

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
02.08.2021	11.08.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.12934 OF 2021

K.Arulanantham

.. Petitioner

- Vs -

State, by
Central Bureau of Investigation
State Crime Branch
Chennai.

.. Respondent

Criminal Original Petition filed u/s 439 Cr.P.C. praying this Court to enlarge the petitioner on bail in Crime No.02 of 2019 on the file of the respondent Central Bureau of Investigation, State Crime Branch, Chennai.

For Petitioner : Mr. R.Karthik

For Respondent : Mr. K.Srinivasan, Spl. PP (CBI Cases)
Mr. Mohammed Jinnah, PP, assisted by
Mr. A.Gopinath, GA (Crl. Side)

ORDER

The petitioner, who is arrayed as A-8 in an offence which had created an eerie atmosphere in the society, and attracted very many sections of the Indian Penal Code and also Prohibition of Harassment of Women Act and Information Technology Act, has filed the present petition for enlargement on default bail, in view of the dismissal of his petition for default bail in Crl. M.P. No.94/2021 by the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, vide order dated 2.7.2021.

2. Initially the case was registered on 24.2.19 in Crime No.59/2019 by Pollachi Town Police Station, leading to the arrest of A-1 to A-4 and, thereafter, on 5.4.19 A-5 was arrested and the accused were remanded to judicial custody. Subsequent to the issuance of the notification by the Government of Tamil Nadu transferring the investigation to the respondent herein, the respondent herein took up the case on 16.4.19 and, thereafter, after initial investigation, fresh charge sheet was filed by the respondent herein on 24.5.19. Subsequent to the same, further investigation by the respondent resulted in the arrest of A-6 to A-8. In the present case, this Court is concerned about A-8, who, according to the prosecution was arrested on 5.1.2021. It is the further case of the prosecution that though initial charge sheet relating to A-1 to A-5 was filed on 24.5.19,

however, subsequent to the arrest of A-6 to A-8, supplementary charge sheet was filed on 22.2.2021.

3. The offence in which the petitioner has been implicated pertains to the act of various accused, including the petitioner, in sexually assaulting and abusing the victims, many in number, which has resulted in the registration of the crime by the Pollachi Town Police, which was, thereafter, transferred to the respondent herein vide notification issued by the Government of Tamil Nadu. For the present, it is not necessary to go into the intricate details about the commission of the offence, but suffice to deal with the issue relating to bail, as sought for by the petitioner. However, when the matter was heard, learned Special Public Prosecutor appearing for the respondent, drew the attention of this Court to one very important aspect in the matter, which requires a deeper consideration, which this Court will advert to after discussing the issue relating to grant of bail.

4. The present bail petition has been moved by the petitioner on the ground that the charge sheet has been filed well beyond the period of 90 days as mandated u/s 167 (2) (a) (i) Cr.P.C. and, therefore, the petitioner is entitled to default bail, as provided under the said Section.

5. When the matter was taken up for hearing on 27.07.2021, in view of the gravity of the offence and the allegations raised against the accused, this Court had directed the respondent to file a report on certain aspects and pursuant to the said direction, a report has been filed by the respondent.

6. The respondents, vide their report dated 02.08.2021 has given particulars on the aspects on which this Court had asked for clarification and this Court is satisfied with the details furnished by the respondents. On three of the issues, in which this Court had sought for clarification relates to the time required for receipt of reports from the forensic lab, when the trial would commence and the assistance needed by the respondent from the State police in the matter of investigation.

7. Insofar as the time required for the reports to be received from the forensic lab, the respondent has submitted that this Court may give direction to the forensic lab to make the reports ready within a period of two weeks from the date of receipt of a copy of this order, preferably on or before 17.08.2021.

8. Insofar as commencement of the trial is concerned, it is the stand of the respondent that the respondent would be ready to go ahead with the trial during

the 1st week of September, 2021 and, accordingly, direction may be issued to the trial court for commencement of trial and also this Court may fix an outer limit for conclusion of the trial by the trial court.

9. Insofar as the assistance, if any, which the respondent may require from the State Police with regard to the investigation is concerned, certain details have been tabled by the respondent, which requires an in-depth analysis by this Court and, therefore, after deciding on the prayer of the petitioner for bail, this Court would further dwell on the said issue in the later portion of this order.

10. Coming to the prayer of the petitioner for bail, learned counsel appearing for the petitioner submitted that though it is the claim of the respondent that supplementary charge sheet was filed on 22.2.2021 pursuant to the arrest of the petitioner/A-8 on 5.1.21, however, the said charge sheet has not been taken cognizance of by the trial court and the same was returned as defective for rectification and, therefore, there was no valid charge sheet in the eye of law and, therefore, the petitioner is entitled to default bail u/s 167 (2) Cr.P.C. It is the further submission of the learned counsel for the petitioner that the forensic reports, which are the basis for the petitioner to be implicated in the case, having not been received till date, the supplementary charge sheet,

allegedly filed by the respondent cannot be said to be a charge sheet fulfilling the requisites as provided for u/s 173 Cr.P.C. and, therefore, the said charge sheet cannot be the basis for keeping the petitioner under continued incarceration and, therefore, the petitioner is entitled for default bail provided u/s 167 (2) Cr.P.C.

11. To buttress his submissions, learned counsel appearing for the petitioner placed reliance on the following decisions :-

"T.V.Sarma – Vs – Turgakamala Devi & Ors. (1976 CrL LJ 1247)

P.V.Vijayaraghavan & Ors. - Vs – CBI & Ors. (1984 CrL LJ 1277)

Matchumari China Venkatareddy & Ors. - Vs – State of A.P. (1994 CrL LJ 257)

Nagarajan – Vs – State of T.N. (2004 (20 LW (CrL.) 545

Achpal @ Ramswaroop & Anr. - Vs – State of Rajasthan (AIR 2018 SC 4547)

Paras Ram – Vs – State of Rajasthan (S.B. Criminal Misc. Bail No.9538/2018 – Dated 14.01.2019)

Mohammed Ali – Vs – State of Kerala (Bail Appl. No.2856/2020 – Dated 20.05.2020)

S.Kasi – Vs – State of Tamil Nadu (C.A. No.452/2020 – Dated 19.06.2020)

Vinesh – Vs – State of Kerala (Bail Appl. No.4876/2020 – Dated 18.08.2020)

M.Ravindran – Vs – The Intelligence Officer, Directorate of Revenue Intelligence (C.A. No.699/2020 – Dated 26.10.2020)

*Fakhrey Alam – Vs – State of Uttar Pradesh (C.A. No.319/2021
– Dated 15.03.2021)*

12. Per contra, learned Special Public Prosecutor appearing for the respondent submitted that initial charge sheet implicating A-1 to A-4 was filed on 24.5.19 and after further investigation by the respondent, on being entrusted with the investigation vide the Government Notification, supplementary charge sheet was filed on 22.2.2021 relating to the arrest of the petitioner/A-8 and other accused, viz., A-6 and A-7 on 5.1.2021. It is the submission of the learned Special Public Prosecutor that the said supplementary charge sheet filed on 22.2.2021 is well within the mandatory period of 90 days prescribed u/s 167 (2) Cr.P.C. It is the further submission of the learned Special Public Prosecutor that the contention of the petitioner that the said supplementary charge sheet has been returned as defective and it is yet to be represented is wholly a figment of imagination on the part of the petitioner, as the order of the trial court clearly show that the supplementary charge sheet has not been returned as defective, but only certain rectifications were directed to be made, which has been duly complied with by the respondent and, therefore, the supplementary charge sheet filed on 22.2.2021 by the respondent is a valid piece of document, as mandated

u/s 167 (2) Cr.P.C. and, therefore, the contention of the petitioner deserves rejection.

