

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213

CRM-M-16445-2022

Reserved on : 02.05.2022

Pronounced on : 19.05.2022

Lovish Mahajan

.....Petitioner

Versus

State of U.T., Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. A.D.S. Sukhija, Advocate,
for the petitioner.

Ms. Simsi Dhir Malhotra, Addl. Public Prosecutor,
for the U.T., Chandigarh.

Mr. M.K. Arya, Advocate,
for the complainant.

VINOD S. BHARDWAJ, J.

The instant petition has been filed under Section 439 of the Code of Criminal Procedure (hereinafter referred to as “Cr.P.C.”) with a prayer seeking regular bail to the petitioner in case bearing FIR No.163 dated 15.09.2021 under Section 420 of the Indian Penal Code (hereinafter referred to as “IPC”) and Section 24 of the Immigration Act, registered at Police Station Sector 36, Chandigarh, District Chandigarh.

Briefly, the facts of the prosecution case as they transpire from the record are that a complaint was received from one Gurcharan Singh against one Pooja Mahajan, Managing Director of I-Abroad, Education &

Immigration Services Pvt. Ltd., Sector 42-C, Chandigarh (hereinafter referred to as “the Company”) alleging that the said accused Pooja Mahajan had cheated the complainant through her firm by alluring the complainant and receiving money from him fraudulently on the pretext of sending his son Malkit Singh to Canada. It is alleged that the owner of the Company, Pooja Mahajan had received a sum of ₹6 lakh from the complainant on various occasions. Out of the said amount, ₹4.5 lakh was received by the accused on 09.10.2020 and the said amount was deposited in the ICICI Bank account. An additional sum of ₹50,000/- was deposited in their said bank account number on 13.10.2020 and certain other amounts were also deposited on various occasions to a total sum of ₹6 lakh. However, despite receipt of the entire amount, the owner of the Company did not obtain the study Visa for the son of the complainant for Canada and that despite an agreement to refund the money in the absence of the son of the petitioner in not securing Visa, the money in question was not refunded. It is alleged that one Raj was also a partner in the same Company and that when the complainant insisted upon either securing a Visa for his son or to return the money, the complainant was threatened that the money shall never be returned and that the complainant may do whatever that he may wish to do. It is also alleged that two more persons accompanied Pooja Mahajan and that the name of one of them was Raj.

Learned counsel appearing on behalf of the petitioner submits that the petitioner is not named in the FIR and is not alleged to have ever met or influenced the complainant. No assurance was ever extended by the petitioner to the complainant to advance any amount and furthermore, no assurance was also made by the petitioner that any Visa for the son of the

complainant shall be secured. There is also no delivery of any money to the petitioner by the complainant. Evidently, the petitioner has been arraigned as an accused on the basis of disclosure statement made by Pooja Mahajan, the main accused, wife of the petitioner with whom the petitioner has an estranged relationship since the year 2020. He further submits that the petitioner is not the owner or Director of I-Abroad, Education & Immigration Services and has no financial control over the affairs of the Company. He submits that Pooja Mahajan and her brother Vivek Saini were the Directors of the said Company and that the petitioner was never a Director therein. Reliance was placed on the record of the Registrar of Companies (Annexure P-3) to supplement the said submission.

Learned counsel appearing on behalf of the petitioner has further argued that the petitioner was engaged as a Media Anchor with I-Abroad, Education & Immigration Services since 12.04.2019 and an appointment letter in this regard was issued vide IAEI/120419/18 dated 12.04.2019 and that the role of the petitioner was only to advertise the Company and its project file on print media as well as in the social media. The terms & conditions of the said engagement/appointment were specific and contained that the petitioner would not offer any payment structure, charges and expenses for Visa process on the print media and the social media and additionally, the petitioner was not authorized to deal with any sales team or process of the Company. Copy of the Media Anchor Agreement/appointment letter dated 12.04.2019 is attached as Annexure P-4. The relevant clauses thereof are reproduced hereinafter below for the facility of reference:-

“You will have no role in management decision, working of

company, any financial or legal matters of the company; only Directors can take decision for that part.

You will not offer any payment structure, charges or expenses for Visa process on media and you are not authorized to deal with sales team or any process of company.

Directors/Management of I-Abroad, Education & Immigration Services Pvt. Ltd. will be responsible for any dispute/legal or financial matter of company and client will approach only to Directors/Management for such matters. You have no role/liability towards such matters and also you will not interfere in such matters.”

