



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

Date of decision: 15th MARCH, 2022

IN THE MATTER OF:

+ **BAIL APPLN. 120/2022**

SURAJ

..... Petitioner

Through

Mr. Adit S. Pujari, Advocate with Mr.
Chaitanya Sundriyal, Advocate

versus

STATE OF DELHI NCT

..... Respondent

Through

Ms. Meenakshi Dahiya, APP for the
State with SI Ram Pratap, Police
Station Kamala Market

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This application has been filed under Section 439 Cr.P.C. read with Section 167 Cr.P.C. seeking bail in FIR No. 312/2021 dated 20.08.2021 registered at Police Station Kamla Market for offences under Sections 377/34 of the Indian Penal Code, 1860 (*hereinafter*, "IPC") read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (*hereinafter*, "POCSO").

2. The facts, in brief, leading up to the filing of this petition are as follows:

- a) On 19.08.2021, a call was received by the mother of the victim child by one Kiran who worked at the Child Welfare Committee that her son (the victim child), aged 13 years, had been sexually



assaulted by 2-3 boys in the neighbourhood. When the mother asked the son about the said sexual assault, he revealed to her that about 2-3 months ago, when he was at the park, one Rahul, a resident of G-Block Central Government Officers Residential Complex, tried to entice him.

- b) The son stated that this Rahul made him cut the wire of a cylinder kept in the basement of the parking lot and that this was seen by one Hanuman. He further stated that then one Ganesh and one Suraj (the Petitioner herein), found out about the cutting of the wire from Hanuman and blackmailed the son into having sexual intercourse with them at different points of time.
- c) On learning about this, the father of the victim child filed a complaint, dictated his statement and an MLC of the victim child was conducted, and on the basis of this, FIR No. 312/2021 under Sections 377/34 IPC read with Section 6 POCSO Act was registered on 20.08.2021
- d) Both the accused, including the Petitioner herein, were arrested on 20.04.2021 and were remanded for 14 days to judicial custody by the Ld. Trial Court *vide* Order dated 21.08.2021. This judicial custody of the Petitioner was extended by the Ld. Trial Court *vide* Orders dated 04.09.2021 and 17.09.2021. *Vide* Order dated 29.09.2021, regular bail application of the Petitioner was dismissed.
- e) A second bail application was filed under Section 167(2) Cr.P.C. on the ground that, despite chargesheet having been



filed, as cognizance of the offences had not been taken by the Ld. Trial Court, the Petitioner was entitled to default bail under Section 167(2) Cr.P.C. This application was dismissed *vide* Order dated 20.12.2021.

f) The Petitioner has now approached this seeking default bail under Section 167(2) Cr.P.C.

3. Mr. Adit S. Pujari, assisted by Mr. Chaitanya Sundriyal, learned Counsel for the Petitioner, submits that the Petitioner is a 22-year-old who has been in custody since 20.08.2021. He states that as per Section 167(2) Cr.P.C., if investigation is not complete within the prescribed period and chargesheet is not filed, then a statutory right to bail accrues to the accused. He submits that in the instant case, despite chargesheet having been filed on 14.10.2021, cognizance of the offences mentioned therein was not taken by the Ld. Trial Court.

4. Mr. Pujari submits that the chargesheet which was filed on 14.10.2021 was incomplete as the statement of the child victim under Section 164 Cr.P.C. mentioned the existence of a video recording, and this had prompted the Ld. Trial Court to merely issue notice in the matter without taking cognizance of the offences. He states that this illegal conduct of the investigating agency defeated the right of the Petitioner to seek default bail and could not be countenanced as per the observations of the Supreme Court in various judgements such as M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence, (2021) 2 SCC 485, and Serious Fraud Investigation Office v. Rahul Modi and Ors., 2022 SCC OnLine SC 153. He states that as no cognizance has been taken by the Ld. Trial Court and the statutory period of 90 days had expired on 18.11.2021, therefore, the



Petitioner had an indefeasible right to securing default bail. He further submits that on the pretext of filing a supplementary chargesheet containing an FSL report, the investigation is being prolonged with cognizance of the chargesheet being taken.

5. The learned Counsel for the Petitioner states that the judgement of the Supreme Court in Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77 that has been relied upon by the Ld. Trial Court while dismissing the bail application of the Petitioner under Section 167(2) Cr.P.C. does not apply in the instant case as in Suresh Kumar Bhikamchand Jain (supra), the Ld. Trial Court's inability to take cognizance stemmed from the lack of sanction under the Prevention of Corruption Act, 1988. He states that cognizance without law was prohibited by law in that case, and that this was not the case in the matter before this Court. Mr. Pujari further submits that in Suresh Kumar Bhikamchand Jain (supra), the investigation had been complete, unlike the instant case.

6. *Per contra*, Ms. Meenakshi Dahiya, learned APP for the State, opposes the Section 167(2) Cr.P.C. bail application of the Petitioner herein.

7. Heard Mr. Adit S. Pujari, assisted by Mr. Chaitanya Sundriyal, learned Counsel for the Petitioner, Ms. Meenakshi Dahiya, learned APP for the State, and perused the material on record.

8. The issue that arises before this Court is whether an accused is entitled to default bail under Section 167(2) Cr.P.C. when chargesheet has been filed, but cognizance has not been taken by the Court of the offences. For this purpose, Section 167 Cr.P.C. has been reproduced hereunder for ease of comprehension:



“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-

(a) I 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;

(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. 1 Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;]. 2 Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.]”

9. Section 167(2) Cr.P.C. provides an indefeasible right to statutory bail to an accused when investigation cannot be completed within the stipulated period of sixty or ninety described, prescribed in the provision. The rationale behind this provision is to ensure that the right to life and personal liberty under Article 21 of the Constitution of India remains preserved. However, once chargesheet has been filed, albeit within the prescribed period, this statutory right to bail of the accused stands extinguished.