13. In the context of the fact that the whole case revolves around the fulfilling of the mandate u/s 167 (2) and 173 Cr.P.C., for better appreciation, the relevant provisions of law are extracted hereunder :-

“167.Procedure when investigation cannot be completed in twenty four hours.

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

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole ; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

1[(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days ; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-*

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter ;]

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take

cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

- (a) the names of the parties;*
- (b) the nature of the information;*
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;*
- (d) whether any offence appears to have been committed and, if so, by whom ;*
- (e) whether the accused has been arrested;*
- (f) whether he has been released on his bond and, if so, whether with or without sureties;*
- (g) whether he has been forwarded in custody under section 170.*

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

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation,

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

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

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

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

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

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

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

such report or reports as they apply in relation to a report forwarded under sub-section (2)."

14. It is not in dispute that the case was initially registered by the Pollachi Town Police in Crime No.59/2019 and, thereafter, due to certain acts of the police, not conducive to investigation and also the safety and security of the victims and the witnesses, the State, invoking Section 6 of the Delhi Special Police Establishments Act, had transferred the investigation to the respondent by issuing requisite notification and based on the said notification, the respondent took charge of the case and Crime No.59/2019, registered on the file of the Pollachi Town Police Station was re-registered as Crime No.RC.2/(S)/2019/CBI/SCB/Chennai u/s 354(A), 354 (B) and 392 IPC and Section 66 (E) of Information Technology Act, 2002, and Section 4 of Tamil Nadu Prohibition of Women Harassment Act, 2002. Initially the case was registered as against A-1 to A-4 and initially charge sheet was laid against A-1 to A-4 on 24.5.19. However, further investigation was conducted u/s 173 (8) Cr.P.C. which revealed the nexus of A-5 to A-8 in the offence, which led to the arrest of A-5 to A-8. In the case of the petitioner, it is admitted that the petitioner was arrested on 5.1.21 and remanded to custody on 6.1.21 and, thereafter, supplementary charge sheet was laid before the trial court as against A-5 to A-8 on 22.2.21,

which according to the respondent is well within the mandatory period of 90 days provided u/s 167 (2) Cr.P.C.

15. It is not in dispute that the the alleged supplementary charge sheet has been laid before the trial court on 22.2.21 and the trial court has pointed out certain errors in the charge sheet, twice the respondent was directed to carry out certain rectification. The said fact is revealed through the order passed by the trial court. Further, after necessary correction, rectification memo has also been filed, however, the charge sheet has not been taken cognizance of by the trial court. The above factual aspects are transpired in the order passed by the trial court rejecting bail to the petitioner.

16. Learned counsel for the petitioner pressed into service the decision of a single Judge of the Andhra Pradesh High Court in **T.V.Sarma – Vs – Turgakamala Devi & Ors. (MANU/AP/0214/1975)**, wherein the Andhra Pradesh High Court held as under :-

“16. The learned Public Prosecutor has argued that in this case there is a charge-sheet though styled preliminary and so the proviso to Section 167 Sub-section (2) does not apply. I do not agree with him. The Code of Criminal Procedure does not contemplate a preliminary charge-sheet and a final charge-

sheet. What is contemplated is only a police report within the meaning of Sub-section (2) of Section 173, Cri. P. C. Admittedly in this case, there is no such report. The so-called preliminary charge-sheet filed in this case is not a police report because the investigation is not yet completed, and so the proviso to Section 167 Sub-section (2) is attracted. In this connection the learned Public Prosecutor has relied upon Sub-section (8) of Section 173, Cr. P.C. in order to contend that even a preliminary charge-sheet is a police report within the meaning of Sub-section (2) of that section. But a reading of Sub-section (8) of Section 173, Cr. P.C. shows that after a police report under Sub-section (2) is sent to the Magistrate, further investigation is not precluded and if upon such investigation further evidence is obtained a further report should be sent to a Magistrate. Therefore, Sub-section (8) of Section 173, Cr. P.C. comes into play only after a report under Sub-section (2) is sent but not before. In this case since no report under Sub-section (2) is sent, Sub-section (8) does not come into operation at all. Since the preliminary report is not the one sent to the court after a report under Sub-section (2) was sent, the learned Public Prosecutor cannot invoke the provisions of Sub-section (8) of Section 173, Criminal Procedure Code.”

17. To emphasis further, learned counsel for the petitioner placed reliance on the decision of a single Judge of the Kerala High Court in **P.V.Vijayyarahavan & Ors. - Vs – CBI & Ors. (MANU/KE/0178/1984)**, wherein it has been held as under:-

“17. On the date of filing the first charge-sheet the investigator was awaiting expert legal opinion on the question whether a charge would lie under Section 201 I.P.C. In other words, he had not formed any definite opinion as to whether on the evidence collected there was a case to place the accused before a Magistrate for trial of the particular offence. In this view of the matter, it must follow that "investigation", as understood in law, was not complete on the date of filing of the first charge-sheet. The investigator had not formed any opinion in regard to Section 201 I.P.C. and consequently, the "investigation" in the case was not complete when the first charge-sheet was filed. The investigator has no case that the formation of opinion was made in this regard on any particular day after 7.2.1984. It must be taken that "investigation" was complete only with the second charge-sheet. In this view, the original charge-sheet was not a charge-sheet laid after completing of investigation. It is a defective charge-sheet.”

18. The decision of the Andhra Pradesh High Court in **Matchumari China Venkatareddy & Ors. - Vs – State of A.P. (MADU/AP/0102/1993)** is also taken in aid by the petitioner with regard to a defective charge sheet and the relevant portion of the same is quoted hereunder :-

“9. Fairness and reasonable procedure is what is contemplated by the expression "procedure established by law" in Art. 21 of the Constitution. S. 167(2), Cr.P.C. was not there in the old Code. It was introduced in 1973 amendment. 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 or 90 days as the case may be. An order for release of bail made under proviso to S. 167(2) is not defeated by lapse of time, the filing of the charge sheet or by remand to custody under S. 309(2). The order of bail can only be cancelled under S. 437(5) or 439(2). The duty of the police is to forward the police report after completion of investigation under section 173(5) Cr.P.C. The forwarding is done for the purpose of taking the same on record and file of the court and then only, the same is perused by the court to take cognizance of the offence. Mere forwarding without meaning it to be taken on file is not contemplated under law. If the police report is forwarded to the Magistrate for taking it on file, but if the Magistrate finds that the said report is not in consonance with S. 173(5) read with S. 173(5) Cr.P.C., he declines to take it on record and that act is only administrative and not judicial. The judicial act commences only when the charge-sheet is in order and the Magistrate proceeds further under Chapter XVI. Unless the charge-sheet is in the official custody of the court together with its accompaniments to be furnished to the accused, it cannot be construed that there is a filing of charge-sheet. Chapter XVI relates to commencement of proceedings before Magistrates, process to be issued when Magistrate takes cognizance of the offence. The next stage is framing of charges under Chapter XVII. Next stage is trial and the eventual being the judgment.”

19. Very many decisions on similar lines, as noted above, have been cited by the learned counsel for the petitioner to drive home the point that once the supplementary charge sheet has been returned back to the respondent for certain defects and the same is yet to be represented and taken cognizance of, there is no charge sheet subsisting as on the completion of the mandatory period of 90 days and, therefore, the petitioner is entitled for default bail u/s 167 (2) Cr.P.C.