He further argues that the relationship between the petitioner and Pooja Mahajan turned sour and she turned out the services of the petitioner w.e.f. 15.12.2020 and after levelling frivolous allegations against the petitioner started residing separately from the petitioner along with their children. She also started levelling false allegations in the representations submitted by her against the petitioner. A copy of one such representation dated 18.12.2020 (Annexure P-6) is also attached along with the present petition. In the said representation, she had alleged that the petitioner is not performing any function of the Company and he is just an employee. She also filed criminal writ petition bearing No.**CRWP-575-2021** and criminal misc. petition bearing No.**CRM-M-26955-2021** for seeking registration of an FIR against the petitioner. It is submitted that the petitioner being an independent service provider for the Company i.e. I-Abroad, Education & Immigration Services, cannot be held culpably liable for any misrepresentation made by the said Company or for failure on the part of the said Company to perform the obligation undertaken by it or failure to refund the money pursuant to any agreement. He further submits that the entire evidence in the form of original documents between the complainant as well

as the accused Pooja Mahajan, photocopies of the Visas, the electronic devices etc. have already been recovered from Pooja Mahajan. He submits that the petitioner was taken in custody on 23.02.2022 and the I-Card of the Company, Pan Card, ATM Cards and different cheque books/pass-books of the bank accounts etc. have also been recovered. He submits that the name of the petitioner has cropped up on the basis of various transfers/transactions in the savings bank account of the petitioner. It is contended that the said amounts were part of payment of expenses and service charges to be paid to the petitioner for carrying out the media/advertising activities on behalf of the Company. The said reimbursement came also towards the expenses incurred by the petitioner on behalf of the Company, even through his own credit cards for depositing various fees for advertisement, etc. against various invoices and stands duly accounted for. He used his credit cards and payments were made from his account as a matter of good faith and that even today various amounts are due to the petitioner from the said Company that remain unpaid due to estranged relationship of the petitioner with the Director Pooja Mahajan and her brother Vivek Saini. He further submits that the petitioner cannot be held accountable or vicariously liable for any misconduct of Pooja Mahajan and her brother Vivek Saini only for the reason that the petitioner has received charges towards the expenses incurred by him and also his contractual fees for the services offered.

Per contra, learned Additional Public Prosecutor appearing on behalf of the U.T., Chandigarh has opposed the petition and has submitted that the petitioner was married to the Director of the said Company and that he was also involved in the conspiracy as there are multiple transactions in his accounts. It is further submitted that there are as many as 21 complaints

of similar *modus operandi*, wherein the total amount so embezzled is ₹1.5 crores approximately. She further submits that many complaints have been received against the petitioner by name and that in the event bail is granted to the petitioner, there is every likelihood of the petitioner absconding from the process of law. She further contends that economic offences of such magnitude create serious apprehensions in the mind of the society and need to be strictly dealt with as hard earned money of the innocent and gullible persons is embezzled by playing fraud upon them. She, however, could not dispute the fact that the complaints against the petitioner had been filed by Pooja Mahajan and that even proceedings were instituted by Pooja Mahajan against the petitioner for seeking registration of an FIR against him. There is also no denial of the agreement of media management that was executed between the petitioner and the Company. The association of the petitioner in the commission of the offence is being sought to be crystallized on the basis of the banking transactions and movement of finances from the account of the Company to the account of the petitioner. The learned State Counsel, however, could not make any reference to any specific complaint by any victim, against the petitioner wherein the obligation of inducement or receipt of money against any assurance is attributed to the petitioner.

Learned counsel appearing on behalf of the petitioner controverted the same by submitting that the transfer of money *per se* does not make out any offence under Section 420 IPC against the petitioner as there is no allegation that the petitioner was, in any manner, involved in an act of instigating, inducing or alluring the complainant or any other person to give money to the Company and that no assurance was given by the petitioner to the complainant. He contends that the conditions of the

agreement itself specify that the petitioner shall not be responsible for any acts and conducts of the I-Abroad, Education & Immigration Services . It is also argued that the petitioner was earlier granted concession of *interim bail* on a petition filed under Section 438 Cr.P.C. on the basis of similar allegations in **CRM-M-6782-2022** (Lovish Mahajan Versus State of Punjab). He further submits that all the banking details/pass-books and documents are already in possession of the police and as such, further custodial interrogation of the petitioner is neither desired nor justified. He has also raised an argument that the petitioner having been taken in custody on 23.02.2022, the investigation in the case had to be concluded by the respondents within a period of 60 days as the FIR has been registered for commission of an alleged offence under Section 420 IPC read with Section 24 of the Immigration Act. Hence, for failure to complete investigation within the period of 60 days, the petitioner is also entitled to be released on bail under Section 167(2) Cr.P.C. as well, since he is prepared and willing to furnish bail bonds and to fulfill such other conditions as may be so imposed, to the satisfaction of the Illaqa Magistrate.

While controverting the submissions made on behalf of the petitioner that the investigation has not yet been concluded despite expiry of the prescribed period under Section 167(2) Cr.P.C., learned Addl. PP appearing on behalf of the U.T., Chandigarh, submitted that incomplete challan has already been furnished by the police and that some part of the investigation is still pending. However, merely on that account, the challan cannot be said to be inconclusive and it cannot be construed that the investigation is not complete. She has contended that as all the complaints have been clubbed, there are more challans likely to be presented with the

allegations that are seemingly more serious. Once the report has been furnished and only some part of the investigation is under progress, the provisions of Section 167(2) Cr.P.C. shall not come into operation.

