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IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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BAIL APPLN. 2707/2022 & CRL.M.(BAIL) 1101/2022

Between:-

**AMARJEET SHARMA
S/O SHRI. HARI CHAND SHARMA
R/O HOUSE NO. 707, SECTOR-16,
PANCHKULA, SECTOR 15, PANCHKULA,
HARYANA-134113**

.....PETITIONER

(Through: Mr. Ujjawal Jain, Mr. Vineet Wadhwa & Ms. Shambhavi Kashyap, Advocates)

AND

**SERIOUS FRAUD INVESTIGATION OFFICE,
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI- 110003**

.....RESPONDENT

(Through: Mr. Anurag Ahluwalia, CGSC alongwith Mr. Kritagya Kumar Kait, Mr. Shriram Tiwary & Mr. Mohd. Salman Kazi, Advocates)

BAIL APPLN. 2709/2022 & CRL.M.(BAIL) 1104/2022

Between:-

**ALKESH SHARMA
S/O SHRI SAT MOHAN LAL
R/O BHUSHAN APARTMENTS,
14/4A, BURDWAN ROAD, ALIPORE,
KOLKATA, WEST BENGAL-700027**

.....PETITIONER

(Through: Mr. Dayan Krishnan, Senior Advocate alongwith Mr. Arshdeep Singh Khurana, Mr. Ujjawal Jain, Mr. Aditya Chopra, Mr. Shreedhar Kale, Mr. Vineet Wadhwa, Ms. Rishieka Ray, Ms. Shambhavi Kashyap & Mr. Vijay Poonia, Advocates)

AND

**SERIOUS FRAUD INVESTIGATION OFFICE,
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI- 110003 RESPONDENT**

*(Through: Mr. Anurag Ahluwalia, CGSC alongwith
Mr. Kritagya Kumar Kait, Mr. Shriram
Tiwary & Mr. Mohd. Salman Kazi, Advocates)*

% Pronounced on : 03.11.2022

J U D G M E N T

1. The present bail applications have been filed under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Section 167(2) of Cr.P.C. on behalf of the applicants seeking bail in CNR NO. DLSW01-005039-2022, Reg. No. CC/374/2022, *SFIO v. Bhushan Airways Services Pvt Ltd. &Ors.*
2. Since the issues involved in both the bail applications are similar, the same are being decided by this common order. The facts are being taken from BAIL APPLN. 2707/2022-*Amarjeet Sharma v. S.F.I.O.*
3. As per the averments made in the bail application, it is seen that on 03.05.2016, the Ministry of Corporate Affairs, Government of India, (hereinafter referred to as “MCA”) in exercise of its powers conferred under Section 212 (1)(c) of the Companies Act, 2013, assigned the investigation into the affairs of *Bhushan Power and Steel Ltd.* (hereinafter referred to as “BPSL”) and its 10 group companies to Serious Fraud Investigation Office (hereinafter referred to as “SFIO”).

On 08.01.2018 MCA, vide another order granted approval under Section 219(b) & (c) of the Companies Act, 2013 to investigate 20 group companies associated with BPSL. It is contended on behalf of the applicants that they were directed to join the investigation on numerous occasions. They had been cooperative during the investigation, with the investigating agency. However, on 21.03.2022, the SFIO arrested the present applicants and produced them before the learned Special Court, Dwarka. The SFIO was granted two days' custody remand. On 24.02.2022, they were again produced before the learned Special Court and were remanded for 14 days judicial custody i.e., till 07.04.2022. Further period of judicial custody was extended from time to time. Lastly, on 18.05.2022 on an application filed by SFIO, the further judicial remand of the applicants was extended up to 31.05.2022.

4. On 19.05.2022 the SFIO has filed a Complaint against the present applicants and others for offences punishable under Section 447 along with other offences of the Companies Act, 2013 and offences under the IPC. It is stated that on 31.05.2022 there was no application for extension of remand of judicial custody, the applicants were produced through video conferencing and that without there being any speaking order their remand was extended upto 17.08.2022. The applicants, therefore, on 23.07.2022, filed bail applications under Section 439 read with Section 167(2) of Cr.P.C., which were taken up for hearing on 01.08.2022 and the bail applications were adjourned to 06.08.2022 directing the *Ahlmed* to trace the relevant documents and produce the same on the next date with respect to the remand order on 31.05.2022. On 01.08.2022, the production warrant for 06.08.2022 was issued. On 06.08.2022, the applicants completed their arguments, however, time was sought by SFIO to address the court and therefore,

on 06.08.2022 a further remand order was passed remanding the applicants to judicial custody till 17.08.2022. On 06.08.2022, a report dated 03.08.2022 was also received from the office of Deputy Superintendent, Central Jail-04, regarding the clarification of remand order dated 31.05.2022. On 27.08.2022, the learned Special court dismissed the bail application of the applicants and, therefore, the applicants have filed the instant bail applications. It is stated that the cognizance on the complaint of SFIO is taken by the Special Judge on 20.09.2022.

5. Learned Senior counsel appearing on behalf of the applicants submits that the custody of the applicants was illegal between 31.05.2022 to 06.08.2022, inasmuch as, there was no judicial order of remand but a mere endorsement on the warrant was made which does not fulfill the legal requirement of a valid remand order. While taking this court through the scheme of Section 167(2) and Section 309 of Cr.P.C., it is submitted that for each remand order, due application of mind is *sine qua non*. In the absence of proper application of mind the remand order is *non est* in the eyes of law. Whether the remand is at the pre-cognizance stage i.e. stage under Section 167(2) of Cr.P.C. or post cognizance stage i.e. under Section 309 of Cr.P.C. application of mind and a speaking order is necessary. It is stated that after 31.05.2022, there is no judicial order extending the remand of the applicants. The endorsement on production warrant cannot be considered to be an order of remand. In either case, the remand order cannot be for more than 15 days and if that be so, the constitutional right of the applicants protected under Article 21 of the Constitution of India is breached and they become entitled for grant of bail. Learned Senior Counsel for the applicants while developing his argument to substantiate that the applicants are entitled for bail on account of their

illegal custody submitted two broad arguments firstly, that notwithstanding filing of the complaint in the instant case on 19.05.2022, the custody of the applicants still is in the hands of the Magistrate and is to be governed by Section 167 of Cr.P.C. and, therefore, the Magistrate cannot breach the maximum time limit for remand i.e. 15 days; and secondly he has to pass a reasoned order for each remand, the same being absent in the present case. In nutshell, he highlights that filing of the charge sheet or a complaint as the case may be would not absolve the Magistrate from the rigour of Section 167 that provides the strict compliance with the following two conditions precedents; (i) No remand order should exceed more than 15 days and; (ii) each remand order has to be by a reasoned order. It is highlighted that under the Cr.P.C. there can be three distinct stages of a case, when a prisoner is required to be remanded; (i) Stage 1: pre-complaint/charge sheet; (ii) Stage 2: post filing of a complaint/charge sheet but pre cognizance; (iii) Stage 3: post cognizance.

