

01.08.2022.
14.
Ct.No.28
as/PA
(Rejected)

C.R.M. (DB) 2318 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Special Case No.25 of 2022 arising out of Bhadreswar P.S. Case No.69 of 2022 dated 17.02.2022 under Sections 420/406/409/467/468/471/477A/34 of the Indian Penal Code.

In the matter of : Soumitra Mridha.

... Petitioner.

Mr. Soubhik Mitter,
Ms. Rajnandini Das.

...for the Petitioner.

Mr. Rudradipta Nandy, Id. A.P.P.,
Mrs. Sonali Das.

...for the State.

Heard the learned Advocates appearing for the parties.

Petitioner has prayed for statutory bail. He submits he was produced on 11.3.2022 and on the 91st day i.e. 9.6.2022, he prayed for such relief as police report had not been submitted. Such prayer was made before the Special Court as well as the Court of the Additional Chief Judicial Magistrate, Chandannagar. His bail prayer, however, came to be rejected on the ground that police report had already been filed before the Additional Chief Judicial Magistrate, Chandannagar.

Mr. Mitter contends police report had not been filed before the Special Court who was empowered to take cognizance. Order dated 9.6.2022 also does not show that the police report had been placed before the Magistrate concerned. Merely submitting the police report in the

custody of the police officer attached to the court would not disentitle his client from statutory bail.

Learned Additional Public Prosecutor submits that the charge sheet was drawn up on 8.6.2022 and had been forwarded to the General Records Office (GRO) attached to the court of the Magistrate on that day itself. From order dated 9.6.2022 it appears that the Magistrate took notice of the said police report on 9.6.2022. Hence, investigation was complete by the time petitioner had prayed for statutory bail.

We have considered the rival submissions of the parties. Facts admitted by the parties are as follows;

Petitioner was arrested on 11.3.2022 and had prayed for statutory bail on the 91st day i.e. 9th June, 2022. (Moot question which falls for decision is whether investigation was completed or not) Sub Section (2) of Section 167 of the Code of Criminal Procedure reads as follows:-

“(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 –

- (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 doe 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.”*

A plain reading of the aforesaid provision would show the power to remand an accused during investigation is restricted to 90 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 and 60 days in other cases.

The present case, inter alia, relates to offences punishable under Sections 409/467 of the Indian Penal Code which are punishable upto life imprisonment. Accordingly, investigation is required to be concluded within 90 days, failing which the accused is entitled to statutory bail.

Moot question which, therefore, arises is whether the investigation was concluded within 90 days.

Materials on record would show that the investigating agency drew up the police report on 8.6.2022 and had forwarded the same to the jurisdictional Magistrate on the same date. It was also received by the officer-in-charge of the General Records Office (GRO) attached to the Magistrate on

8.6.2022. On the next day, the Magistrate commented as follows:-

“It appears from the copy of documents with this part record that final report has been submitted u/s.409 IPC along with other penal sections.”

In the light of the aforesaid observation, the Magistrate concluded that investigation is complete and the accused was not entitled to statutory bail.

The word ‘*investigation*’ has been defined in **H. N. Rishbud & Inder Singh Vs. State of Delhi**¹ as follows:-

“5. ... Thus, under the Code investigation consists generally of the following steps:

(1) Proceeding to the spot,

(2) Ascertainment of the facts and circumstances of the case,

(3) Discovery and arrest of the suspected offender,

(4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and

(5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173.

From the aforesaid definition, it appears that filing of a charge sheet is the last step in the process of investigation. Records placed before us show that the police officer took necessary steps to file the charge sheet in the General Records Office (GRO) of the Magistrate on 8.6.2022. Such

¹ AIR 1955 SC 196

exercise had been undertaken after 5.00 P.M. when the court had risen for the day. On the 91st day, filing of charge sheet was brought to the notice of the learned Magistrate. Taking note of such fact Magistrate was pleased to refuse statutory bail to the accused. As the police officer had taken necessary steps to file the charge sheet in the department attached to the office of the Magistrate on 8.6.2022 and such fact was brought to the notice of the Magistrate on the very day on which the petitioner had prayed for statutory bail, we are of the view investigation in the case had concluded prior to his applying for statutory bail and he was rightly denied such relief. It is true the police report was filed before the jurisdictional Magistrate and not the Special Court who was empowered to take cognizance of the offence punishable under Section 409 of the Indian Penal Code. However, it may not be out of place to note upon his arrest petitioner had been produced before the said Magistrate and had been remanded by him till the case upon submission of police report was sent to Special Court for taking cognizance.

In ***Serious Fraud Investigation Office vs. Rahul Modi And Others***² the Apex Court held in the event investigation has concluded and police report has been filed, failure to take cognizance would not be a ground to entitle the accused to statutory bail.

² 2022 SCC OnLine SC 153

In the light of the aforesaid facts where investigation appears to have been concluded and the police report forwarded to the jurisdictional Magistrate on 8.6.2022 which came to the notice of the Magistrate on the day on which the accused prayed for statutory bail i.e. on 9.6.2022, we are of the opinion the investigation had concluded at the time when he had prayed for statutory bail and, therefore, the denial of his prayer cannot be said to be contrary to law.

Hence, we are not inclined to grant statutory bail to the petitioner.

Accordingly, the prayer for bail of the petitioner is rejected.

We make it clear that the petitioner has restricted his submissions to grant of statutory bail and not on merits.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)