Reliance in this regard is placed upon a judgment of this Court in case **State of Haryana Versus Mehal Singh and others**, reported as **1978 PLR 480** to contend that a mere failure on the part of the police to append the documents or the statements under Section 161 Cr.P.C. cannot be construed to hold that the police report filed under Section 173 Cr.P.C. was inconclusive and that the accused cannot be released under the provision of Section 167(2) Cr.P.C. on the said account.

I have heard learned counsel appearing on behalf of the respective parties and gone through the record with their able assistance.

However, since the petitioner has also raised an additional plea of operation of Section 167(2) Cr.P.C. in his favour, the said aspect is also being examined at the first instance as an additional ground to consider the right, if any, of the petitioner to claim bail. It is worthwhile to point out that the Hon'ble Supreme Court in the matter of **Rakesh Kumar Paul Versus State of Assam**, (2017) 15 SCC 67 in its judgment dated 16.08.2017 passed in SLP (Criminal) No.2009 of 2017 had held that when a challan is not put up within the statutory period, the Court may grant him the default bail on oral or written application. However, the oral request ought not to be made as a rule. The relevant extract of the said judgment is reproduced hereinafter below:-

Procedure for obtaining default bail

“40. In the present case, it was also argued by learned counsel for the State(1996) 1 SCC 722 that the petitioner did not apply

for 'default bail' on or after 4th January, 2017 till 24th January, 2017 on which date his indefeasible right got extinguished on the filing of the charge sheet. Strictly speaking this is correct since the petitioner applied for regular bail on 11th January, 2017 in the Gauhati High Court – he made no specific application for grant of 'default bail'. However, the application for regular bail filed by the accused on 11th January, 2017 did advert to the statutory period for filing a charge sheet having expired and that perhaps no charge sheet had in fact being filed. In any event, this issue was argued by learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the petitioner did not make any application for default bail – such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for 'default bail' or an oral application for 'default bail' is of no consequence. The concerned court must deal with such an application by considering the statutory requirements namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge sheet or challan has been filed and whether the accused is prepared to and does furnish bail.

41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court.

42. In Sunil Batra II v. Home Secretary, Delhi

Administration this Court accepted a letter, which was treated as petition, written by a prisoner in Tihar Jail, Delhi complaining of inhuman torture inflicted on another prisoner by the Jail Warder. In Hussainara Khatoon v. State of Bihar a number of writ petitions, some by way of a letter, were grouped together and treated as habeas corpus petitions. In Rubabbuddin Sheikh v. State of Gujarat the brother of the deceased wrote a letter to the Chief Justice of India complaining of a fake encounter and subsequent disappearance of his sister-in-law. This was treated as a habeas corpus petition. In Kishore Singh Ravinder Dev v. State of Rajasthan the petitioners sent a telegram to a learned judge of this Court complaining of solitary confinement of prisoners. The telegram was treated as a habeas corpus petition and the concerned persons were directed to be released from solitary confinement. In Paramjit Kaur (Mrs.) v. State of Punjab a telegram received at the residential office of a learned judge of this Court(1980) 3 SCC 488(1980) 1 SCC 98(2007) 4 SCC 318(1981) 1 SCC 503(1996) 7 SCC 20 alleging an incident of kidnapping by the police was treated as a habeas corpus petition. In Bandhua Mukti Morcha v. Union of India a petition addressed to a learned judge of this Court relating to the inhumane and intolerable conditions of stone quarry workers in many States and how many of them were bonded labour was treated as a writ petition on the view that the “Constitution-makers deliberately did not lay down any particular form of proceeding for enforcement of a fundamental right nor did they stipulate that such proceeding should conform to any rigid pattern or straight-jacket formula”. In People’s Union for Democratic Rights v. Union of India a letter addressed to a learned Judge of this Court concerning violation of various labour laws in the construction projects connected to the Asian Games was treated as a writ petition. In Dr. Upendra Baxi (I) v. State of Uttar Pradesh a letter relating to inhuman conditions in the

Agra Protective Home for Women was treated as a writ petition and in Sheela Barse v. State of Maharashtra a letter addressed by a journalist complaining of custodial violence against woman prisoners in Bombay was treated as a writ petition. These cases are merely illustrative of the personal liberty jurisprudence of this Court and in matters pertaining to Article 21 of the Constitution of India this Court has consistently taken the view that it is not advisable to be ritualistic and formal. However, we must make it clear that we should not be understood to suggest that procedures must always be given a go-by – that is certainly not our intention.

Duty of the Courts

“... it is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the Magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the Magistrate concerned liable to departmental proceedings.”