6. It is thus argued that the period between the filing of the charge sheet till the taking of cognizance, the Magistrate will continue to exercise its power to remand under Section 167(2) of Cr.P.C. Learned Senior Counsel for the applicants has also submitted that as per Section 436(1)(c) of the Companies Act, 2013, the learned Special Judge under the Companies Act, acts as a Magistrate when he exercises the power of remand under Section 167(2) of Cr.P.C. He, therefore, submits that when a law requires a particular exercise to be done in a specific manner, the same has to be done in that way alone. While placing reliance on various decisions, learned Senior Counsel further goes on to submit that even on merits there is no complete bar in granting bail under Section 439 of Cr.P.C. He further submits that the applicants have been falsely implicated in the case and there is no

evidence to *prima-facie* prove that they have committed any offence. In any case the trial in the instant complaint would take a long time as there are 90 accused in the complaint. The documents over nine trunks have been produced alongwith the complaint and hence for the entire duration of trial the applicants cannot be put through continued incarceration. He further submitted that the applicants are not a flight risk. Even as per the prosecuting agency the investigation *qua* the present applicants is complete. There is no likelihood of tampering with evidence and the applicants are not in a position to influence any witnesses as they were not the overall in-charge of the company. There is no possibility of the commission of a similar offence.

7. Learned Senior Counsel for the applicants has placed reliance on a decision of the Hon'ble Supreme Court in the matters of ***Ram Narayan Singh v. State of Delhi***¹, ***Madhu Limaye v. The State of Maharashtra***², ***Manubhai Ratilal Patel v. State of Gujarat***³, ***Fakhrey Alam v. The State of Uttar Pradesh***⁴, ***Union of India v. Thamisharasi and Ors.***⁵, ***Rakesh Kumar Paul v. State of Assam***⁶, ***Suresh Kumar Bhikamchand Jain v. State of Maharashtra***⁷ & ***Serious Fraud Investigation Office v. Rahul Modi & Ors.***⁸, ***Jainam Rathod v. State of Haryana***, CRL.A. 640/2022, ***Sujay U. Desai v. Serious Fraud Investigation***, CRL.A. 1023/2022 and the decisions of this Court and of other High Courts in the matter of ***Yogesh Mittal v. ED***⁹, ***Raj Pal Singh v. State of U.P.*** CRL.REV. 1098/1994, ***Rajesh Mishra v. State of U.P.***, CRL.REV. 1891/1994,

¹ AIR 1953 SC 277

² 1969 1 SCC 292

³ (2013) 1 SCC 314

⁴ (2021) SCCOnLine SC 5329

⁵ (1995) 4 SCC 190

⁶ (2017) 15 SC 67

⁷ (2013) 3 SCC 77

⁸ (2022) SCC OnLine SC 153

⁹ (2018) 248 DLT 630

***K.K. Girdhar v. M.S. Kathuria*¹⁰ *Tunde Gbaja v. Central Bureau of Investigation*¹¹.**

8. Learned counsel appearing on behalf of the respondent opposed the instant bail applications. He submits that the instant bail applications do not have any substance and deserve to be outrightly rejected. According to him, the interpretation propounded by the applicants is contrary to the scheme of Section 167 of the Cr.P.C. He submits that if the provision of Section 167 of Cr.P.C. is perused carefully and in its entirety, the same would clearly reveal that the condition for remand of maximum 15 days and passing of a speaking order only applies till the complaint or charge sheet as the case may be is filed as mandated in Section 167(2)(a)(i)(ii) of Cr.P.C. He has further referred to sub-Section (3) of Section 167 to indicate that a Magistrate authorizing under Section 167 of Cr.P.C. any detention in the custody of the police has to record the reasons for doing so. According to him, the detention in the custody of “police” requires reasons to be recorded, and since in the instant case, the detention is not in the custody of the “police” but is in “judicial” custody, therefore, there is no requirement of passing a reasoned order. He specifically submitted that sub-Section (2) of Section 167 of Cr.P.C. uses the word “such custody”. According to him, such custody would mean “police custody”. He submits that the Magistrate to whom an accused person is forwarded under Section 167 of Cr.P.C., may, whether he has or has no jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days in the whole. According to him, clause (a) of sub-Section (2) of Section 167 of

¹⁰ ILR 1988 2 Del. 197

¹¹ 2007 (1995) DRJ 429

Cr.P.C. provides that the Magistrate may authorize the detention of the accused persons otherwise than in the custody of the police, beyond the period of 15 days, if he satisfied that adequate grounds exist for doing so. What is required to be followed is the timeline provided under sub-clause (i) (ii) of clause (a) of sub-Section (2) of Section 167 of Cr.P.C., if the complaint or the charge sheet is filed within the timeline of 60 days or 90 days as the case may be, subsequent thereto there is no legal necessity to adhere to the requirement of extending the remand only upto 15 days or to pass a speaking order. According to him, after filing of the complaint or the charge sheet, the requirement of Section 167(2) of the Cr.P.C. is fulfilled and the accused is not entitled for grant of bail, and at best he can apply for regular bail. During the period of filing of the complaint till the cognizance is taken the accused remains in the custody of the Magistrate but the Magistrate is not required to pass a speaking order or not to grant remand exceeding 15 days. In the instant case according to him, the cognizance is taken on 20.09.2019 and, therefore, w.e.f. 19.05.2022 i.e., the date of filing of the complaint till the cognizance is taken i.e. on 20.09.2022, the applicants remained in the custody of the Magistrate and the Magistrate was not required to pass speaking order for each remand or to limit the extension of remand only upto 15 days. In any case, according to him, the custody of the applicants cannot be said to be illegal at best it can be an order of defective remand. Having opted not to challenge the order of remand dated 31.05.2022, the applicants now cannot take the ground of any defect in the said order. He submitted that on 06.08.2022 by a specific remand order passed by the Magistrate, the judicial custody was extended upto 17.08.2022. He submitted that, as on date, the applicants are in the judicial custody under a valid order and if at all