20. However, it is to be pointed out that in all the cases, which have been relied on by the petitioner, the accused therein have been arrested and remanded and police report has not been filed within the time prescribed u/s 173 (2) Cr.P.C. But the case on hand stands on a slightly different footing. In the present case, initially certain accused have been arrested and police report was filed against them within the time prescribed and cognizance has also been taken and, thereafter, invoking Section 173 (8) Cr.P.C., further investigation was taken up leading to the arrest of the petitioner and certain other accused and, thereafter, further report was filed with regard to the same offences, which is yet to be taken cognizance of by the trial court and, therefore, it is contended that the accused, who have been arrested based on further investigation are also entitled to default bail inspite of the charge sheet filed earlier as the said

supplementary charge sheet cannot be said to have been filed within the prescribed period as the same is yet to be taken cognizance of.

21. This Court has no quarrel with regard to the proposition of law laid down with regard to the interpretation to be attached to Section 167 (2) and 173 (8) Cr.P.C. The law is very well settled on this aspect. Once an accused is arrested, the accused is entitled to default bail on completion of a period of 90 days, if police report is not filed as is provided for u/s 173 Cr.P.C. As already extracted above, sub-section (2) to Section 173 Cr.P.C. provides the details that should form part of the police report. However, in cases where the police report has been filed and has been taken cognizance of by the trial court, further investigation is made permissible u/s 173 (8) Cr.P.C.

22. From a careful perusal of Section 173 (8) Cr.P.C., it is manifestly clear that there is no embargo for further investigation of the case after filing of a report under sub-section (2), and on such further investigation, if further evidence, oral or documentary is obtained, the same shall be placed before the concerned Magistrate by way of further report as prescribed. It is to be pointed out that further investigation contemplated u/s 173 (8) Cr.P.C. does not contain any prescription of a period within which the investigation is to be concluded.

Though Section 173 (8) is stand-alone but it cannot be said to be without any adjutant as remand/detention of any accused on the basis of further investigation is once again relatable to Section 167 (2) Cr.P.C.

23. It is to be pointed out that the procedure for taking cognizance of an offence by the Magistrate starts from invocation of powers u/s 167 upon non-completion of investigation within the period of 24 hours prescribed u/s 57 Cr.P.C. The mandate u/s 167 (2) for extending the period of investigation to 90 days in cases of offences which is punishable with death, imprisonment for life or imprisonment for a term of not less than ten years is vested in the Magistrate, who may authorise the detention of the accused beyond the period of 15 days if he is satisfied that adequate grounds exist for so doing. Once the invocation of power u/s 167 (2) is exercised by the Magistrate, within a period of 90 days, the investigating agency is to file the report before the Magistrate, as mandated u/s 173 Cr.P.C.

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24. Section 173 (2) Cr.P.C. prescribes the details that should form part of the report filed by the police upon completion of investigation. The ingredients, which had been prescribed in Section 173 (2) Cr.P.C. relating to the details to be produced in the report by the police are as under :-

“(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

- (a) the names of the parties;*
- (b) the nature of the information;*
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;*
- (d) whether any offence appears to have been committed and, if so, by whom ;*
- (e) whether the accused has been arrested;*
- (f) whether he has been released on his bond and, if so, whether with or without sureties;*
- (g) whether he has been forwarded in custody under section 170.”*

25. From the above, it is implicitly clear that for the purpose of filing the report within the mandatory period, the report should contain the above particulars. In the present case, it is not disputed that the police report, showing the names of A-1 to A-4 as accused for offences, shown in the said police report, was filed way back on 24.5.19. Subsequent to the filing of the report, in view of the nature and gravity of the offence and with a view to expand the scope of the investigation to find out whether there are other persons, who have been victimised in a similar fashion, the respondent had thrown their net wide open by

invoking sub-section (8) to Section 173 Cr.P.C., whereby, further investigation was taken up, resulting in the arrest of A-6 to A-8 on 5.1.21 and their remand on 6.1.21.

26. It is the case of the respondent that pursuant to the arrest of A-6 to A-8 and confiscation of oral and documentary evidence, which have been sent for forensic analysis, supplementary report with regard to A-6 to A-8 for offences, committed by them in association with A-1 to A-5, was filed on 22.2.21.

27. However, as stated above, the petitioner contends that the said report was not taken cognizance of by the trial court as it was found to be defective and, therefore, the said report cannot be taken in aid of to fulfill the condition prescribed u/s 167 (2) Cr.P.C. and the petitioner is therefore entitled to default bail.

28. Though such a stand is taken by the petitioner, however, a careful perusal of Section 167 Cr.P.C. reveals that it pertains only to the custody of the accused in relation to a crime under investigation and the further acts that are to be performed by the investigating agency and the Magistrate on the filing of the report. Section 167 Cr.P.C. does not speak of taking cognizance of the report filed

and only Section 173 (2) Cr.P.C. speaks of the report to be filed by the police which should contain the details, as mandated u/s 173 (2) Cr.P.C. In the above backdrop, once the report is filed by the investigating agency before the Magistrate as provided u/s 173 (2), the accused cannot fall back on Section 167 (2) Cr.P.C. for the purpose of default bail. Nowhere in any of the above two provisions of law it is mandated that cognizance by the Magistrate is *sine qua non* for Section 167 (2) Cr.P.C. to not come into play. What is mandated u/s 173 (2) and (8) Cr.P.C. is only for the investigating agency to file a report as mandated u/s 173 (2) within a prescribed time and the cognizance by the court has no relevancy insofar as consideration for default bail is concerned.

29. In this regard, useful reference can be had to the decision of this Court in ***K.Gopinath & Ors. - Vs – The State (Crl. 7816/20, etc. - Dated 11.09.20)***, where the learned single Judge, after discussing decisions of the Hon'ble Supreme Court, held as under :-

“29. From the cursory reading of the above provisions it is clear that the statutory requirements of a final report contemplated under Section 173(2)Cr.P.C. will be satisfied if the materials prescribed therein are included in the final report, apart from the documents and statements of the witnesses as contemplated under Section 173 (5) of the Cr.P.C.

30. The Honourable Supreme Court in the case of **Satya Narain Musadi -vs- State of Bihar** reported in 1980 (3) SCC 152 has held as follows:

“Section 173(2) thus provides what the report in the prescribed form should contain. In this case the report did contain the name of the accused and the nature of the offence. In fact Section 170 provides that if upon an investigation under Chapter XII it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground to proceed against the accused such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report, etc. If the accused is on bail that fact will be notified in the final report submitted under Section 173(2) would be complied with if the various details therein prescribed are included in the report. This report is an intimation to the Magistrate that upon investigation into a cognizable offence the investigating officer has been able to procure sufficient evidence for the Court to inquire into the offence and the necessary information is being sent to the Court. In fact, the report under Section 173(2) purports to be an opinion of the investigating officer that as far as he is concerned he has been able to procure sufficient evidence for the trial of the accused by the Court and when he states in the report not only the names of the accused, but names of the witnesses, the nature of the offence and a request that the case be tried, there is compliance with Section 173(2). The

report as envisaged by Section 173(2) has to be accompanied as required by sub-Section (5) by all the documents and statements of the witnesses therein mentioned. One cannot divorce the details which the report must contain as required by sub-Section (2) from its accompaniments which are required to be submitted under sub-section 5. The whole of it is submitted as a report to the Court. But even if a narrow construction is adopted that the police report can only be what is prescribed in Section 173(2) there would be sufficient compliance if what is required to be mentioned by the statute has been set down in the report. To say that all the details of the offence must be set out in the report under Section 173(2) submitted by the police officer would be expecting him to do something more than what the Parliament has expected him to set out therein. If the report with sufficient particularity and clarity specifies the contravention of the law which is the alleged offence, it would be sufficient compliance with Section 11. The details which would be necessary to be proved to bring home the guilt to the accused would emerge at a later stage, when after notice to the accused a charge is framed against him and further in the course of the trial. They would all be matters of evidence and Section 11 does not require the report to be or to contain the evidence in support of the charge, its function being merely to afford a basis for enabling the Magistrate to take cognizance of the case

(see *Bhagwati Saran v. State of Uttar Pradesh*, 1961 (3) SCR 563).