44. Strong words indeed. That being so we are of the clear opinion that adapting this principle, it would equally be the duty and responsibility of a court on coming to know that the accused person before it is entitled to ‘default bail’, to at least apprise him or her of the indefeasible right. A contrary view would diminish the respect for personal liberty, on which so much emphasis has been laid by this Court as is evidenced by the decisions mentioned above, and also adverted to in Nirala Yadav.”

It is noticed that the bail petition of the petitioner is already pending adjudication before this Court and that the statutory period prescribed under Section 167(2) Cr.P.C. is claimed to have ended. Consequently, it would be a travesty to justice not to consider the plea for grant of bail under Section 167(2) Cr.P.C. as well and to instead direct an accused to apply fresh under the said provisions. The said approach would rather be in conflict with the majority view of the judgments in the matter of **Rakesh Kumar Paul's case (supra)**.

For appreciation of the same, it would be essential to examine as to whether the final report filed in the instant case can be said to be a complete investigation or an investigation where the report cannot be held to be inconclusive and that mere additional documents are required to be furnished in support of the final report already filed as per the ratio of judgment in the matter of **Mehal Singh and others case (supra)** relied upon by the learned Addl. PP for the U.T. Chandigarh. It would thus be essential to refer to the statutory provisions of Section 167 and 173 Cr.P.C. The same are extracted hereinafter below:-

“Section 167 Cr.P.C.. 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 no 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 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;]

Section 173 Cr.P.C. : Report of police officer on completion of investigation.

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

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(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.

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

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (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).

It is evident from a perusal of the statutory provisions that if the investigation is not concluded by the investigating agency within the prescribed time frame, the accused is entitled to be released on bail. A final report upon conclusion of investigation has to be filed in terms of Section 173(2) of Cr.P.C. and must be accompanied by documents and evidence as stipulated under Section 173(5) Cr.P.C. The power of further investigation is contemplated in Section 173(8) Cr.P.C. which empowers the investigating agency to obtain additional evidence. The report must be accompanied with all documents or relevant extracts thereof on which the prosecution proposes to rely and also the statements recorded under Section 161 Cr.P.C. of all the persons whom the prosecution proposes to examine as its witnesses. It would thus be safe to conclude that for the purposes of ascertaining as to whether the report in question is inconclusive or an incomplete report and as to whether the same would be considered as a completed report awaiting submission of additional documents disentitling an accused from default bail under Section 167(2) Cr.P.C., it has to be seen on the aforesaid parameters. Invariably, where the final report so submitted does not satisfy the necessary test of the report as prescribed under Section 173(5) Cr.P.C., it would be

presumed to be an incomplete investigation and the prosecution cannot be permitted to contend that merely by filing some part of the final report, it can successfully defeat the right of an accused to claim default bail. It has often been laid as law through numerous precedent judgments of the Hon'ble Apex Court that bail is a rule and jail is an exception. A submission advanced by the prosecution has to be tested on the ultimate statutory aim and object and as to whether the suggested interpretation is likely to defeat the object of the statute. The benevolent provisions enshrined in a statutory scheme ought to be assigned a liberal interpretation and any suggestion or any interpretation which is intended to curtail, infringe, restrict or confine such a right has to be strictly construed.

It would thus be necessary to look into the various judicial pronouncements that have examined the aspect of default bail and incomplete investigation or final report.

The Madras High Court was seized of a similar issue in the matter of **Nagarajan and others Versus State of Tamil Nadu** in Cr1. R.C. Nos. 1824 & 1825 of 2003, decided on 23.12.2003 and had held as under:-

“17. From the above referred to decisions of Supreme Court and of the various High Courts, it is clear that,

1. On the default committed by the investigating agency to file a charge-sheet within 90 days, to all the accused in judicial custody for 90 days an indefeasible right accrues in them for being released on bail.

2. Such indefeasible right will be in existence till the charge sheet is filed.

3. It is the duty of the Court to inform the accused that he is entitled for bail.

4. If the accused files bail application under the proviso of Section 167(2) Criminal Procedure Code, 1973 he ought to

have been released on bail.

5. Even if the bail is granted under Section 167(2) of Criminal Procedure Code due to the default committed by the police in not filing the charge sheet in 90 days, but before the execution of bond with surety for bail if the charge sheet is filed, even then the accused cannot be detained in custody.

6. Filing of a defective charge sheet and returning the same to the investigating officer to rectify the defect, amounts to non-filing of charge sheet and will not defeat the indefeasible right accrued in the accused for being released on bail after the expiry of 90 days of time.

7. The subsequent filing of charge sheet could not cancel the order already passed.

8. The police report (charge sheet) under Section 173(2) Criminal Procedure Code, 1973 is not complete, unless it is accompanied by the material papers (statements etc.,) as contemplated under Section 173(5) Criminal Procedure Code, 1973.

9. If the police report (charge sheet) is not filed in complete form as mentioned above, within the stipulated period, the accused shall have absolute right for being released on bail subject to their readiness for furnishing sureties.”