there was any illegality in the order of remand dated 31.05.2022, the same would not enure in favour of accused for grant of bail under Section 167(2) of Cr.P.C. The scope of Section 167(2) of Cr.P.C. comes to an end once the compliant or the charge sheet as the case may be is filed. The custody if at all defective for a limited period of time may not entitle the applicant for grant of bail. The applicants could have filed a petition for *habeas corpus*. It is further stated that the act of the applicants falls within the purview of Section 447, 448, 36-I, 229 & 129 of the Companies Act, 2013, Section 211, 628 of the Companies Act, 1956 and Sections 120(B), 417 read with Section 420 of IPC. It is for this reason, it is stated that the case of the applicants falls under Section 212(c) of the Companies Act, 2013, which starts with a non-obstante clause and the provisions stipulated under Section 212 (6) (i) & (ii) of the Companies Act, 2013, are mandatory in nature. It is stated that the twin test has to be satisfied before a person accused of any offences covered under Section 447 can be released on bail. It is also submitted that Section 212(7) of the Companies Act, 2013 provides that the limitation on granting bail under Section 212 (6) of the Companies Act is in addition to the limitation under the Code of Criminal Procedure 1973, or any other law for the time being in force.

9. While referring to the status report, it is submitted that the applicants are closely associated with various individuals having considerable influence. Most of the witnesses/individuals associated with the investigation of BPSL, were working under the applicants and are under their powerful influence in the society. Thus, there is every likelihood that witnesses may be influenced and investigation may be hampered. It is stated that there are reasonable apprehensions that the applicants will interfere with the course of justice by attempting to intimidate the witnesses, by creating or causing

disappearance of evidence, fleeing or otherwise placing themselves beyond the reach of the sureties and may abuse the liberty granted to them by indulging in similar or other unlawful acts.

10. Reliance is placed on the decision of the Hon'ble Supreme Court in the matters of *Abdul Azeez v National Investigation Agency*¹², *Suresh Kumar Bhikamchand Jain v. State of Maharashtra*¹³, *Dinesh Dalmia v. CBI*¹⁴, *Narcotics Control Bureau v. Mohit Aggarwal*¹⁵ and *SFIO v. Nitin Johari &Anr.*¹⁶ *Y.S. Jagan Mohan Reddy v. CBI*¹⁷ *Serious Fraud Investigation Office v. Rahul Modi &Ors*¹⁸ &the Judgment of Rajasthan High Court in the case of *Mahesh Chand and etc. v. State of Rajasthan and etc.*¹⁹.

11. I have heard Shri Dayan Krishnan, learned Senior Counsel assisted by Shri Arshdeep Singh Khurana for the applicants and Shri Anurag Ahluwalia, learned CGSC assisted by Shri Kritagya Kumar Kait, for the SFIO/respondent. I have considered the submission made by the learned counsel appearing for the parties and perused the record.

12. It is seen that the present applicants are involved in the alleged fraud allegedly resulting in misappropriation of the public money to the tune of Rs.5,435/- Crores. The role assigned to the applicant- *Amarjeet Sharma* is that he was the head of the Accounts Department of BPSL. All the financials statements of the BPSL and various accused companies were prepared by him, which were not reflecting

¹² (2014) 16 SCC 543

¹³ (2013) 3 SCC 77

¹⁴ (2007) 8 SCC 770

¹⁵ (2022) SCC OnLine SC 891

¹⁶ SCC OnLine SC 1178

¹⁷ (2013) 7 SCC 439

¹⁸ (2019) 9 SCC 165

¹⁹ (1984) SCCOnLine Raj. 43

the true and fair view of the affairs of the company. He had signed the balance sheets of BPSL for financial year 2010-11 & 2017-18. He was allegedly aware that BPSL used to make the payments in the form of capital advances to various companies based at Kolkata which further invested in the accused companies by rotation of these funds. The further allegations are that the issues were reflagged in the forensic report conducted by EY for the period Financial Year 2013-2014 to 2015-2016. According to the allegations, the applicant-*Amarjeet Sharma* was well aware that the advances to suppliers were in fact not genuine business. Instances of larger fraud committed by various individuals including the applicants have been highlighted while showing that there were instances of siphoning off materials from BPSL Plant, *Sambalpur Orissa*. The diversion of funds from BPSL in the form of bogus capital advances and routing the same as equity or unsecured loans in related entities of BPSL have been pointed out. Bogus advances to suppliers, purchase of property by *Shree Ankleshwar Commercial Company Pvt. Ltd.* from BPSL and unsecured loans to *Silver Star Commercial Company Pvt. Ltd.* etc. have been highlighted. Fraudulent availing of credit facilities, cheating upon the banks, false representation in the financials, falsification of Books of Accounts for not providing true and fair view of finances of BPSL, misuse of corporate structure of 30 companies and other fraudulent transactions etc. are the issues highlighted in the status report.

13. As per the Status Report, the brief allegations against the applicants- *Amarjeet Sharma* and *Alkesh Sharma* reads as under:-

Amarjeet Sharma

“The applicant-Amarjeet Sharma was the head of the Accounts Department of BPSL. All the financial of BPSL and

various accused companies were prepared by him which were not reflecting true and fair view of the affairs of the companies. He had signed the balance sheets of BPSL for F.Y. 2010-11 to 2017-18. He was aware that BPSL used to make payments in the form of capital advances to various companies based at Kolkata which further invested in the accused companies by rotation of these funds. He was bogus advance aware that the issue of Capital Advances was highlighted by the Income-Tax department and also the same was red flagged in the forensic report conducted by EY for the period F.Y. 2013-14 to 2015-He was aware that the advances to suppliers were not genuine business”.

