

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

% Reserved on: 06th March, 2023
Pronounced on: 11th April, 2023

+ **BAIL APPLN. 3195/2022**

RIYAZUDDIN Petitioner

Through: Dr. Ashutosh, and Ms. Fathima,
Advocates.

versus

STATE NCT OF DELHI Respondent

Through: Mr. Ritesh Kumar Bahri, APP
for the State with SI Rahul, PS
Spl. Cell

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL
JUDGMENT

ANISH DAYAL, J.

1. By this petition, the petitioner seeks admission to statutory bail under Section 167(2) r/w Section 439 and 482 Cr.P.C. in proceedings arising out of FIR No. 228/2021, at PS Special Cell under Sections 489B, 489C, 120B IPC. As per the case of the prosecution, the said FIR was registered on the basis of information received by the Special Cell on 29th August, 2021 wherein the petitioner was apprehended along with fake Indian currency of Rs. 20,000/- in the denomination of Rs. 2000/- and Rs. 500/- respectively. During his search, one original Aadhaar Card having No. 4099 9764 2654 with particulars as Riyazuddin s/o Zahooruddin r/o 2590, Sir Sayyed Ahmed Road, Darya Ganj Delhi-110002 was recovered along with two mobile phones, PAN card, driving license. During the search of his Honda City car bearing No. DL 9CU 0473 at the spot one colored photocopy

of a forged Aadhaar card bearing No. 4382 3128 1964 having photograph of the petitioner but with different details mentioning one Rohit s/o Sunil r/o House No. 512, Laxmi Nagar Delhi was also recovered. Later during the police remand, additional fake Indian currency worth Rs. 5000/- was recovered at his instance from the rented accommodation. It transpired that the petitioner was also absconding in another case of fake Indian currency registered with *vide* FIR No. 271/2021 under Sections 489B, 489C, 34 IPC at PS. Jafrabad. Pursuant to the apprehension of the petitioner on 30th August 2021, he was remanded to judicial custody on 4th September 2021 and since then has been in jail except for sometime in 2022 when he was on interim bail on the ground of his wife suffering from brain tumor. Upon completion of the investigation, charge-sheet was filed on 26th October, 2021. However, it was stated that further investigation was still pending and upon completion of the investigation final charge sheet would be filed under Section 173 (8) Cr.P.C.

2. As per the first charge sheet, the learned Trial Court took cognizance of offences punishable under Sections 471, 489B, 489C, 120B of the IPC. The petitioner's grievance is that till that time no offence under Section 420 IPC was made out and on 18th April 2022 when the learned Trial Court summoned the ACP in this regard on the ground that having discovered the forged Aadhaar card on the basis of which apparently a mobile phone had been procured by the petitioner including room booked at the Noida International Hotel at Sector 11 Noida, it was discovered that no investigation had been done. It further seemed to have been scuttled midway and a "*half-baked charge sheet has been filed*". When the ACP appeared on 19th April 2022, he made a categorical statement that further investigation was still

pending and a supplementary challan would be filed soon. Consequently, a supplementary charge-sheet was filed on 23rd May, 2022 for addition of offences punishable under Section 419 and 420 IPC and the learned Trial Court took cognizance of offence punishable only under Section 420 IPC on 6th June, 2022. Accordingly, an application dated 20th May, 2022 was filed by the petitioner under Section 167(2) Cr.P.C. essentially contending that there was filing of an incomplete charge-sheet since the offence under Section 420 had been included later. The said application was rejected by the learned ASJ *vide* the impugned order, noting that the original offence for which the petitioner had been arrested was for fake Indian currency which was recovered from his possession, for which the charge-sheet had been duly and completely filed within the limitation period. But since during the investigation it was also revealed that he used a forged and fabricated Aadhaar card, further investigation was carried out and a supplementary charge-sheet was filed. The learned ASJ distinguished the decision of ***Tunde Gbaja v. Central Bureau of Investigation***, 2007 SCC OnLine Del 450 on which the petitioner had heavily relied upon to state that this was not the case where the charge-sheet had been filed in piecemeal but was a case when the main charge-sheet had been filed but a supplementary charge-sheet was required because of subsequent investigation revealing another offence.

3. Learned counsel for the petitioner contends that filing a charge-sheet for only some of the offences and stating there-in that investigation was pending with respect to others, cannot amount to a complete charge-sheet depriving a person of statutory bail. Investigation for leftover offences cannot be equated with a situation

where there is pending investigation of existing offences for which a charge sheet is filed and then a supplementary charge sheet gets filed along with corroborative evidence like an FSL report. Reliance was also placed on the following paragraphs of the **Tunde Gbaja** (*supra*):

“13. A remand under section 309(2) of the Code can be made only after taking cognizance of the offence. That being the position, in the absence of a final report regarding all the offences alleged to have been committed by the accused persons, it has to be held that the Magistrate has not taken cognizance of the offences as required by Section 309(2) of the Code. The Magistrate is not empowered to order remand of the accused to judicial custody unless final report as contemplated under section 173(2) of the Code is laid before Court.