31. The above judgment followed by the Honourable Supreme Court of India, in the case of **Tara Singh Vs- State of** in **1951 SCR 729**, wherein it is held as follows:

“19. Stand of the learned counsel for the appellants was that the mere filing of the defective challan was really on no consequence. This aspect has been dealt with in *Tara Singh and Satya Narain* cases in detail. Since all the relevant documents were before the Court before the expiry of 90 days period, grievance of the appellant is sans merit”.

32. That apart, even assuming the police has not complied with the requirement under Section 173 (5) of the Cr.P.C and that only some of the documents and statements have been filed along with the final report, it will not preclude the investigating agency from filing the remaining documents subsequently. It is open to the investigating agency to produce the additional documents which were collected prior to or subsequent to the investigation with the permission of the Court. The word should used in sub section (5) of Section 178 of Cr.P.C is not mandatory but only directory as held by the Hon'ble Supreme Court. In the case of **Central Bureau of Investigation -vs- R.S. Pai and another** reported in **2002 (5) SCC, 82** which reads as follows:

“7. From the aforesaid sub-sections, it is apparent that normally, the Investigating Officer is required to produce all the relevant documents at the time of submitting the

charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court. In our view, considering the preliminary stage of prosecution and the context in which Police Officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word 'shall' used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in Narayan Rao v. The State of Andhra Pradesh [(1958) SCR 283 at 293] and it was held that the word 'shall' occurring in sub-section 4 of Section 173 and sub-section 3 of Section 207A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the

prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there can not be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained. In the said decision it is held that if some mistake is committed in not producing the relevant documents at the time of submitting the report, it is always open to the investigating officer to produce the same with the permission of the Court. The Bench proceeded further to observe that if the further investigation is not precluded, then there is no question of not permitting the prosecution to produce the additional document which were gathered prior to or subsequent to the investigation and the word 'shall' used in sub-section 5 cannot be interpreted as mandatory, but as directory. Therefore it is contended that the High Court is justified in refusing to grant default bail in favour of the appellant".

*The above judgments has been followed in **Narendra Kumar Amin -vs- Central Bureau of Investigation and others** reported in **2015 (3) Supreme Court Cases 417.**"*

30. From the above decision, it is amply evident that within the period prescribed u/s 167 (2) Cr.P.C., the police report needs to be filed as provided u/s 173 (2) Cr.P.C. It is to be pointed out that the investigating agency, if intends to further investigate the matter after filing the report, it can do so by following the prescription u/s 173 (8) Cr.P.C. and proceed with further investigation and

collects materials, oral and documentary, which have a bearing on the case, including arrest of any other person presumably connected with the offence, and consequent upon such arrest, remand/detention of the accused as envisaged u/s 167 (2) Cr.P.C. needs to be made. Once supplementary report as envisaged u/s 173 (8) Cr.P.C. is filed within the prescribed period mandated u/s 167 (2), the default bail, provided in the event of the investigating agency not completing the investigation within the prescribed period, stands excluded. Section 167 (2) Cr.P.C. does not in any manner speak about the cognizance to be taken by the Magistrate within the period of 90 days and it speaks only about the part to be played by the investigating agency in submitting its report to the Magistrate for the continued detention of the accused. By the above provision of law, Parliament has put shackles on the investigating agency to complete the investigation expeditiously and the investigating agency, cannot, at its whims and fancies, prolong the investigation. Failure of the investigating agency to act diligently will give an indefeasible right to the accused to default bail.

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31. Once a supplementary report is filed within the prescribed period of 90 days, there is no necessity to fall back on Section 167 (2) Cr.P.C., as the initial report has already been taken cognizance of by the Magistrate and the supplementary report is only an addition to the said report on which cognizance

has already been taken. The accused, who has been arrested in connection with the matter in which further investigation has been taken up, the continued custody of the accused alone is a matter of consideration u/s 167 (2) Cr.P.C. so long as the supplementary report, if filed within the mandated period, the same merges with the initial report on which cognizance has already been taken by the Magistrate and, therefore, the plea of default bail for the said accused would stand extinguished. Therefore, the contention of the petitioner that on the arrest of the petitioner, the supplementary report ought to have been filed and cognizance should also be taken by the Magistrate within the period of 90 days prescribed u/s 167 (2) Cr.P.C., is nothing but a misreading of the provision of law.

32. An act, viz., filing of final report, which has already been performed and fulfilled, leading to cognizance being taken by the court on the basis of the report submitted by the investigating agency, it would not be right on the part of the court to relegate the investigating agency back to square one by making them to go through the rigours of Section 167 (2) Cr.P.C., for the purpose of cognizance as well, since the investigating agency would not be bound by acts, which is within the domain of the judicial forum, for which the investigating agency cannot be made answerable. The operation of Section 167 (2) Cr.P.C. would only be to the limited extent of custody of the accused so long as the report is filed by

the investigating agency within the prescribed period and cognizance is not a matter of concern, as is evident from the above provision of law. Taking cognizance on the report of the investigating agency is within the realm of the court for which the investigating agency cannot be put to accountability.

33. Further, it should not be lost sight of that investigation is to be completed u/s 57 Cr.P.C., within the first twenty-four hours and if the investigating agency is unable to complete the investigation, the provision u/s 167 (2) Cr.P.C. gets attracted. It is to be borne in mind at this juncture that the outer limit of 90 days is given for filing of police report, failing which an indefeasible right accrues to the accused for bail. Sub-section (2) to Section 167 Cr.P.C. has been inserted only after detailed deliberation by the Law Commission and the law makers, so that the rights and liberty of the accused are not curtailed for no fault of his or for the lethargic investigation done by the investigating agency. The period mandated u/s 167 (2) Cr.P.C. is not only for the purpose of conferring the right and liberty on the accused to be entitled for default bail, but equally on the investigating agency to assert its right for the continued detention of the accused in custody, by filing the requisite report within time, which would show the diligence of the investigating agency in conducting the investigation. Therefore, embargo is created on the investigating agency to file the final report

so that the investigation agency will act diligently and file the report. There Code is silent on the aspect of taking cognizance by the Magistrate within the period mandated u/s 167 Cr.P.C.