The Andhra Pradesh High Court in the matter of **Matchumari**

China Venkatareddy and others Versus State of A.P., Criminal Petn.

Nos. 341 and 559 of 1993, decided on 19.3.1993 had held as under:-

“Fairness and reasonable procedure is what is contemplated by the expression "procedure established by law" in Article 21 of the Constitution. Section 167(2), Criminal Procedure Code, 1973 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 Section 167(2) is not defeated by lapse of time, the filing of the charge sheet or by remand to custody under Section 309(2). The order of bail can only be cancelled under Section 437(5) or 439(2). The duty of the police is to forward the police report after completion of investigation under Section 173(2) Criminal Procedure Code, 1973. 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 Section 173(2) read with Section 173(5) Criminal Procedure Code, 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.

11. In view of what is stated supra, I hold as follows :

(1) That the police report (charge-sheet) under section 173(2) Criminal Procedure Code, 1973 is not complete unless it is accompanied by the material papers (statements etc.) as contemplated under Section 173(5) Criminal Procedure Code, 1973.

(2) That a perusal of police report (charge sheet) as to whether the same is in consonance with sub-sections 173(2) and 173(5) Criminal Procedure Code, 1973 is only an administrative act and not a judicial act.

(3) *That judicial act commences when the police report (charge-sheet) is filed in complete form, both complying with the provisions contained under sections 173(2) and 173(5) Criminal Procedure Code, 1973 and it is taken on the file of the court and perused by the court for taking a decision under section 190(1)(b) Criminal Procedure Code, 1973.*

(4) *That if the investigation is not completed either within 90 days or 60 days, as the case may be, and if the police report (charge sheet) is not filed in complete form as mentioned supra within the stipulated periods, the accused shall have absolute right for being released on bail subject to their readiness for furnishing sureties; and*

(5) *As the provisions of Section 167(2), have not been complied with in the instant cases, the petitioners in both the Criminal Petitions shall be released on bail on each of their furnishing personal bonds for the sum of Rs, 10,000/- (Rupees ten thousand only) with one surety each for Rs. 10,000/- (Rupees ten thousand only) to the satisfaction of the Judicial First Class Magistrate, Darsi, Prakasam District."*

The Kerala High Court in the matter of **P.V. Vijayaraghavan and others Versus C.B.I and another**, Criminal Revn. Petn. No. 113 of 1984 decided on 9.4.1984 had held as under:-

"9. Section 2(c) defines cognizable "offence" as an offence for which and cognizable "case" as a case in which, a police officer may, in accordance with the First Schedule or under any other law" for the time being in force, arrest without warrant. Section 2(h) defines "investigation" as including all proceedings under the Code for the collection of evidence conducted by a police officer etc. Interpreting the expression "Committal of the Case", a Full Bench of this Court in Natesan v. Peethambharan 1984 Ker LT 116 : (1984 Cri LJ 324), observed "As we understand the expression, it only means 'Case presented to Court and taken to file' and nothing more.

The expression 'Case' is not synonymous with occurrence or crime or transaction..... 'Case' only means the case taken on file by the Magistrate on taking cognizance .

So, there could be plurality of cases in regard to the same offence leading to plurality of committal proceedings and orders. The word 'Case' cannot be interpreted in a narrow and technical way. It has to be understood in the general sense of the term.....

10. The expression "case" used in the provisions under examination has to be understood in the general sense and not in a narrow or technical way. The words "offence" and "case" are not synonymous, though an offence always leads to a case and a case would always involve an offence or offences. An occurrence of transaction may involve commission of only one offence; or it may involve several offences. When a police officer receives; information about the commission of a cognizable offence, and records the same, he is said to register a case, sometimes called a Crime Case. "'Case", understood in this general sense means the case before the police officer arising from the information placed before him regarding an occurrence in which an offence or offences are committed. "Case" relates to the transaction of which information is given and not merely one of the offences committed during the course of the transaction.

11. The heading of Section 154 is " Information in cognizable cases". The heading of Section 155 is "Information as to non-cognizable cases and investigation of such cases." The heading of Section 156 is "Police Officer's power to investigate cognizable case". sub-section (3) of Section 154, sub-sections (2) and (4) of Section 155, sub-sections (1) and (2) of Section 156, Section 157, sub-section (1) of Section 160, sub-sections (1) and (2) of Section 161 refer to investigation of a "case". Section 167 refers to diary relating to the case. This would indicate that investigation is to be of a "case" and riot to be

conducted piecemeal with reference to each offence committed in a transaction or occurrence. Investigation is to be of a case, that is, all the facts and circumstances of a case which would mean all the offences involved therein. Therefore, when Section 173 speaks of completion of investigation, it must ordinarily be taken to refer to completion of investigation of all the facts and circumstances relating to the case, whether the transaction involves one offence or plurality of offences. I am therefore of opinion that a final report or charge-sheet under Section 173 could be filed only after completion of the investigation in the case relating to all the offences arising in the case.”