14. Thus, in the light of the report filed by the CBI, a further investigation in respect of the offences under the Official Secrets Act, IPC, Act and the Order is necessary, If final report is laid before Court and the Magistrate takes cognizance of the offence, a further report under section 173(8) of the Code regarding commission of offences or involvement of the accused in connection with the other offences can be made. But in the absence of a final report in respect of all the offences, it cannot be said that a final report under section 173(2) in respect of the offences alleged to have been committed by the petitioners under the Official Secrets Act could be legally filed by invoking the provisions of Section 173(8) of the Code. The finding of the Court below to the contra is, in our view, illegal.

15. Admittedly, no final report has been filed by the CBI against the petitioners in respect of the various offences. In its absence, the prosecution is not justified in resorting to Section 173(8) of the Code to submit a further report in respect of the alleged involvement of the petitioners under the Official Secrets Act, IPC, Act and the Order. Since the investigation of the case is not complete, we find no reason to deny the statutory bail to the petitioners under Section 167(2) of the Code.”

4. Further, this Court endorsed the view of the Kerala High Court in **Vijayaraghavan v. CBI**, 1984 Ker LT 522 and quoted:

“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 or 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 that 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 transactions of which information is given and not merely one of the offences committed during the course of the transaction”.

5. Further, learned counsel for the petitioner sought to distinguish the following case laws relied upon by the learned APP for the State *inter alia* **Serious Fraud Investigation Office v. Rahul Modi**, 2022 SCC OnLine SC 153 and **Dinesh Dalmia v. CBI**, (2007) 8 SCC 770 of the Hon’ble Supreme Court and **Suraj v. State (NCT of Delhi)**, 2022 SCC OnLine Del 3501 and **Saurabh Bali v. State**, 2021 SCC OnLine Del 3605 of this Court.

6. While decisions in **Rahul Modi** (*supra*) and **Dinesh Dalmia** (*supra*) involved different factual matrices, the decision in **Suraj v. State** (*supra*) was regarding filing of a video recording subsequently, which was held as not a filing of an incomplete charge-sheet, as no new offence was added. Similarly in **Saurabh Bali** (*supra*), the supplementary charge-sheet was placing a CFSL report and chemical

analysis blood report in respect of the offences for which charge-sheet had already been filed.

7. Learned APP however also relied upon the decision in ***Akash @ Gangu Dilip More v. The State Of Maharashtra***, CrI. Appeal No. 429/2021 dated 21 February, 2022 of the Bombay High Court, where charge-sheet was filed for offences under provisions of Indian Penal Code, the Arms Act and later, for offences under MCOCA, a supplementary charge-sheet had been filed. It was the contention of the learned APP that further investigation was required for tracing the authenticity of the second Aadhaar card and therefore only in respect of that issue the later charge-sheet was filed pursuant to the investigation which included trying to secure the information from UIDAI, the Statutory Authority for Aadhaar cards.

8. In rejoinder, learned counsel for the petitioner stated that since the State already knew of booking of the hotel and the mobile phone on the basis of a false Aadhar card and did not file the charge-sheet, there is no reason to file a delayed charge-sheet. It was reiterated that the learned ACP had stated on 19th April, 2022 that certain aspects had been neglected by the concerned IO and further investigation was still pending.

9. Learned APP for the State drew attention to para 12,13 and 14 of ***Suraj*** (*supra*):

“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 charge sheet 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 judgments 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 charge sheet 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. Charge sheet 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 charge sheet and that filing of a charge sheet would entail completion of investigation and that the right to default bail under Section 167 (2) CrPC would not survive. Further, flowing from the judgments 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 charge sheet 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.”

(emphasis added)

10. Learned counsel for the petitioner also raised arguments in relation to regular bail under Section 439 Cr.P.C. contending that the previous conduct of the petitioner shows that he was not likely to abscond neither influence any witness nor tamper with evidence since

he is not required for the purpose of investigation and has already remained in jail for more than one year which could possibly be the punishment for which he would be liable in case of conviction. Further, he belongs to the poor and lower strata of society, is the only adult male member, and his family includes his minor school going children, ailing wife who is suffering from brain tumor. In fact, it was pointed out that this Court has already granted interim bail to the said petitioner on account of the medical condition of the wife. As regards the previous involvements which have been alleged on the petitioner, it is contended that these unsolved cases have been foisted by the police since the petitioner is of a lower economic status and is unable to support himself.

11. For an assessment of the contentions, relating to the prayer of statutory bail, it will require to consider 173(8) of the Cr.P.C. which is extracted here below for ready reference:

“(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 subsections (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).”