34. It is to be borne in mind that not in all cases, further investigation contemplated u/s 173 (8) Cr.P.C. would be invoked by the investigating agency. It is in cases, which have far reaching ramifications and the culpability of many persons come to light, which requires deeper investigation, the investigation agency resorts to further investigation contemplated u/s 173 (8) Cr.P.C. Therefore, once the period of 90 days from the date of remand of an accused pursuant to an FIR is completed, in the absence of filing of police report, the said accused would be entitled to default bail, but the same yardstick can be adopted to an accused, arrested on the basis of further investigation, only to the limited extent of custody and filing of further report as mandated u/s 167 and 173 Cr.P.C. and the delayed taking of cognizance by the Magistrate would in no way defeat the report or the right of the investigating agency to have the accused under continued detention. Therefore, the arrest of the petitioner in this case pursuant to further investigation should not be seen in isolation, but should be seen in conjunction with the police report already filed and also the supplementary report filed within the mandatory period prescribed u/s 167 (2) Cr.P.C. And the

prescription of the period having been complied with, the accused cannot be said to have accrued an indefeasible right to default bail.

35. Further the view of this Court that the supplementary report cannot be said to be considered in isolation, but should be considered in conjunction with the initial report filed by the investigating agency is further strengthened by the fact that the word used in Section 173 (8) is “supplementary report” and not merely “report” as is used in Section 173 (2). The factum of usage of the words “report” and “supplementary report” in sub-sections (2) and (8) of Section 173 makes it clear that the Parliament had indeed distinguished between the two reports filed u/s (2) and (8) of Section 173 Cr.P.C. The usage of the words in sub-sections (2) and (8) of Section 173 Cr.P.C. clearly portrays that the supplementary report is not a stand alone report, but it is a report, which merges with the main report, which has already been filed by the investigating agency u/s 173 (2) Cr.P.C. on which cognizance has been taken by the court. Once the supplementary report, on filing, merges with the original report, mere not taking cognizance of the supplementary report by the Court cannot be the basis for the accused to claim default bail u/s 167 (2) Cr.P.C., as not taking cognizance of the report by the Court would not negate the rights of the investigating agency to have the accused under continued detention.

36. In the case on hand, it is evident from the order passed by which bail has been rejected to the petitioner by the trial court, the supplementary report has been filed on 22.2.21, and for certain mistakes the investigating agency was directed to rectify the same. It is further evident from the said order that rectification has been carried out by the respondent and the report is before the Court. There is a lot of difference between a defective report and a report which was directed to be rectified. A report, which is defective is an imperfect report, while a report, which requires rectification could only mean that there are certain mistakes, which needs to be corrected. Even the rejection order of the court below shows that the respondent has been asked to rectify certain mistakes in the report and the same stood rectified by filing the necessary memo. That being the case, the report alleged to be a defective report by the petitioner, could in no way be said to be a defective report.

37. Further, as already stated above, the mistakes having been rectified, there is a report before the Court, which is the prescription under sub-sections (2) and (8) to Section 173 Cr.P.C. and cognizance of the Court of the report is not one of the prescription in the said provision and, therefore, the claim of the petitioner that cognizance having not been taken within the time prescribed u/s

167 (2), he would be entitled for default bail is an argument, which is not only too far fetched, but also devoid of merits and acceptance. Therefore, the contention of the petitioner that the report filed pursuant to further investigation is a defective report, which has been returned to the investigating agency and, therefore, there is no report in the eye of law in and by which the accused could be fastened with the crime and, therefore, in the absence of cognizance being taken, the accused is entitled to default bail, is too preposterous an argument to be accepted.

38. In the case on hand, the initial report having been filed on 24.5.19, which has been taken cognizance of leading to further investigation u/s 173 (8) Cr.P.C. and filing of supplementary report, which merges with the initial report, once the mistakes stood rectified, would not grant any benefit to the petitioner, who has been arrested pursuant to the filing of the final report by the police on 24.5.19 and the supplementary report filed on 22.2.21 subsequent to collection of further oral and documentary evidence leading to the arrest of the petitioner on 5.1.21 and, therefore, the petitioner could in no way derive any benefit by taking recourse to Section 167 (2) Cr.P.C., as the report has been filed by the investigating agency well within the time prescribed. Therefore, the contention of the petitioner that the supplementary report having not been taken on file by

the Magistrate would bring into play the period of prescription in Section 167 (2) Cr.P.C. does not merit acceptance.

39. Insofar as the contention of the petitioner that forensic reports, which is the basis for implicating the petitioner, having not been filed along with the supplementary report, the prescription u/s 173 (2) Cr.P.C. is not fulfilled and, therefore, the said supplementary report cannot be said to be a comprehensive report to implicate the petitioner also merits negation.

40. In this regard, reference has already been made by this Court to the decision in *Gopinath's case (supra)*, where it has been categorically held that there is no embargo on the investigating agency from producing the documents in addition to the documents already filed before the Court. Reference was drawn to Section 173 (2) Cr.P.C. which mandates that the names of the parties, the nature of information, the names of the persons, who appear to be acquainted with the circumstances of the case, the arrest of the accused and other ancillary details alone are to be prescribed in the police report and not all the documents, which are to be relied on by the investigating agency. Further the articles, which are necessary for the purpose of enabling the Magistrate to pass an order of remand of the accused are relevant and are to be placed at the

time of filing of the police report and not all the report, which are relied on by the prosecution. In the case on hand, the main documentary evidence has been produced before the court in the final report, which was prior to the arrest of the petitioner and the supplementary report of the investigating agency is only an addition to the said final report, already tabled before the Court and, therefore, the non-filing of the forensic analysis report along with the supplementary report cannot be held in detriment against the investigating agency. Therefore, the contention of the petitioner that the non-filing of the forensic analysis report along with the supplementary report would render the supplementary report defective is too far fetched an argument to accept, as accepting the same would defeat the very purpose of selective inclusion of clauses (a) to (h) u/s 173 (2) Cr.P.C. In the above backdrop of the discussion, this Court is of the considered view that the non-filing of the forensic analysis report along with the supplementary report does not vitiate the supplementary report and the supplementary report cannot be said to be defective.

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41. Now, this Court turns its attention back to the report of the respondent based on which submissions were placed by the learned Special Public Prosecutor. The sum and substance of the argument advanced by the learned Special Public Prosecutor is for the assistance, if any, to be rendered by

the State police in the matter of investigation and trial and also with regard to the protection that is necessary to be given to the witnesses and the victims in the present case, as the influence of the accused in the present case would have a detrimental impact on the victims and the witnesses, if their identities are made known to the public. In this background, learned Special Public Prosecutor laid much stress on the decision of the Hon'ble Supreme Court in ***Mahender Chawla & Ors. – Vs – Union of India & Ors. (MANU/SC/1421/2018)***, wherein the Supreme Court had discussed the provisions of the Witness Protection Scheme, 2018 and the necessity for its effective implementation and directions were given to the States for adhering to the various provisions of the said Scheme. In view of the nature and gravity of the offence involved in the present case and also the status and influence of the accused vis-a-vis the victims and the other witnesses in this case, it is submitted that necessarily the provisions of the said scheme has to be strictly adhered to, for which a direction may be given by this Court, lest the chances of the victims and the witnesses being manipulated and terrorised to retract their statements cannot be ruled out.

