the default bail was granted and therefore, this judgment is also distinguishable in terms of the facts of

the present case.

7. The petitioner in this case has been chargesheeted for the offence punishable under Section 363/302/201/328/109/34 IPC & 14 POCSO Act. It has been specifically submitted by Ld. APP that petitioner was arrested in the present case on 31.10.2018. The said fact has also appeared in the bail order of Ld. Trial Court where in it is mentioned by Ld. ASJ that from arrest memo it is clear that petitioner was arrested in this case on 31.10.2018 at 4.20 PM and on the same day, he was sent to judicial custody. The chargesheet in this case was filed on 29.01.2019. In judgment '**Ravi Prakash Singh @ Arvind Singh v. State of Bihar, AIR 2015 Supreme Court 1294**', the Hon'ble Supreme Court has held under;

12. In State of M.P. v. 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 of Section 167(2) of the Code.

8. In view of the above law when one counts 60 days or 90 days, as the case may be, for filing the charge-sheet, the date when the accused was remanded is to be excluded and date when the charge-sheet is filed is to be included. The date of remand as well as

date of arrest of the petitioner is same i.e 31.10.2018. If the date of remand is excluded and days are counted from the date of remand to filing of chargesheet, the details are as under;

S.N,	Month	Days
1	Nov., 2018	30
2.	Dec., 2018	31
3.	Jan., 2019	29
	Total	90

9. In view of the above calculation there is no delay in filing the charge-sheet.

10. The Ld. Counsel for the petitioner has, however, argued that challan/ chargesheet was incomplete at the time of filing the same. However, this plea has not been taken by the Ld. Counsel for the petitioner in the petition. Perusal of the order of Ld. ASJ reveals that Ld. Counsel for the petitioner had taken this plea before the Ld. ASJ and he has discussed his contention in details. The relevant paras of the order dated 12.02.2019 of Ld. ASJ runs as follows;

16. On the basis of law laid down, the facts of the case in had is to be examined. In the present case charge-sheet has been filed which was directed to be checked. It is reported by the officer (Ahlmad) that checking is pending for want of typed copy of statement u/s. 161 CrPC of witnesses, index and other formalities. The charge-sheet kept pending for taking cognizance. As per charge-sheet, it is mentioned that FSL result and certificate u/s. 65-B of Indian Evidence Act and other paper would be filed by way of supplementary charge-sheet u/s 173(8) CrPC.

17. However it is mentioned, as per investigation and statement of witnesses there are sufficient material to charge-sheeted the accused persons. The post mortem report has been filed, statement of witnesses were recorded u/s 161 CrPC wherein mother of victim and other witnesses of recovery, arrest and last seen were recorded. Therefore, there were sufficient material when the charge-sheet was filed to take cognizance against the accused persons.

18. It is also pertinent to mention here that IO had completed the objection raised by the court staff, therefore, the charge-sheet was complete in all respect as per law laid down by various judgments.

19. According to sum up, the charge-sheet has been filed within 90 days of the arrest of accused and the charge-sheet is filed with sufficient material to take cognizance. Accordingly, contention of Ld. Counsel is devoid on merits and I am of the opinion that the charge-sheet was filed within the stipulated period of 90 days and was having complete material to take cognizance.

11. There is no infirmity in the above observation of Ld. ASJ. So far as other contention of the Ld. Counsel for the petitioner that petitioner was detained illegally from 28.10.2018 to 31.10.2018 by the police official of P.S. Welcome is concerned, there is nothing on record to suggest that he was illegally detained from 28.10.2018 till 31.10.2018 as arrest memo is dated 31.10.2018. No grounds are, therefore, made out for bail u/s. 167 (2) (a) (i) of the CrPC. The bail application is, therefore, dismissed.

BRIJESH SETHI, J

SEPTEMBER 30, 2019 (AP)