Alkesh Sharma

“The applicant-Alkesh Sharma was Ex-President (Accounts), BPSL and also Director in Reward Capital Services Pvt. Ltd. (September 2003 to March 2020), Décor Investment & Finance Pvt. Ltd (June 1996 to August 2007), and Nilanchal Investments Pvt. Ltd. (August 2004 to March 2020). He had signed the balance sheets of Nilanchal Investment Pvt. Ltd. for F.Y. 2013-14 to 2015-16 and Reward Capital Services Pvt. Ltd. for F.Y. 2013-14 to 2016-17. He was actively involved in the day-to-day affairs of the company at the Kolkata plant. He was looking after siphoning off funds from BPSL through various Kolkata, Delhi and Mumbai based paper entities managed and controlled by various entry-operators. He was the main link between BPSL and various entry operators of paper companies”.

14. The narration of the aforesaid facts would reveal that in the instant case the applicants were arrested on 21.03.2022 and the investigation report/complaint has been filed on 19.05.2022, i.e. within 60 days. It is thus seen that the provisions under Section 167(2) (a) (ii) would not have any application and the applicants are not entitled for grant of default bail under the aforesaid provision. Apparently, the investigation with respect to present applicants are concerned, is complete in all respects and the complaint/prosecution has been filed to substantiate the charges.

15. The Hon'ble Supreme Court in the case of **Rahul Modi (supra)** has considered the law in great detail with respect to the scope of application of Section 167(2) of Cr.P.C. The issue therein was whether an accused is entitled for statutory bail under Section 167(2) of Cr.P.C. on the ground that cognizance was not taken before the expiry of 60 days or 90 days as the case may be from the date of remand. The Hon'ble Supreme Court in paragraph No. 11 while placing reliance on earlier decision **Suresh Kumar Bhikamchand Jain (supra)** has held that filing of a charge sheet is sufficient compliance with the provision of Section 167 of Cr.P.C. While analyzing the earlier decisions of the Hon'ble Supreme Court, which were cited to argue otherwise, it has been held that the Hon'ble Supreme Court had not taken any different view in any of the earlier decisions and the view of the Hon'ble Supreme Court has been found to be consistent that the indefeasible right accruing to the accused is enforceable only prior to the filing of challan and does not survive or remain enforceable, on the challan being filed. It has been made clear that once the challan has been filed the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused.

16. In the present case the complaint so far as it relates to the applicants, the same is complete in all respects. Even in the decision relied upon by learned counsel for the applicants in the case of **Yogesh Mittal (supra)**, paragraph No. 27 operates against the applicants which recorded that in that case the supplementary complaint did not contain new offence and was only additional evidence in support of the offence for which main complaint was already filed. Even the exercise of filing of the additional evidence in pursuance to the main complaint

was accepted to be legal recourse of law. Therefore, it cannot be said that in the instant case the applicants are entitled for default bail.

17. The submission whether once the complaint/charge sheet is filed, the court is required to pass reasoned judicial order of remand every time when the accused is produced and the period of remand cannot exceed beyond 15 days requires deeper scrutiny.

18. In the instant case, the judicial custody of the applicants upto 31.05.2022 is absolutely in accordance with law and there is no quarrel on this. What is being argued is that when the applicants were produced through video conferencing on 31.05.2022, they were further directed to be produced on 17.08.2022 without any formal application or without any reasoned order. Only on production warrant the Special Judge has extended the judicial remand putting his seal and signature. There is a clear breach of the requirement of there being a 15 days maximum remand period. It is thus contended that the endorsement of the concerned Special Judge dated 31.05.2022 for production of the applicant on 17.08.2022 amounts to illegal custody and is in violation of Article 21 of the Constitution. It is also contended that even sub-Section (2) of Section 309 of Cr.P.C. requires that if the court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considered reasonable, and may by a warrant remand the accused if in custody provided that no Magistrate shall remand an accused persons to custody under this Section for a term exceeding 15 days at a time. It is thus stated that the law requires at each stage i.e. Pre 309 or post 309 of Cr.P.C., to pass a reasoned order of remand and the same not exceeding 15 days at a

time are the statutory principles to be strictly followed. It is, therefore, submitted that in the instant case remand order dated 31.05.2022 which although cannot be termed to be a legal remand order, but even if it is considered to be valid, the same cannot breach the period of remand beyond 15 days.

19. For the purposes of clarity of the facts, communication dated 03.08.2022 of the office of Superintendent, Central Jail, to the Special Judge regarding clarification of extension of judicial remand is reproduced as under:-

Hon'ble Sir,

Please refer to the order issued from the Hon'ble Court on 02.08.2022 on the bail application filed by the counsel of the accused, wherein this office has been directed to file the report on 06.08.2022 as to whether judicial remand of the accused was extended on 31.05.2022 or not.

In this regard it is submitted that as per record the accused was produced before the Hon'ble court on 31.05.2022 for further extension of judicial remand on which the NDOH was given as 17.08.2022 (Copy Encl.)”.

20. The said communication is accompanied by an endorsement of Special Judge dated 31.05.2022, the same is extracted as under:-

“Accused be produced on 17/8/22 (Through VC)

-sd-

*ASJ-03/SW
31/5/2022”*

21. It is also seen that after filing of the bail application in terms of the order dated 01.08.2022, the applicants were directed to be produced on 06.08.2022. The order dated 01.08.2022 and order dated 06.08.2022 passed by the learned ASJ are also reproduced as under:-

**CNR NO. DLSWOI-005039-2022
Reg.No.CC/374/20 22**

SFIO Vs. Bhushan Airways Services Pvt. Ltd. &Ors.

Let production warrants against accused Amarjeet Sharma and Alkesh Sharma be issued with a direction to produce them physically on 06.08.2022.