42. The Hon'ble Supreme Court in *Mahender Chawla's case (supra)* had occasion to deal with the role of the witnesses in the criminal justice delivery system and the trauma the witnesses face during the pre and post trial stage due

to their being witnesses in a case and in the said scenario, directions were issued for formulating a scheme for Witness Protection, as is being done in the other countries. In the aftermath of the said directions, the Government had formulated the Witness Protection Scheme, 2018, which has been extracted and dealt with in-depth in the aforesaid order and for better clarity, the relevant portions of the order, which would be just and necessary for passing orders in this case, are quoted hereunder :-

"2. Thus, witnesses are important players in the judicial system, who help the judges in arriving at correct factual findings. The instrument of evidence is the medium through which facts, either disputed or required to be proved, are effectively conveyed to the courts. This evidence in the form of documentary and oral is given by the witnesses. A witness may be a partisan or interested witness, i.e., a witness who is in a near relation with the victim of crime or is concerned with conviction of the accused person. Even his testimony is relevant, though, stricter scrutiny is required while adjudging the credence of such a victim. However, apart from these witnesses or the witnesses who may themselves be the victims, other witnesses may not have any personal interest in the outcome of a case. They still help the judicial system. In the words of Whittaker Chambers, a witness is "a man whose life and faith are so completely one that when the challenge comes to step out and testify for his faith, he does so, disregarding all risks, accepting all consequences."

3. *The importance of the witness, particularly in a criminal trial is highlighted in a book in the following manner:*

In search of truth, he plays that sacred role of the sun, which eliminates the darkness of ignorance and illuminates the face of justice, encircled by devils of humanity and compassion.

xxx xxx xxx

The value of witnesses can't be denied, keeping in view the dependency of the criminal proceedings on the testimonies and cooperation of witnesses in all the stages of the proceedings, especially in those cases where the prosecution has to establish the guilt with absolute certainty via oral cross-examination of witnesses in hearings open to the world at large. In such cases, the testimony of a witness, even if not as an eye witness, may prove to be crucial in determining the circumstances in which the crime might have been committed....

Notwithstanding the same, the conditions of witnesses in Indian Legal System can be termed as 'pathetic'. There are many threats faced by the witnesses at various stages of an investigation and then during the trial of a case. Apart from facing life threatening intimidation to himself and to his relatives, he may have to face the trauma of attending the court regularly. Because of the lack of Witness Protection Programme in India and the treatment that is meted out to them, there is a tendency of reluctance in coming forward and making statement during the investigation and/or testify in courts. These witnesses neither have any legal remedy nor do they get suitably treated.

The present legal system takes witnesses completely for granted. They are summoned to court regardless of their financial and personal conditions. Many times they are made to appear long after the incident of the alleged crime, which significantly hampers their ability to recall necessary details at the time of actual crime. They are not even suitably remunerated for the loss of time and the expenditure towards conveyance etc.

5. It hardly needs to be emphasised that one of the main reasons for witnesses to turn hostile is that they are not accorded appropriate protection by the State. It is a harsh reality, particularly, in those cases where the Accused persons/criminals are tried for heinous offences, or where the Accused persons are influential persons or in a dominating position that they make attempts to terrorize or intimidate the witnesses because of which these witnesses either avoid coming to courts or refrain from deposing truthfully. This unfortunate situation prevails because of the reason that the State has not undertaken any protective measure to ensure the safety of these witnesses, commonly known as 'witness protection'.

44. On the analysis of various cases, the following reasons can be discerned which make witnesses retracting their statements before the court and turning hostile:

- (i) Threat/Intimidation.*
- (ii) Inducement by various means.*
- (iii) Use of muscle and money power by the Accused.*
- (iv) Use of stock witnesses.*

- (v) *Protracted trials.*
- (vi) *Hassles faced by the witnesses during investigation and trial.*
- (vii) *Non-existence of any clear-cut legislation to check hostility of witness.*

45. Threat and intimidation has been one of the major causes for the hostility of witnesses. Bentham said: "witnesses are the eyes and ears of justice". When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is for this reason there has been a lot of discussion on witness protection and from various quarters demand is made for the State to play a definite role in coming out with witness protection programme, at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. A stern and emphatic message to this effect was given in Zahira Habibullah case [Zahira Habibullah Sheikh (5) v. State of Gujarat, MANU/SC/1344/2006 : (2006) 3 SCC 374; (2006) 2 SCC (Cri.) 8] as well.

46. Justifying the measures to be taken for witness protection to enable the witnesses to depose truthfully and without fear, Justice Malimath Committee Report on Reforms of Criminal Justice System, 2003 has remarked as under:

11.3. Another major problem is about safety of witnesses and their family members who face danger at different stages. They are often threatened and the seriousness of the threat depends upon the type of the case and the background of the Accused and his family. Many times crucial witnesses are threatened or injured prior to their testifying in the court. If the witness is still not amenable he may even be murdered. In such situations the witness will not come forward to give evidence unless he is assured of protection or is guaranteed anonymity of some form of physical disguise. ... Time has come for a comprehensive law being enacted for protection of the witness and members of his family.

9. Since this case relates to the issue of protection of witnesses, we are eschewing any further discussion on other miseries faced by the witnesses, though we emphasise the need for addressing other problems as well, at appropriate level, if the criminal justice system in this country is to succeed. Adverting to the importance of witness protection, we may mention that it has been highlighted and emphasised by the courts in India, including this Court, time and again. Issues of protection of identity of witnesses and witness protection programme have been raised in number of judgments like NHRC v. State of Gujarat 2003 (9) SCALE 329, People's Union for Civil Liberties (PUCL) v. Union of India MANU/SC/1036/2003 : 2003 (10) SCALE 967, Zahira v. State of Gujarat MANU/SC/0322/2004 : (2004) 4 SCC 158, Sakshi v. Union of India MANU/SC/0523/2004 : (2004)

5 SCC 518 and *Zahira Habibulla Sheikh v. Gujarat*
MANU/SC/0322/2004 : 2006 (3) SCALE 967.

10. In *People's Union for Civil Liberties*, wherein constitutionality some of the provisions of the Prevention of Terrorism Act (POTA), 2002, were challenged, the Court carefully analyzed Section 30 of the Act, which had mentioned about the protection of witnesses. This provision provides for the proceedings to be held in camera in order to keep the identity of witness confidential. The Court felt the reality that very often witnesses do not come forward to testify before court in serious crimes. Witnesses are not ready to give evidence mainly because their lives might be in danger. In the court's view, Section 30 of the Act maintains a balance between the rights of a witness, the rights of an Accused and the interest of the public. However, secrecy of the witness is an exception and not a Rule under this section.

12. In some other judgments, this Court gave some more guidelines, in the following manner:

a) Sections 354 and 377 of the Indian Penal Code should be tried and inquired on the same principles mentioned Under Sub-section (2) of Section 327 Code of Criminal Procedure.

b) While holding the trial of rape or child sex abuse, some sort of arrangements like a screen or something like it may be used so as to make sure that victim or witnesses (who are equally vulnerable and need protection like the victim) do not confront the Accused;

c) Questions raised during the cross-examination by the counsel of the Accused that are directly related to and be reminiscent to the victim or the witnesses of the incident should be written down and given to the presiding officer of the court in advance. The presiding officer must put forth those questions to the victim or witness in simple and clear language and as far as possible without making her uncomfortable;

13. It hardly needs to be emphasised that failure to hear material witness is denial of fair trial. The practice, however, to give protection to the witnesses is based on ad hocism, i.e., on case to case basis. The Courts have also, in the process, adopted different means to ensure witness protection, which can be stated in brief detail:

(a) Publication of evidence of the witness only during the course of trial and not after [Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Anr.; [MANU/SC/0044/1966 : 1966 (3) SCR 744].