10. In Suresh Kumar Bhikamchand Jain (supra), the Supreme Court had in detail considered the question as to whether cognizance of the chargesheet was necessary to prevent the accused from seeking default bail or whether mere filing of the chargesheet would suffice for the investigation to be deemed complete. The relevant portion of the said judgement has been referenced as follows:

“16. At this juncture, we may refer to certain dates which are relevant to the facts of this case, namely:



xxx

From the above dates, it would be evident that both the charge-sheet as also the supplementary charge-sheet were filed within 90 days from the date of the petitioner's arrest and remand to police custody. It is true that cognizance was not taken by the Special Court on account of failure of the prosecution to obtain sanction to prosecute the accused under the provisions of the PC Act, but does such failure amount to non-compliance with the provisions of Section 167(2) CrPC is the question with which we are confronted.

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 term 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 case [(1975) 2 SCC 220 : 1975 SCC (Cri) 484] and in Sanjay Dutt case [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] 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 hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether 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 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 remand the accused to custody, both police custody and/or judicial custody, for 15 days at a time, up to 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.” (emphasis supplied)

11. The aforementioned judgement, therefore, cements the position that once a chargesheet has been filed within the stipulated time, the question of grant of statutory bail or default does not arise. Whether cognizance has been taken or not taken is not relevant for compliance of Section 167 Cr.P.C., and mere filing of the chargesheet is sufficient. The learned Counsel for the Petitioner’s contention that there was an erroneous reliance on Suresh Kumar Bhikamchand Jain (supra) as there was no factum of sanction being needed in the instant case does not hold any water for the fact that the judgement clearly delineates the fact that sanction which was required for cognizance therein stands on a different footing from the process of investigation.

12. The issue being discussed herein has further been laid to rest in Serious Fraud Investigation Office v. Rahul Modi (supra) wherein the Supreme Court has comprehensively dealt with multiple decisions pertaining to whether filing of the chargesheet is sufficient compliance with the provisions of Section 167 Cr.P.C. and whether the accused can demand



release on default bail under Section 167(2) Cr.P.C. on the ground that cognizance has not been taken before the expiry of the stipulated period. While considering the same question that has arisen before this Court, the Apex Court has painstakingly referred to Suresh Kumar Bhikamchand Jain v. State of Maharashtra (supra), Mohamed Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722, Sanjay Dutt v. State, (1994) 5 SCC 410, and M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence (supra) to arrive at the conclusion that all these judgements categorically lay down that the indefeasible right of an accused to seek statutory bail under Section 167(2) Cr.P.C. arises only if the chargesheet has not been filed before the expiry of the statutory period. The relevant paragraph of Serious Fraud Investigation Office v. Rahul Modi (supra) is as follows:

“16. A close scrutiny of the judgments in Sanjay Dutt (supra), Madar Sheikh (supra) and M. Ravindran (supra) would show that there is nothing contrary to what has been decided in Bhikamchand Jain (supra). In all the above judgments which are relied upon by either side, this Court had categorically laid down that the indefeasible right of an accused to seek statutory bail under Section 167(2), CrPC arises only if the charge-sheet has not been filed before the expiry of the statutory period. Reference to cognizance in Madar Sheikh (supra) is in view of the fact situation where the application was filed after the charge-sheet was submitted and cognizance had been taken by the trial court. Such reference cannot be construed as this Court introducing an additional requirement of cognizance having to be taken within the period prescribed under proviso (a) to Section



167(2), CrPC, failing which the accused would be entitled to default bail, even after filing of the charge-sheet within the statutory period. It is not necessary to repeat that in both Madar Sheikh (supra) and M. Ravindran (supra), this Court expressed its view that non-filing of the charge-sheet within the statutory period is the ground for availing the indefeasible right to claim bail under Section 167(2), CrPC. The conundrum relating to the custody of the accused after the expiry of 60 days has also been dealt with by this Court in Bhikamchand Jain (supra). It was made clear that the accused remains in custody of the Magistrate till cognizance is taken by the relevant court. As the issue that arises for consideration in this case is squarely covered by the judgment in Bhikamchand Jain (supra), the order passed by the High Court on 31.05.2019 is hereby set aside.”

(emphasis supplied)

13. In the instant case, the Petitioner was arrested on 20.08.2021. Chargesheet was filed on 14.10.2021, i.e. within the period prescribed by the statutory provision. The material on record indicates that cognizance had not been taken by the Ld. Trial Court on the ground that certain clarifications were required with respect to an FSL report which was pending as well as a video recording of the offences allegedly being committed that had been mentioned by the victim child in his Section 164 Cr.P.C. statement. On 16.12.2021, the Investigating Officer had informed the Ld. Trial Court that further investigation would be conducted and that a supplementary chargesheet would be filed in that regard.

14. At this juncture, it would be pertinent to note that the Petitioner can be convicted on the basis of the testimony of the victim, and the video recording can be collected and filed by way of a supplementary chargesheet



and that filing of a chargesheet would entail completion of investigation and that the right to default bail under Section 167 (2) CrPC would not survive. Further, flowing from the judgements of the Supreme Court that have been discussed above, cognizance of the Ld. Trial Court is immaterial to the compliance of Section 167(2) Cr.P.C. This Court is of the opinion that as the chargesheet had been filed well within the time period as stipulated under Section 167(2), the Petitioner is no longer entitled to his right to seek default bail.

15. With the above observations, the petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J.

MARCH 15, 2022

Rahul

न्यायमेव जयते