--SD-

(Dr. Jaminder Singh)

*ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/ New Delhi/ 01.08.2022”*

Pursuant to the previous order dated O 1.08.2022, accused Amarjeet Sharma and Alkesh Sharma are produced from J/C. Replies of concerned Dy. Superintendent, Central Jail No. 4 also received regarding clarification of remand dated 31.05.2022. It has been clarified in the reports that on 31.05.2022, the accused persons namely Alkesh Sharma and Amarjeet Sharma were remanded by this Court for 17.08.2022. Copies of remand orders are also attached with the replies and some are placed on record. Copies of same be supplied to learned counsel for complainant as well as accused persons, as requested. Both accused persons namely Alkesh Sharma and Amarjeet Sharma are further remanded to J/C till 17.08.2022 i.e. date already fixed.

Contd 2/- “

Reg.No.CC/374/2022

SFIO Vs. Bhushan Airways Services Pvt. Ltd. &Ors.

Production warrants be also issued for accused Arun Aggarwal to be produced physically on next date of hearing i.e. 17.08.2022.

Be put up for consideration on 17.08.2022, date already fixed.

--SD-

(Dr. Jagminder Singh)

*ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/ New Delhi/ 06.08.2022*

22. The aforesaid facts and the orders would clearly show that there is no order on 31.05.2022, except an endorsement on production warrant which directs for production of the applicants on 17.08.2022.

Any order remanding the applicants if at all, is considered to have been passed after 31.05.2022 is only on 06.08.2022, which says that the applicants be further remanded to judicial custody till 17.08.2022.

23. In view of the aforesaid, the question which emerges for immediate consideration is whether on 31.05.2022 a speaking order was required to be passed and further the remand period beyond more than 15 days can be accepted to be legal. The answer to the aforesaid question would depend upon the interpretation of the relevant provisions applicable in the instant case.

24. Section 167 of Cr.P.C. is reproduced as under:-

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

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

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

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

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

25. This court also finds it appropriate to reproduce Section 212(6) and Section 212(7) of the Companies Act, 2013. The same is reproduced as under:-

“(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,¹[offence covered under

section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) The Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—

(i) The Director, Serious Fraud Investigation Office; or

(ii) Any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.”

26. The Hon’ble Supreme Court in the matter of **Ram Narayan Singh** (*supra*) was considering a petition for the writ of *habeas corpus* where the custody of the detenu was sought to be justified on the basis of two remand orders, the one alleged to have been passed by Additional District Magistrate on 06.03.1953 and the other alleged to have been passed by the trial Magistrate on 09.03.1953, whereby the matter was adjourned. The Hon’ble Supreme court perused the order dated 09.03.1953 and noted that the same merely directed the adjournment of the case till 11.03.1953 and the order did not contain

any direction for remanding the accused to custody till that date. The so-called warrants only contained on its back the endorsement “remanded to judicial till 11.03.1953”. The Hon’ble Supreme Court noted that there was no order of remand committing the accused to further custody till 11.03.1953. The Hon’ble Supreme Court further noted that when on 10.03.1953 the affidavit on behalf of the Government was filed justifying the detention there was no order remanding the four persons to custody. The petitioners in that case were, therefore, directed to be released.

27. In the case of *Madhu Limaye (supra)* in paragraph No. 12, it has been held that once it is shown that the arrest made by the police officers was illegal, it was necessary for the State to establish that at the stage of remand the Magistrate who directed for detention in jail custody applied his mind to all relevant matters. It has been held that the orders of remand are not such as would cure the constitutional infirmities. In the case of *Madhu Limaye (supra)*, he was arrested on 06.11.1968. The First Information Report was formally registered on 19.11.1968, where the date of occurrence was mentioned as 06.11.1968 and the question which the Hon’ble Supreme Court was dealing with was whether the arrest on 06.11.1968 was illegal inasmuch as the same was effected by police officers for offences which were non-cognizable and whether there was violation of the mandatory provision of Article 22(1) of the Constitution. The other questions which were dealt with by the Hon’ble Supreme Court in that case was whether the arrest was effected for extraneous consideration and were actuated by *malafides*. The Hon’ble Supreme Court in paragraph No. 8 has noted that the arrest of *Madhu Limaye (supra)* and his companions was effected by the police officers concerned without any specific orders or directions from the Magistrate on

06.11.1968. In that case the remand orders were passed on 6th November and on 20th November, 1968 on the basis that the accused persons had been arrested and forwarded under custody under Section 151, 107 & 117 of Cr.P.C. It is thus seen that the Hon'ble Supreme Court was considering the submissions in a petition under Article 32 of the Constitution and the issue involved in the present case does not have any relevance to the facts and situation existing in the case of *Madhu Limaye (supra)*. The decision in the case of *Madhu Limaye (supra)*, therefore, would have no application in the present case.

28. In the matter of *Manubhai Ratilal Patel (supra)* in paragraph No. 24 it has been held that the act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising the judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justifies such a remand or to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. It has been held that it is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner. Paragraph No. 24 of the said decision is reproduced as under:-

“The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This

requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner”

The facts in the case of ***Manubhai Ratilal Patel (supra)*** would reveal that an FIR was registered against the accused in that case which was challenged in a petition under Section 482 of Cr.P.C. before the High Court. The High Court granted interim relief staying the further proceedings in respect of the investigation. The accused was arrested on 16.07.2012 and was produced before the concerned judicial Magistrate on 17.07.2012. The police prayed for remand which was granted upto 19.07.2012. The application for regular bail was filed which was rejected by the concerned court. The accused prayed for interim bail which was also rejected by the court of sessions. He, therefore, filed *habeas corpus* petition before the High Court contending therein that the Magistrate could not have exercised its power under Section 167(2) of Cr.P.C. remanding the accused either to police or judicial custody in view of the stay order passed by the High Court and therefore, the detention of the accused was argued to be absolutely illegal and *non est* in law. The Hon’ble Supreme Court in paragraph No. 31 of the said decision has held that the order of remand cannot be regarded as untenable in law. It is for this reason the decision in the case of ***Manubhai Ratilal Patel (supra)*** also would not have any application in the facts and situation of the present case. The facts in the case of ***Raj Pal Singh (supra)*** cited by learned Senior Counsel appearing for the applicant do not indicate as to whether the consideration was after filing of the charge sheet/complaint. In the absence of the aforementioned fact, no ratio decidendi can be inferred