(b) Re-trial allowed due to apprehension and threat to the life of witness [Sunil Kumar Pal v. Phota Sheikh and Ors.; MANU/SC/0129/1984 : AIR 1984 SC 1591]

(c) Necessity of anonymity for victims in cases of rape [Delhi Domestic Working Women's Forum v. Union of India; MANU/SC/0519/1995 : (1995) 1 SCC 14]]

(d) Discouraging the practice of obtaining adjournments in cases when witness is present and Accused is absent. [State of U.P. v. Shambhu Nath Singh; MANU/SC/0221/2001 : (2001) 4 SCC 667]

(e) Making threatening of witnesses as a ground for cancellation of bail [Ram Govind Upadhyay v. Sudarshan Singh; MANU/SC/0203/2002 : II (2002) SLT 587]

(f) Cross-examination by video conferencing -- This is one of the innovative methods devised, which is specifically helpful to the victims of sexual crimes, particularly, child witnesses who are victims of crime as well.

19. When the matter was again listed on August 28, 2017, Mr. K.K. Venugopal, learned Attorney General appeared on behalf of the Union of India, along with Ms. Pinky Anand, Additional Solicitor General. It was pointed out that since this Court was primarily dealing with the issue pertaining to witness protection programme, it would be appropriate that other States are also impleaded inasmuch as the issue had PAN India significant and witness protection programme should be available in all the States. The Petitioners were, accordingly, directed to implead other States as well and they be served with the notice of this petition. This is how the coverage of the petition has been extended to the entire country, encompassing all the States and Union Territories.

21. Mr. Venugopal, learned Attorney General for India was also requested to give suggestions in the form of a draft scheme. It is heartening to note that Union of India did not take this petition as adversarial and understood the necessity of having such a scheme in the larger public interest. With this sensitivity in mind, Ministry of Home Affairs have prepared a draft witness

protection scheme, 2018 and placed the same on record of this case. This was noted in the orders dated April 13, 2018 and the State Governments as well as Union Territories, who had already been supplied with the copy of the draft scheme by the Ministry itself, were asked to furnish their comments by May 31, 2018 to the Ministry of Home Affairs.

25. At this stage, we reproduce Witness Protection Scheme, 2018 as filed, in its entirety:

Witness Protection Scheme, 2018

PREFACE

Aims & Objective:

The ability of a witness to give testimony in a judicial setting or to cooperate with law enforcement and investigations without fear of intimidation or reprisal is essential in maintaining the Rule of law. The objective of this Scheme is to ensure that the investigation, prosecution and trial of criminal offences is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violent or other criminal recrimination. It aims to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance to criminal law enforcement agencies and overall administration of Justice. Witnesses need to be given the confidence to come forward to assist law enforcement and Judicial Authorities with full assurance of safety. It is aimed to identify series of measures that may be adopted to safeguard

witnesses and their family members from intimidation and threats against their lives, reputation and property.

29. As pointed out above, in Sakshi's case, the Court had insisted about the need to come up with a legislation for the protection of witnesses. It had even requested the Law Commission to examine certain aspects, which resulted to 172nd review of rape laws by the Law Commission. However, the Court specifically rejected the suggestion of the Law Commission regarding examination of vulnerable witnesses in the absence of Accused. Having regard to the provisions of Section 273 of the Code of Criminal Procedure, which is based on the tenets of principle of natural justice, that the witness must be examined in the presence of the Accused, such a principle cannot be sacrificed in trials and in inquiries regarding sexual offences. In such a scenario examination of these witnesses through video conferencing provides the solution which balances the interest of the Accused as well as vulnerable witnesses.

30. Part II(7)(L) of the Witness Protection Scheme, 2018 provides for usage of specially designed court room having special arrangements like live links, one way mirrors, and screens apart from separate passages for witnesses and Accused with the option to modify the image of the face of the witness and to modify the audio feed of the witness's voice, so that he/she is not identified.

33. In fact, the Supreme Court too, in *The State of Maharashtra v. Bandu @ Daulat* (Order dt. 24.20.2017 in Crl. Appeal No. 1820/2017) has directed as follows:

10. ... there should be special centres for examination of vulnerable witnesses in criminal cases in the interest of conducive environment in Court so as to encourage a vulnerable victim to make a statement. Such centres ought to be set up with all necessary safeguards. Our attention has been drawn to guidelines issued by the Delhi High Court for recording evidence of vulnerable witnesses in criminal matters and also the fact that four special centres have been set up at Delhi for the purpose.

* * * * *

12. The directions of Delhi High Court and setting up of special centres for vulnerable witnesses as noted above are consistent with the decision of this Court and supplement the same. We are of the view that all High Courts can adopt such guidelines if the same have not yet been adopted with such modifications as may be deemed necessary. Setting up of one center for vulnerable witnesses may be perhaps required almost in every district in the country. All the High Courts may take appropriate steps in this direction in due course in phases. At least two such centres in the jurisdiction of each High Court may be set up within three months from today. Thereafter, more such centres may be set up as per decision of the High Courts.

34. One thing which emerges from the aforesaid discussion is that there is a paramount need to have witness protection

regime, in a statutory form, which all the stakeholders and all the players in the criminal justice system concede. At the same time no such legislation has been brought about. These are the considerations which had influenced this Court to have a holistic regime of witness protection which should be considered as law Under Article 141 of the Constitution till a suitable law is framed.

35. We, accordingly, direct that:

(i) This Court has given its imprimatur to the Scheme prepared by Respondent No. 1 which is approved hereby. It comes into effect forthwith.

(ii) The Union of India as well as States and Union Territories shall enforce the Witness Protection Scheme, 2018 in letter and spirit.

(iii) It shall be the 'law' Under Article 141/142 of the Constitution, till the enactment of suitable Parliamentary and/or State Legislations on the subject.

(iv) In line with the aforesaid provisions contained in the Scheme, in all the district courts in India, vulnerable witness deposition complexes shall be set up by the States and Union Territories. This should be achieved within a period of one year, i.e., by the end of the year 2019. The Central Government should also support this endeavour of the States/Union Territories by helping them financially and otherwise."

43. The above decision of the Hon'ble Supreme Court has threadbare dissected the various difficulties faced by the witnesses in deposing before a

court of law and the challenges they face not only prior to deposition, but also post deposition, where even their life is put at stake at the hands of unscrupulous persons.

44. Learned Special Public Prosecutor, highlighting the above aspects, which had weighed with the Hon'ble Supreme Court in issuing series of directions to the Governments, both at the Centre and in the States, the need to provide adequate safeguards not only for the witnesses, but also for the victims, who are also witnesses in their case from being threatened and intimidated from giving evidence against the accused, submitted that the case on hand, being one of such a nature and the gravity of the offence committed, also being of monstrous proportion, by persons, who had terrorised the victims by their acts in committing such indecent and inhuman acts, this Court, not only to uphold justice, but equally with a view to safeguarding the interest of the victims and the witnesses, who would be deposing in the trial, may issue directions to the State in consonance with the directions issued by the Hon'ble Supreme Court pertaining to the Witness Protection Scheme, 2018, formulated for this purpose, so that the safety and security of the victims and the witnesses are not jeopardized and that they could give evidence without fear or favour against the accused persons.

45. It is also further submitted by the learned Special Public Prosecutor that this Court may issue necessary direction to the State to provide necessary assistance to the respondent, if required and sought for, for effectively prosecuting the case and also protecting the witnesses and the victims.