The Delhi High Court in the matter of **State Versus Hargyan**, passed in Criminal Revision Petition No.770/2015 decided on 13.06.2016 had held as under:-

*“9. This court has also perused the judgment of the Hon’ble Supreme Court in the case of **Union of India through CBI vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, (2014) 9 SCC 457**, in which the accused filed an application under Section 167(2) of Cr. P.C. and after filing of the application for statutory bail, the prosecution filed the charge sheet and that too without filing any application for extension of time for filing the charge sheet. In that case, it was held that “A Court cannot act to extinguish the right of an accused if the law so confers on him. Law has to prevail. The prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused. Such an act is not permissible. If we permit ourselves to say so, the prosecution exhibited sheer negligence in not filing the application within the time which it was entitled to do so in law but made all adroit attempts to redeem the cause by its conduct.”*

10. In present case, the factual position emerges that the accused was arrested on 29.10.2014 and the charge sheet was filed before the court on 26.12.2014. On perusal of the charge

sheet, the court finding that certain aspects were incomplete due to incomplete investigation, the Investigating Officer was directed to further investigate into the matter and the charge sheet was returned for the purpose of filing the charge sheet after completing the investigation on all aspects.

Undisputedly, Section 167(2) Cr. P.C. precludes the concerned Magistrate to have the custody of the detenue beyond 60 days until he receives the charge sheet under Section 173 Cr. P.C. to adjudicate upon the same.

11. In the present case, accepting an incomplete report on 26.12.2014 and returning the same on account of incomplete investigation on certain aspects, and making the accused disentitled for benefit under Section 167(2) Cr. P.C. is an apparent abuse of law.

12. This court is of the considered opinion that charge sheet filed within statutory period of 60 days ought to be complete to enable the concerned Magistrate to adjudicate and not an incomplete charge sheet to infringe upon the right of the accused to be released on bail.”

The Punjab and Haryana High Court in the matter of **Amandeep Singh Bhui Versus Inspector (Prevention) Central Goods and Service Tax**, passed in CRM-M-29607-2021 decided on 28.10.2021 had held as under:-

“The right to default bail arises when the investigating agency is not able to complete the investigation and put up the challan within the stipulated period, as the case may be. As has been held in catena of judgments by the Hon’ble Apex Court as also this Court, such a right is an indefeasible right. The accused, thus, does derive such a benefit due to the failure on the part of the investigating agency/prosecution. Such right having been recognized as a Fundamental Right in a plethora of judgments, cannot be equated with the discretionary right of the Court,

wherein the Court in its discretion may impose any condition, as may be deemed fit so as to enlarge the accused on bail.

The Hon'ble Apex Court in Saravanan's case (supra), has held that default bail under Section 167(2) Cr.P.C. is an indefeasible right and no condition of deposit of the alleged amount involved in the alleged crime can be imposed by the Court while granting default bail/statutory bail to the accused. The relevant extracts from the judgment would read as under:-

“8. We have heard the learned counsel for the respective parties at length.

The short question which is posed for the consideration of this Court is, whether while releasing the appellant/accused on default bail/statutory bail under Section 167(2), Cr.P.C., any condition of deposit of amount as imposed by the High Court, could have been imposed?

9. Having heard the learned counsel for the respective parties and considering the scheme and the object and purpose of default bail/statutory bail, we are of the opinion that the High Court has committed a grave error in imposing condition that the appellant shall deposit a sum of Rs.8,00,000/ while releasing the appellant on default bail/statutory bail. It appears that the High Court has imposed such a condition taking into consideration the fact that earlier at the time of hearing of the regular bail application, before the learned Magistrate, the wife of the appellant filed an affidavit agreeing to deposit Rs.7,00,000/. However, as observed by this Court in catena of decisions and more particularly in the case of Rakesh Kumar Paul (supra), where the investigation is not completed within 60 days or 90 days, as the case may be, and no charge-sheet is filed by 60th or 90th day, accused gets an “indefeasible right” to default bail, and the accused becomes entitled to default bail once the accused applies for default bail and furnish bail. Therefore, the only requirement for getting the default bail/statutory bail under Section 167(2), Cr.P.C. is that the

accused is in jail for more than 60 or 90 days, as the case may be, and within 60 or 90 days, as the case may be, the investigation is not completed and no charge-sheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail. No other condition of deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C. As observed by this Court in the case of Rakesh Kumar Paul (supra) and in other decisions, the accused is entitled to default bail/statutory bail, subject to the eventuality occurring in Section 167, Cr.P.C., namely, investigation is not completed within 60 days or 90 days, as the case may be, and no charge-sheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail.