from the said decision. The said decision would thus has no application in the instant case. In the case of ***Rajesh Misra (supra)***, the Hon'ble High Court of Allahabad noted that there was no order of remand by the Chief Judicial Magistrate who committed the accused to the court of sessions and the Sessions Judge also did not pass any order of remand under sub-Section (2) of Section 309 of Cr.P.C. A careful perusal of the reasoning given in the case of ***Rajesh Misra (supra)*** would indicate that the High Court was persuaded to accept the submission made by the accused in that case while placing reliance on various decisions including the cases of ***Ram Narayan Singh (supra)*** & ***Madhu Limaye (supra)***. I am of the opinion that the principles laid down in the cases of ***Ram Narayan (supra)*** and ***Madhu Limaye (supra)***, do not support the view taken by the High Court of Allahabad in the case of ***Rajesh Misra (supra)***, therefore, I am not persuaded with the reasoning in the case of ***Rajesh Misra***. In the case of ***Yogesh Mittal (supra)*** one of the questions considered by the Coordinate Bench of this Court is whether the custody of the petitioner in that case after 11.08.2017 was illegal resulting in an indefeasible right to him to be released on bail. It was noted therein that on 11.08.2017 when the Presiding Officer was on leave the concerned Reader directed for taking up the matter on 31.08.2017 and the question that arose before the Coordinate Bench of this Court was the remand beyond 15 days would have entitled the petitioner for release on bail. It was found that the custody of the petitioner in that case was illegal before 31.08.2017, subsequent to which, the custody became legal. The bail application of the petitioner in that case was heard on 29.08.2017 and this court found that on the date of hearing of the bail application since the custody of the petitioner was found to be illegal, therefore, the petitioner was entitled for grant of bail.

29. It is settled principle of law that courts should not place reliance on decisions without discussing how the factual situation of the case they are asked to adjudicate upon fits the facts situation of the decision on which reliance is placed. Circumstantial flexibility, one additional or different fact may make a world of difference between the conclusions to be reached in two cases. Observations of the courts are neither to be read as *Euclid's Theorems* nor as provisions of the statute, and are never to be taken out of contexts. Courts primarily interpret statutes, they do not interpret judgments. Each case depends on its own facts and a close similarity between one case and another may not be enough. It is because even a single significant detail may alter the entire factual matrix, in deciding such cases. One should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not decisive. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. According to well settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgments based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence is a decision, is its *ratio*, and not every observation found therein nor what logically follows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as precedent. In order to understand and appreciate the binding force of a decision it

is always necessary to see what were the facts in the case in which the decision was given and, what was the point which had to be decided. Law cannot afford to be static and, therefore, Judges are to apply an intelligent technique in the use of precedents. The court is bound by the *ratio decidendi* of a decision and not mere observations. There is no precedent on facts. It is the legal proposition flowing from the judgment which has binding effect. (Pls. See): ***Rekha Mukherjee v. Ashis Kumar Das & Others***²⁰, ***Ram Prasad Sarma v. Mani Kumar Subba & Others***,²¹ ***Vishal N. Kalsaria v. Bank of India & Others***²², ***Bhavnagar University v. Palitana Sugar Mill (P) Ltd. & Others***²³, ***Union of India & Anr. v. Major Bahadur Singh***²⁴ and ***Padma Sundara Rao (Dead) & Others v. State of T.N. & Others***²⁵.

30. If the decision of this court in the case of ***Yogesh Mittal (supra)*** is carefully perused the conclusion recorded therein in paragraph No. 34 with respect to question No. (iv) stated in paragraph No. 28 would indicate that this court was considering the provision of Section 309 of Cr.P.C. and the conclusion was based on a pronouncement of the Hon'ble Supreme Court in the case of ***Ram Narayan Singh (supra)*** & ***Kanu Sanyal (supra)***. The question whether in terms of the provision of Section 167 of the Cr.P.C. after filing of the complaint/charge sheet the concerned court is required to pass speaking order or whether the period of remand cannot extend beyond 15 days was not an issue. More importantly the remand order in that case was not under the signature and seal of the concerned Judge but was under the signature of the Reader. The provisions of Section 309

²⁰ (2005) 3 SCC 427

²¹ (2003) 1 SCC 289

²² (2016) 3 SCC 762

²³ (2003) 2 SCC 111

²⁴ (2006) 1 SCC 368

²⁵ (2002) 3 SCC 5

of Cr.P.C. or the prohibition not to pass an order of remand for 15 days is only applicable to the Magistrate and is not applicable to the court of sessions post the stage of cognizance. No reasoning can be found as to why an accused would become entitled for bail in case of illegal detention. On the contrary, the Coordinate bench of this Court in the case of **Harshad S. Mehta v. CBI**²⁶ recognized the principle that illegal detention may not be the ground for release on bail but can factor as one of the reasons. Thus, the decision in the case of **Yogesh Mittal (supra)** is distinguishable on facts and would not have bearing under the facts of the present case.

31. In the case of **Harshad S. Mehta v. CBI (supra)** decided by this court, the question whether remand under Section 167(2) of Cr.P.C. has to be taken after every 15 days or not and whether after the initial remand of 15 days the accused can be remanded in perpetuity subject of course to the outer limit of 60/90 days was one of the issues. This Court in paragraph No. 22 of the said decision has held that in no case the Magistrate can authorise the detention beyond 90 days or 60 days as the case may be. But even beyond 15 days and up to the period of 60 days, the remand has to be taken of the accused 15 days each time. The said principle has been laid down relying on the decision of the Hon'ble Supreme Court in the case of **Raj Narain v. Superintendent Central Jail, New Delhi**²⁷. The reason behind the provision and the legislative intent has been discussed in paragraph No. 24 to state that when the remand is sought, it is to ward off malpractices and is in fact a counter check to safeguard the liberty of an accused. By process of remand, the Magistrate monitors the proceedings in such a manner so that a full account of remand is handy and bail is offered to such

²⁶DRJ 1992 (24)