46. This Court has taken into consideration the submissions advanced by the learned Special Public Prosecutor on the need for safeguarding the security and safety of the victims and the witnesses and on the above submission, sought for necessary details from the learned Public Prosecutor appearing for the State as to the assistance that the State is ready and willing to provide in the matter of providing security to the witnesses and the victims and also the conduct of trial and prosecution of the accused, if sought for by the respondent, to which the learned Public Prosecutor, appearing for the State submitted that if any assistance is required at any stage of investigation and also at any stage during the trial, the Government would provide all the necessary assistance sought for. The learned Public Prosecutor for the State also submitted that for the purpose of assisting the respondent in the conduct of investigation, the Government, on its own volition, has decided to assign a Special Officer in the cadre of Superintendent of Police, who is well versed in the specific type of case, to assist the respondent CBI in conducting the trial and also for any other matter

connected with the trial. It is further submitted by the learned Public Prosecutor for the State that all the infrastructure that are necessary would be provided by the State for implementing the Witness Protection Scheme, 2018.

47. Learned Public Prosecutor for the State after getting further instructions also informed the Court that Ms.J.Mutharasi, Superintendent of Police, CBCID – Unit-2, would be deputed by the Government for the purpose of assisting the respondent CBI in prosecuting the trial against the accused. The statement of the Public Prosecutor appearing for the State is recorded.

48. It was also brought to the notice of this Court by the learned Special Public Prosecutor for the respondent that initially the then investigating officer had divulged the identity of the victims over the media, which resulted in the imposition of a cost of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) by this Court, vide order dated 15.03.2019 made in W.P. (MD) No.6238/2019, payable to the victim by the State. It is submitted by the learned Public Prosecutor for the State that the cost imposed has been paid to the victim. Though the victim stands compensated, however, this Court is of the view that the said cost imposed on the said persons is not commensurate with the gravity of the offence committed by the concerned persons. The disclosure of the names of the victims

by the investigating team over the media, has put the fate of the said victims in jeopardy and the violation is of such a magnitude that imposition of cost alone would not be sufficient. Even in the order passed by this Court in W.P. (MD) No.6238/19, this Court had directed the State to initiate disciplinary action against the erring persons. This Court had, even at the earlier instance, highlighted the necessity for action to be taken against such of those officials, who spell out the names of the victim over the media, in utter disregard to the directions of this Court and also the Witness Protection Scheme, and the need for dealing with such of those persons with iron hands so that recurrence of such incidents do not take place. In such a backdrop, this Court is of the considered opinion that the persons, who were investigating the case then and who had committed such a lapse of divulging the names of the victims to the media should be dealt with departmentally by initiating proceedings against them. To the said view of the Court, learned Public Prosecutor appearing for the State, on instructions, fairly conceded that the Government will take suitable departmental action against the persons, who were part of the investigating team, who were responsible for the said lapse. Accordingly, while recording the stand of the Government, as aforesaid, this Court, as undertaken by the State, directs initiation of appropriate departmental action against the said officials who were involved in divulging the names of the victim to the media.

49. In view of the foregoing discussions, this criminal original petition is dismissed.

50. Further, on the basis of the directions issued by the Hon'ble Supreme Court in *Mahender Chawla's case (supra)* and also with a view to ensure that the safety and security of the victims, who would be witnesses in the trial as also the other witnesses, who would be deposing during the trial, this Court, in the interest of justice, issues the following directions :-

i) *As undertaken by the respondent/CBI, all earnest efforts be made to commence the trial by the 1st week of September, 2021 and to that extent the respondent/CBI shall take all earnest efforts to apprehend all the persons, if not already apprehended and file necessary report before the commencement of the trial.*

ii) *It is open to the respondents to file necessary application seeking identity protection of the witnesses before the Competent Authority, who, on receipt of the same, shall pass appropriate order in terms with Para-III of the Scheme.*

iii) *The trial court shall, during the course of hearing of such application, shall ensure that the name of the witness*

is not revealed to any other person, which is likely to lead to the identification of the witness.

iv) The Witness Protection Measures as spelt out in in Part-II, Part-III, Part-IV and Part-V of the Witness Protection Scheme, 2018, shall be strictly adhered to once the competent authority has passed an order protecting the identity of the witness.

v) The State Government also shall ensure that the types of protection measures, as envisaged under Clause-7 of the Witness Protection Scheme, is strictly adhered to, so that the identity of the witness would be closely guarded pre-trial and post-trial so that the safety and security of the victims and witnesses would stand protected.

vi) The State Government shall provide the necessary funds for implementing the witness protection programme pursuant to the Witness Protection Order passed by the competent authority.

vii) The State shall also take all necessary steps for providing Live Link for taking deposition of the victims and the witnesses for the purposes of interacting with the competent authority as also for the purpose of deposing before the Court.

viii) The Forensic Lab, which comes under the control of the State Government, shall submit the necessary reports relating to the items, which have been sent by the respondent for analysis, to the respondent/CBI within a

period of two weeks from the date of receipt of a copy of this order. The learned Public Prosecutor appearing for the State shall ensure that the reports are dispatched by the Forensic Lab, within the time frame as given above.

ix) In view of the sensitivity of the case, the trial court shall take all necessary steps to conduct "In Camera Proceedings", wherever necessary as provided under Clause 2 (f) of the Witness Protection Scheme.

x) As informed by the learned Public Prosecutor for the State, the State shall issue necessary notification nominating Ms.J.Mutharasi, Superintendent of Police, CBCID – Unit-2, for the purpose of assisting the respondent CBI in prosecuting the case before the trial court.

xi) The Government shall initiate appropriate departmental action forthwith against the then Superintendent of Police and also the other police personnel, who were involved in divulging the names of the victims and the accused to the media.

xii) The learned Sessions Judge, Mahalir Neethi Mandram, Coimbatore, is directed to conduct the trial on day-to-day basis and complete the trial within a period of six months from the date of commencement of the trial, as undertaken by the respondent/CBI.

xiii) The Public Prosecutor appointed by the CBI before the trial court for the purpose of conducting the trial before the Sessions Judge, Mahalir Neethimandram, Coimbatore,

shall take the assistance of Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases, High Court, Madras, for effective conduct of the trial in accordance with. The Public Prosecutor appointed for conducting the trial shall also keep the Special Public Prosecutor for CBI Cases, High Court, Madras, informed of the day-to-day affairs in the conduct of the trial so that the Special Public Prosecutor for CBI Cases, High Court, Madras, can give his rich experience in the proper conduct of the case for ensuring fair delivery of justice to all the parties concerned.

51. Before parting with this case, this Court would like to recapitulate the words and thoughts of the Father of our Nation, Mahatma Gandhiji, who had lamented that independence of our country would stand fully achieved only when a day comes when the women folk are able to go outside without any fear during the night. However, the pathetic situation that has unfolded since independence is that the women folk are not able to move out without fear even during the day time as their security and safety are at peril at the hands of anti-social elements, who prey on the women folk to satisfy their lust as is reflected in this case, thereby rendering the independence attained through blood sweating of our freedom fighters an effort in vain. The expeditious and judicious disposal of cases of this nature by the courts alone could infuse a semblance of safety in

the minds of the common man that the justice delivery system will step in to fill up the lacunae to not only render speedy justice but also see to it that the persons, who perpetrate heinous crimes are dealt with iron hands.

11.08.2021

Index : Yes / No

Internet : Yes / No

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To

1. Central Bureau of Investigation
SPI Crime Branch, Beasant Nagar
Chennai.
2. The Spl. Public Prosecutor for CBI Cases
High Court, Madras.
3. The Public Prosecutor
High Court
Madras.
4. The Chief Secretary to Government
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai.
5. The Home Secretary
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai.
6. The Director General of Police
Chennai.



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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
CRL. O.P. NO. 12934 OF 2021**

**Pronounced on
11.08.2021**

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