9.1 As observed hereinabove and even from the impugned orders passed by the High Court, it appears that the High Court while releasing the appellant on default bail/statutory bail has imposed the condition to deposit Rs.8,00,000/ taking into consideration that earlier before the learned Magistrate and while considering the regular bail application under Section 437 Cr.P.C., the wife of the accused filed an affidavit to deposit Rs.7,00,000/. That cannot be a ground to impose the condition to deposit the amount involved, while granting default bail/statutory bail.

9.2. The circumstances while considering the regular bail application under Section 437 Cr.P.C. are different, while considering the application for default bail/statutory bail. Under the circumstances, the condition imposed by the High Court to deposit Rs.8,00,000/, while releasing the appellant on default bail/ statutory bail is unsustainable and deserves to be quashed and set aside..... ”

Thus, in view of the judgment of the Hon'ble Supreme

Court in Saravanan's case (supra), I am of the considered opinion that the default bail under Section 167(2) Cr.P.C. cannot be equated with the discretion of the Court under Sections 437, 438 or 439 Cr.P.C., wherein the Court has got ample power to impose any condition as would be deemed fit on the facts and in the circumstances of the case. The indefeasible right under Section 167(2) Cr.P.C., accrued due to the failure on the part of the investigating agency to complete the investigation and present the challan within the stipulated period would, therefore, be a right free from any inhibition or embargo."

Furthermore, in the matter of **Sanjay Dutt Versus State through CBI** reported as (1994) 5 SCC 410, the Hon'ble Apex Court held that proviso to Section 167(2) Cr.P.C. creates an indefeasible right in an accused on account of the default on the investigating agency in the completion of investigation within the maximum period prescribed or extended as the case may be, to seek an order for his release on bail. The indefeasible right to be enlarged on bail accrues in favour of the accused, if the police failed to complete the investigation and put up the challan against him in accordance with law under Section 173 Cr.P.C. An obligation, in such a case, is cast upon the Court, when after the expiry of maximum period during which an accused could be kept in custody, to decline the police request for further remand. There is yet another obligation which is cast upon the Court and that is to inform the accused of his right of being released on bail and to enable him to make an application in that behalf.

In the decision of **Hussainara Khatoon v. Home Secretary** reported as **AIR 1979 Supreme Court 1377**, the Hon'ble Supreme Court has held as follows :

"When an undertrial prisoner is produced before a Magistrate and he has been in detention for 90 days or 60 days, as the case may, the Magistrate must, before making an order of further remand to judicial custody, point out to the undertrial prisoner that he is entitled to be released on bail. The State Government must also provide at its own cost a lawyer to the undertrial prisoner with a view to enable him to apply for bail in exercise of his right under proviso (a) to Sub-section (2) of Section 167 and the Magistrate must take care to see that the right of the undertrial prisoner to the assistance of a lawyer provided at State is secured to him and he must deal with the application for bail in accordance with the guidelines laid down by us in our Order dated 12th February, 1979. We hope and trust that every Magistrate in the country and every State Government will act in accordance with this mandate of the Court. This is the constitutional obligation of the State Government and the Magistrate and we have no doubt that if this is strictly carried out, there will be considerable improvement in the situation in regard to undertrial prisoners and there will be proper observance of the rule of law."

The necessity to examine the said aspect has also arisen on account of the fact that the learned Additional Public Prosecutor has not disputed the fact that as many as 21 persons had lodged their complaint against I-Aboard, Education & Immigration Services and that statements and evidence/documents of all such complainants/victims have to be recorded and that they had filed a report only with respect to three of the said persons and that investigation with respect to the remaining 18 persons is still under process and that the necessary documents relied upon by them along with the investigation so conducted and the witnesses in support thereof are yet to be furnished. She has argued that as a conclusive report regarding commission of cognizable offence has already been filed, hence, the

remaining investigation into the other 18 complaints is inconsequential and it would only be in the nature of additional documents that are required to be filed. The said submission, however, does not appear to reason. It would be an altogether different proposition in law where all the witnesses have already been recorded and that no fresh evidence is to be filed and merely the documents to supplement the evidence already collected have to be placed on record through a supplementary challan. The position would be on an entirely different footing where not only statements of fresh witnesses are to be recorded, but also additional documents in the form of fresh evidence have to be filed and the said documents, witnesses and evidence have to be relied upon by the prosecution. All of such evidence, statements and depositions are required to be part of the final report in terms of Section 173(5) Cr.P.C. in case the investigation can be said to have concluded against an accused.

