

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.920 OF 2022**

Sujata Chennakeshavallu Ramgiri and Anr. ... Applicants
versus
The State of Maharashtra ... Respondents

Ms. Sana Raees Khan i/by Hulyalkar and Associate, for Applicant.
Mr. R.M.Pethe, AGP, for Applicant.

CORAM: N.J.JAMADAR, J.

**DATE : 13th MAY, 2022
(VACATION COURT)**

P.C.

1. The Applicants who are arraigned in C.R.No.258 of 2021 for the offences punishable under Sections 420, 406 and 506 of the Indian Penal Code, 1860 ('the Penal Code') and Sections 3 and 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, have preferred this Application for releasing them on bail.

2. The Applicants claimed that they were arrested on 20th October, 2021. The Investigating Officer filed a charge-sheet on 17th December, 2021 for the offences punishable under Sections 420, 406 and 506 of the Indian Penal Code, 1860 ('the Penal Code') and Sections 3 and 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. However, the jurisdictional Magistrate has not yet taken cognizance of the said offences. Resultantly, according to

the Applicants, they are in illegal custody.

3. The Applicants had, thus, preferred an Application before the learned Magistrate for default bail under Section 167 (2) of the Code of Criminal Procedure, 1973 ('the Code'). However, the learned Magistrate by an order dated 2nd February, 2022 rejected the Application. The Applicants carried the matter in revision being Criminal Revision No.63 of 2022, before the learned Additional Sessions Judge, Pune. The learned Additional Sessions Judge also dismissed the Revision Application. Being aggrieved, the Applicants have approached this Court.

4. I have heard Ms. Sana Khan, learned Counsel for the Applicants and Mr. Pethe, learned APP, for the State.

5. Ms. Khan submitted that though, in the case at hand, the Investigating Officer did file the charge-sheet within the period of 60 days, yet there is non-compliance with the statutory requirement of taking cognizance of the offences within the stipulated period, by an order passed by the jurisdictional Magistrate. Ms. Khan invited the attention of this Court to the endorsement on the first page of the charge-sheet in Regular Criminal Case No.1159 of 2021 arising out of C.R.No.258 of 2021. Laying emphasis on the fact that the said stamped endorsement of the issuance of process against the

accused, does not bear the signature of the learned Magistrate, Ms. Khan would urge that no cognizance of the offences can be said to have been taken by the learned Magistrate. Since cognizance has not been taken, recourse to Section 309 of the Code, cannot be legitimately made. Thus, according to Ms. Khan, the continued detention of the Applicants without lawful cognizance of the offences, is plainly illegal. Therefore, the Applicants deserve to be released on bail.

6. Mr. Pethe, learned APP would urge that the learned Magistrate and the learned Additional Sessions Judge, rightly did not accede to the aforesaid submission on behalf of the Applicants. Since the charge-sheet has already been lodged within the statutory period, the Applicants/accused were not entitled to claim default bail under Section 167(2) of the Code. The fact that the endorsement of the issuance of process, does not bear the signature of the learned Magistrate, was not fatal, submitted Mr. Pethe.

7. Having considered the submissions in the context of the incontrovertible fact that the charge-sheet has been lodged within the stipulated period of 60 days, I am of the view that the learned Magistrate and the learned Additional Sessions Judge, committed no

error in rejecting the prayer of the Applicants for default bail.

8. The thrust of the submission on behalf of the Applicants was that the learned Magistrate ought to have taken cognizance of the offences within the statutory period and the mere filing of the charge-sheet within the said period of 60 days, was of no avail.

9. I am afraid to accede to this submission. It is not the requirement in law that the cognizance of the offences must also be taken post filing of the charge-sheet, within the period stipulated under Section 167(2) of the Code. The said provision stipulates the period within which the investigation must be completed, depending upon the punishment the offence entails, and provides that the accused gets an indefeasible right to be released on bail if the investigation is not completed within the stipulated period.

10. The stage of taking cognizance is distinct from that of completion of investigation and filing of the charge-sheet. The question is no longer *res integra*. A three Judge bench of the Supreme Court in the case of Suresh Kumar Bhikamchand Jain V/s. State of Maharashtra and Anr.¹ had an occasion to consider the question in the light of the challenge to the continued detention of the Petitioner therein, sans the cognizance of the offences, for want

¹ (2013) 3 SCC 77

of sanction for prosecution, though the charge-sheet was lodged within the statutory period. The Supreme Court repelled the challenge holding, inter alia, that once the charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. Filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a) (ii) of the Code. Whether the cognizance is taken or not is of no significance, so far as Section 167 of the Code is concerned.

11. The observations of the Supreme Court in paragraphs 17, 18 and 19 are material and hence, extracted below :

“17. In our view, grant of sanction is nowhere contemplated under Section 167 CrPC. What the said section contemplates is the completion of investigation in respect of different types of cases within a stipulated period and the right of an accused to be released on bail on the failure of the investigating authorities to do so. The scheme of the provisions relating to remand of an accused, first during the stage of investigation and, thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within 60 days and offences punishable with death, imprisonment for life or imprisonment for a terms of not less than 10 years, within 90 days. In the event, the investigation is not completed by the investigating authorities, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. Accordingly, if on either the 61st day or the 91st day, an accused makes an Application for being

released on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. The said provision has been considered and interpreted in various cases, such as the ones referred to hereinbefore. Both the decisions in Natabar Parida case² and in Sanjay Dutt case³ were instances where the charge sheet was not filed within the period stipulated in Section 167(2) CrPC and an application having been made for grant of bail prior to the filing of the charge sheet, this Court held that the accused enjoyed an indefeasible right to grant of bail, if such an application was made before the filing of the charge sheet, but once the charge sheet was filed, such right came to an end and the accused would be entitled to pray for regular bail on merits.

18. None of the said cases detract from the position that once a charge sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated above, in our view, the filing of charge sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether the cognizance is taken or not is not material as far as Section 167 CrPC is concerned. The right which may have accrued to the Petitioner, had charge sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 CrPC, it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167 CrPC. The scheme of CrPC is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During

² Natabar parida V/s. State of Orissa (1975) 2 SCC 220

³ Sanjay Dutt V/s. State (1994) 5 SCC 410

the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) CrPC, the Magistrate is vested with authority to remain the accused to custody, both police custody and/or judicial custody for 15 days at a time, upto a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the Court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 CrPC. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court.

19. Having regard to the above, we have no hesitation in holding that notwithstanding the fact that the prosecution had not been able to obtain sanction to prosecute the accused, the accused was not entitled to grant of statutory bail since the charge-sheet had been filed well within the period contemplated under Section 167(2)(a)(ii) CrPC. Sanction is an enabling provision to prosecute, which is totally separate from the concept of investigation which is concluded by the filing of the charge-sheet. The two are on separate footings. In that view of the matter, the special leave petition deserves to be and is hereby dismissed."

12. In view of the aforesaid exposition of law, the Application

for default bail on the ground that the learned Magistrate had not taken cognizance of the offences, though the charge-sheet had been lodged within the statutory period, does not deserve countenance. Hence, the following order :

ORDER

The Application stands rejected.

(N.J.JAMADAR, J.)