²⁷ (1970) 2 SCC 750

accused person at the end of 60 or 90 days as the case may be. In paragraph No. 31 the following observations have been made:-

“31 Admittedly, in this case the remand was not sought nor the police diary as required was produced before the Magistrate after 25th August, 1992. Nor any application filed by C.B.I. giving reason for non-production of the petitioner after 25th August 1992. Therefore, his detention after 25th August, 1992 was illegal. But the question which arises is whether the detention which became illegal, automatically entitled him to bail? The law is now well settled that if the detention is illegal, the remedy is not the bail but a petition for habeas Corpus as held in the case of Mahesh Chand Vs. State of Rajasthan 1985 Crl.LJ. 301. Though there is a Single Bench Judgment of our own High Court in the. case of Prof. Darshan Singh Vs. State in Crl.M.(M) 1306/86 dated 10th October, 1986 decided by M.K. Chawla, J. wherein the bail was granted taking this also as a factor but this was not the main ground for granting the bail. There is no quarrel with the proposition that this can also be a factor while considering for the grant of the bail. This is so far as the legal position is concerned. So far as the grant of bail is concerned the bail can only be granted if the person is in custody. But in the present case, Mr. Harshad S. Mehta is not in custody. Therefore, Mr. Saxena appearing for the C.B.I. fairly conceded that the person who is not. in custody cannot be granted bail and therefore, so far as the bail is concerned, it has become infructuous”.

32. It is thus seen that the manner of remand as has been discussed in the case of **Harshad S. Mehta (supra)** was prior to the filing of the charge sheet/complaint stage. The instant case involves the question post filing of the complaint/charge sheet. Even observation made in paragraph No. 31 would go to show that this court has recognized the well settled legal position that if the detention is illegal the remedy is not the bail but a petition for habeas corpus. A reliance was also placed by this Court on a decision of the Full Bench of Rajasthan High

Court in *Mahesh Chand (supra)*. This Court, however, noted that there is no quarrel with the proposition that illegal detention can also be a factor while considering for the grant of bail. Thus, the position of law as noted in the said case does not recognize a principle to say that the illegal detention can alone be the ground to grant bail to an accused.

33. In the case of *Abdul Azeez (supra)* the Hon'ble Supreme Court declined to accept the prayer for grant of bail under Section 167(2) of Cr.P.C. on the ground that the Investigating Agency failed to file the final report within 180 days as according to the accused in that case the charge sheet which was filed was not a final report as contemplated under Section 173(2) of Cr.P.C. The requisite sanction as required under Section 18 & 18(A) of UAPA Act, and so also under Section 7 of Explosive Substances Act were obtained therein and merely because certain facets of the matter called for further investigation it has been held that the same does not deem such final report to be incomplete. It has been held that the requirement of Section 167(2) of Cr.P.C. stood fully complied with. In the case of *Suresh Kumar Bhikamchand Jain (supra)* the Hon'ble Supreme Court has held that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. The filing of charge-sheet was found to be sufficient compliance with the provisions of Section 167(2)(a)(ii) of Cr.P.C. Whether cognizance is taken or not is not material as far as Section 167 Cr.P.C. is concerned. It has also been held that merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 Cr.P.C., it cannot be said that the accused is entitled to grant of statutory bail. The scheme of Cr.P.C. is such that once the investigation stage is completed, the court proceeds to the next stage,

which is the taking of cognizance and trial. The 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) Cr.P.C., 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. It has also been held that 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. The paragraph No. 18 of the said decision is reproduced as under:-

“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”.

34. Even in the case of **Dinesh Dalmia (supra)**, the Hon’ble Supreme Court has held that right under Section 167(2) of Cr.P.C. is a conditional one, being conditional on the investigation having remained pending that is on the charge sheet not having been presented within the stipulated time. Once a charge sheet is filed the right under Section 167(2) of Cr.P.C. ceases and does not revive only because a further investigation remains pending within the meaning of Section 173(8) of Cr.P.C. The same principles have been reiterated by the Hon’ble Supreme Court in the case of **Rahul Modi (supra)** and it has been held that filing of charge sheet is sufficient compliance with the provisions of proviso (a) to Section 167(2) of Cr.P.C. and that taking of cognizance is not material to Section 167 of Cr.P.C. In the instant case, although the issue involved in the case of **Rahul Modi (supra)** with respect to taking of cognizance beyond the period of 60/90 days is not involved. However, the fact remains that the Hon’ble Supreme Court has categorically held that filing of the charge sheet is the sufficient compliance of proviso (a) to Section 167(2) of Cr.P.C.

35. If the facts and the issue involved in the present case are considered in the context of the legal position as has been discussed in various cases, the same would reveal that the complaint in the present case has been filed within a period of 60 days. The Special Judge on

06.08.2022 directed for production of the applicants on production warrant and their further remand was extended. As on date the applicants are under valid judicial remand. On 31.05.2022 the applicants were produced through Video Conference which is an acceptable mode of production and there is endorsement by the concerned Special Judge for their further production on 17.08.2022. The complaint in this case is filed on 19.05.2022 i.e., before 31.05.2022. It is thus seen that on 31.05.2022 when the production was directed beyond 15 days the complaint was already filed. A reading of the provisions under Section 167 of Cr.P.C. nowhere carves out the principle to indicate that the accused would be entitled for bail for any reason whatsoever apart from any other reason then stipulated under the proviso (a) of sub-Section (2) of Section 167 of Cr.P.C. The right of default bail is finished/extinguished, the moment charge sheet is filed within the period prescribed therein. Any irregularity or illegality in the remand order is not a statutorily sanctioned reason for grant of default bail. Evidently, endorsement dated 31.05.2022 has not been challenged. The bail can only be granted under the Cr.P.C. when either there is breach of the provision of Section 167 of Cr.P.C. or the accused is able to make out his case for grant of bail in Chapter XXXIII (Sections 436 to 439 of Cr.P.C.). Even for the sake of argument if the argument of the applicants is accepted that they remained in illegal custody between 31.05.2022 to 06.08.2022, the fact remains that they have not filed any petition for *habeas corpus* or taken any other steps in accordance with law. Filing of the bail application, subsequent to filing of the complaint/charge sheet, will have to be considered on its own merits. The applicants may be entitled for any other legal remedy like the filing of petition under Article 226 of the Constitution of India or a petition under Section 482

of Cr.P.C. but in no case, he can claim bail under Section 167 of Cr.P.C. Besides that he/she can also claim appropriate compensation in accordance with law but the mandate of law would not automatically entitle the grant of bail on account of illegal custody, if any.