A Division Bench judgment of this Court in the matter of **Ajit Singh alias Jeeta and another Versus State of Punjab**, passed in Criminal Revision No.4659 of 2015 decided on 30.11.2018 considered the Full Bench Judgment in the matter of **Mehal Singh and others case (supra)** and thereafter concluded that a challan/final report would be termed as incomplete where certain essential, integral and inherent part of the investigation is yet to be submitted. If such document or evidence is sought to be relied upon and is likely to lay the foundation of culpability of an accused and would be necessary for a Magistrate/Judge to form an opinion regarding the commission of an offence and to take cognizance of the involvement of an accused in the commission of an offence, any such report which seeks to further place on record such relevant material cannot be said

to be a conclusive final report and would remain as an incomplete investigation. The mere production of additional documents is a separate proposition as compared to introduction of new witnesses and fresh evidence. Where the prosecution intends to record testimonies of other witnesses and collect documents to substantiate its case against an accused by recording evidence and collecting proof and documents in support thereof, the investigation cannot be said to be have been concluded. It may be concluded partially and only with respect to some of the complainants, however, as all remaining complainants/aggrieved are witnesses in this case itself, hence, the decision of the prosecution to record their testimonies and to collect their evidence to prove its case against an accused has been taken. It cannot thus be held to be a complete investigation unless the police concludes that it does not wish to collect any fresh evidence for placing reliance to prove its case in terms of Section 173(5) Cr.P.C.

It is also not disputed by the State Counsel that reference to such evidence and statements of the witnesses would essentially be a part of the charge to be framed against the accused and cognizance of the same has to be taken by the Court. Thus, the pending investigation cannot be ignored or be disregarded as the evidence in question is not just for production of any documents in support of the case, rather, the investigation is in the nature as would be integral to take cognizance of the case and an adjudication whereof is to be done by the Illaqa Magistrate. The cognizance of the investigation yet to be completed, requires to be taken and to be ingrained as a part of the charge to be framed, decided and to be adjudicated by the Court.

While referring to the submissions advanced by the learned

counsel appearing on behalf of the petitioner on merits, Section 420 IPC relates to an offence of cheating and punishment against the same. It would thus be necessary to notice the essential ingredients for commission of the said offence. The relevant statutory provisions are extracted hereinafter below:-

Section 23 IPC

23. “Wrongful gain”.—“Wrongful gain” is gain by unlawful means of property to which the person gaining is not legally entitled.

“Wrongful loss”.—“Wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully/Losing wrongfully.—A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

Section 24 IPC

24. “Dishonestly”.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

Section 25 IPC

25. “Fraudulently”.—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

Section 415 IPC

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or

omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Section 420 IPC

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

It is, thus, essential that for the purpose of commission of an offence punishable under Section 420 IPC, the following ingredients must be satisfied:-

- (i) There must be a person deceived;
- (ii) The person so deceived has been induced fraudulently or dishonestly with an intention to cause wrongful loss to the person deceived and wrongful gain to himself or to any other person; and
- (iii) The person so deceived is induced to deliver property or to consent retention of the property and that but for the inducement, the person so deceived would not have parted with the property.

A perusal of the allegations levelled in the instant petition shows that there is no attribution against the petitioner of having induced the complainant to deliver any money. Moreover, the complainant had also not parted with any money on the asking of the petitioner or in favour of the petitioner. The transfer of the amount was done in the account of the

Company. Furthermore, the existence of the agreement (Annexure P-4) is not denied as well as the facts related to the relationship of the petitioner and his wife turning sour. It is also not disputed that in yet another case under Section 420 IPC on the same set of allegations having been registered against the petitioner, concession of *interim bail* in a petition under Section 438 Cr.P.C. had been extended to the petitioner. Additionally, all the necessary documents and records are already in possession of the police. Besides, apart from a monetary transaction in the account of the petitioner, there is no other evidence that is being relied upon by the prosecution to make out the ingredients of Section 420 IPC against the petitioner and he is being arraigned as an accused with the aid of Section 120-B IPC. In the absence of any dispute being raised to the legality or validity of the Media arrangement agreement, it is yet to be conclusively determined as to whether the money transaction to the account of the petitioner would amount to causing wrongful loss/wrongful gain. Being a recipient of ill-gotten money for legitimate service is distinct from being recipient of money by ill-means. While there is no criminal liability for the first way, the receipt of money by the latter would certainly attract criminal liability. The emphasis of the prosecution that the petitioner was in conspiracy with Pooja Mahajan and Vivek Saini does not inspire such confidence at this stage considering that estranged relationship and litigation amongst the two is not denied or disputed by the prosecution. The continued incarceration of the petitioner would thus not be justified.

It is evident from a consideration of the status of the instant case as well as the submissions made by the learned Additional Public Prosecutor that the report stated to be a final report under Section 173 Cr.P.C. and the

pending additional charge-sheet to be filed is a ruse inasmuch as the additional charge-sheet is to be submitted not in the context of the evidence collected prior to the filing of the report, but, further collection of fresh evidence is to be made. It is thus, not a mere exercise of assimilation of evidence to be collected pursuant to an investigation conducted, rather, the process of conducting of an investigation and collection of new and additional evidence is still undergoing. Thus, it cannot be said that the investigation has been concluded and a final report in terms of Section 173(2) read with Section 173(5) Cr.P.C. stands filed. Therefore, considering it from either perspectives, the petitioner in the present case is entitled to be enlarged on bail.

The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

The petition is allowed.

May 19, 2022
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No