36. None of the decisions cited by learned Senior Counsel for the applicants recognizes the principle of grant of bail on any other ground except on breach of the provision of Section 167 of Cr.P.C. or on merits. The decision in the case of *Yogesh Mittal (supra)* has already been distinguished on facts and the said decision does not lay down the principle that there can be any other mode under which the accused can seek for bail. It is to be noted that the present case pertains to post filing of the complaint and a reading of provisions under Section 167 of Cr.P.C. does not indicate a requirement of passing reasoned order or to confine the remand only upto maximum 15 days in one go. It is thus concluded that the applicants are not entitled for grant of bail on account of breach of 15 days' time limit, post filing of complaint or on account of not passing a reasoned order. Post filing of complaint/chargesheet as the case may be, endorsement on production warrant by the competent court is sufficient compliance of Section 167 of the Cr.P.C., of course the accused, if at all he has any grievance with respect to any illegality or irregularity with respect to the passing of the order of remand post filing of the complaint/chargesheet or if he feels that any of his legal right are infringed, he can certainly raise his grievance in accordance with law but the same would not entitle him for his release on bail under Section 167 of Cr.P.C. It is settled principle that if the words of a statute are clear and free from any vagueness and are, therefore,

reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning irrespective of consequences.

37. The language of sub-Section 3 of Section 167 of Cr.P.C. is unambiguous and, therefore, has to be understood in the natural and ordinary sense. The same would indicate that if the accused is remanded in police custody, the reasoned order is *sine qua non*. The logic behind not permitting the Magistrate to remand an accused beyond 15 days unless the complaint/charge sheet is filed is also based on the fundamental constitutional principles of the right to liberty. Once a charge sheet/complaint is filed the further course envisaged under the Cr.P.C. will have to take place and the mode available for the accused for bail is only on merits. Any other interpretation of Section 167 of Cr.P.C. would lead to the creation of another mode for grant of bail which is not envisaged under the Code of Criminal Procedure and, therefore, the same is not acceptable. The 15 days' time limit and reasoned order are the requirement to be followed under Section 167 of Cr.P.C. only during pendency of investigation.

38. Besides, the aforesaid, the Full Bench decision of the Patna High Court in the matter of ***Rabindra Rai v. State of Bihar***²⁸ also takes almost a similar view. Thus, the argument of the applicants is not acceptable that in the absence of a reasoned order and on breach of 15 days time limit, they are entitled for bail under Section 167 of the Cr.P.C.

39. So far as the argument on merits are concerned, it must be stated that as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in Cr.P.C. A reference can be made to the

decision of the Hon'ble Supreme Court in the case of ***Y.S. Jagan Mohan Reddy v. CBI***²⁹, where the Supreme Court has held that the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. In paragraph No. 35 of the said decision it has been noted that the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. The similar view has been adopted by the Hon'ble Supreme Court in several other decisions including in the case of ***Gautam Kundu v. The Directorate of Enforcement***³⁰ & ***State of Bihar v. Amit Kumar***³¹. The Hon'ble Supreme Court recently in the case of ***Nitin Johari (supra)*** has further reiterated the same principles. In the decision of ***Mohit Aggarwal (supra)*** in paragraph No. 18, the Hon'ble Supreme Court in the context of Section 37 of NDPS Act, has held that the narrow parameters available under Section 37 of the NDPS Act were not satisfied in that case. The length of period of custody or the facts that the charge sheet has been filed and the trial has commenced, are by themselves not consideration for grant of bail but

²⁹(2013) 7 SCC 439

³⁰(2015) 16 SCC 1

³¹(2017) 13 SCC 751

the same can be some of the factors to be considered by a court for grant of bail.

40. In the case of *Jainam Rathod (supra)*, the Hon'ble Supreme Court was considering bail application of an accused against whom the allegations for violation of the provisions of Section 447 of the Companies Act, 2013 and various provisions of the IPC including Sections 406/417/418/420/467/468/471/474/477A were alleged. The Hon'ble Supreme Court in paragraph No. 7 of the said decision had taken note of the fact that the accused therein was in custody since 28.08.2019 and there were 187 accused in all. The Hon'ble Supreme Court being mindful of the need to protect the personal liberty of the accused and in the absence of fair likelihood of the trial being completed within reasonable period granted bail. The Hon'ble Supreme Court had taken note of its earlier decision in the case of *Nitin Johari (supra)* and has held that while the provisions of Section 212(6) of the Companies Act, 2013 must be borne in mind, equally, it is necessary to protect the constitutional right to an expeditious trial in a situation where a large number of accused implicated in a criminal trial, the same would necessarily result in delay in its conclusion. The role of the other accused must be distinguished from the role of the main accused.

41. In the case of *Sujay U. Desai (supra)*, the Hon'ble Supreme Court has taken into consideration that the accused in that case was in custody since 19.03.2020 on the ground that the right to an expeditious trial is protected under Article 21 of the Constitution.

42. In the case in hand the applicants were taken into custody on 21.03.2022. The Status Report indicates that the investigation with respect to other accused persons is not complete in all respects. An

apprehension has been raised by the prosecuting agency on the basis of the role of the respective applicants that the applicants being closely associated with various individuals and have considerable influence over most of the witnesses who were working under the applicants. Specific roles of the applicants have been detailed in respective Status Reports. The brief role of each applicant has been reproduced in the preceding paragraphs. It is thus seen that at this stage, it cannot be said that the constitutional right of the applicants for speedy trial is infringed and on the contrary this court is not satisfied that there are reasonable grounds to believe that the applicants are not guilty of the offences alleged against them.

43. Hence, the applicants are not entitled for grant of bail even on merits. Accordingly, at this stage both the bail applications stand dismissed alongwith pending applications.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 03, 2022

p'ma