12. An extremely useful assessment of the law relating to section 167 (2) and Section 173 Cr.P.C has been provided by in a judgment of a learned Single Judge of this Court in ***Chitra Ramkrishna v. CBI*** (2022) SCC OnLine Del 3124. Learned Judge has comprehensively reviewed the various decisions of the Hon’ble Supreme Court and

other Courts on this issue including *inter alia* the decision in **Tunde Gbaja** (*supra*), **M. Ravindran v. DRI** (2021)2 SCC 485, **Rakesh Kumar Paul v. State of Asam** (2017) 15 SCC 67, **Vijayaraghavan v. CBI**(*supra*), **Rahul Modi** (*supra*), **Abdul Azeez PV v. National Investigation Agency** AIR (2014) SCW 6537, **Dinesh Dalmia**(*supra*), held as under:

In view of the legal position pertaining to section 167(2) of the Code as discussed hereinabove, Section 173 of the Code only permits filing of a final report after completion of the entire investigation in respect of all offences and does not permit a piece-meal investigation and filing of incomplete charge sheet before Court. The charge sheet filed by the respondent/CBI is a piece meal charge sheet and is not filed in respect all offences subject matter of present FIR. The respondent/CBI is not legally permitted to pick one portion of investigation and to complete it and thereafter file piece meal charge sheet in respect of few offences subject matter of FIR and to left open investigation in respect of other offences and subsequent filing of charge sheet in respect of left over offences. This would be complete negation of section 167(2) of the Code. The investigating agency cannot be permitted to fragment or break FIR for the purpose of different charge sheets and this will tantamount to negation of section 167 (2) and would against mandate of Article of 21 of the Constitution. The practice of filing such types of charge sheets to seek extension of remand beyond the statutory period was deprecated by the Superior Courts in past. The investigating agency is required to form opinion regarding all offences subject matter of FIR after completion of entire investigation.

117. There is no force in the arguments advanced by the Special Public Prosecutor for the respondent/CBI that the right of the applicant/accused under section 167(2) of the Code has come to an end immediately after filing of

charge sheet on 21.04.2022 and said right under section 167(2) cannot be revived due to reason that further investigation is pending within the meaning of sub-section 8 of Section 173 of the Code. As mentioned and discussed hereinabove that there is a distinction between completion of investigation and further investigation. The respondent/CBI has conducted and concluded part investigation pertaining to alleged illegalities committed by the applicant/accused in initial appointment of Anand Subramanian and subsequent re-designation and other related issues but investigation pertaining to allegations made in FIR is still pending which cannot be termed as further investigation within ambit of section 173(8) of the Code. The further investigation can be resorted to only after the completion of investigation and filing of complete charge sheet.

There cannot be any dispute to the legal proposition that the purpose of police report under section 173(2) of the Code is to enable the Magistrate to satisfy himself on issue of taking cognizance or not. The concerned Special Court can take cognizance only in respect of some of offences for which charge sheet was filed on 21.04.22 but cannot take cognizance in respect of offence for which investigation is still pending and charge sheet is not filed. It is not permissible within mandate of legal provisions as contained in sections 173(2) and 167(2) to take cognizance in piece meal or in parts. It would amount to negation of indefeasible right given to the accused under section 167(2) of the Code. The constitutional right under section 167(2) of the Code and granted to accused in case of non-completion of investigation within stipulated period cannot be interpreted to convenience of investigating agency. In the present case, the respondent/CBI itself preferred to club investigation of issues arising out of SEBI order dated 11.02.2022 with investigation of offences subject matter of present FIR. The investigating agency cannot circumvent Section 167(2) of the Code by filing incomplete charge

sheet and cannot be filed within the meaning of Section 173 (2) till the investigation is completed and any report sent before the investigation is completed will not be a police report within the meaning of section 173(2) of the Code. The respondent/CBI cannot take shelter of filing charge sheet in respect of offences pertaining to alleged illegal appointment of Anand Subramanian by giving nomenclature of complete charge sheet or final report as per section 173(2) of the Code to defeat the right of statutory bail under Section 167(2) of the Code.121. The Special Judge while dismissing application for grant of statutory bail vide order dated 28.05.2022 did not appreciate legal provisions pertaining to section 167(2) in right perspective by holding that the charge sheet was complete containing all the details and was filed by mentioning therein the relevant sections. The Special Judge did not appreciate difference between incomplete investigation and further investigation and accepted both phrases as carrying same meaning. The Special Judge did not correctly observed and held that the charge-sheet filed on 21.04.2022 clearly describes details of all the material collected by the IO/Investigating agency during the investigation regarding role played by the applicant/accused and Anand Subramanium. The charge sheet filed on 21.04.2022 was confined to the investigation related to alleged illegal appointment of Anand Subramanian and subsequent redesign nation and is not related to their role in abuse of server architecture. There can only be one charge sheet out of investigation although there is no restriction on filing of number of supplementary charge sheets. The decision in Y.S. Jagan Mohan Reddy v.CBI cited by the Special Public Prosecutor for the respondent/CBI where in one RC several transactions were investigated regarding which separate charge-sheets were filed and the cases were tried as separate cases after taking cognizance and the Supreme Court refused to consider pendency of investigation in other transactions as

aground for bail holding that economic offences are a class apart. It is true that present FIR involves huge financial and economic offences but in present investigation, the offences for which charge sheet was filed on 21.04.2022 and offences for which investigation arising out of present FIR is still pending are interconnected and interlinked and cannot be separated and even this reflecting from Status Report filed by the respondent/CBI and written arguments submitted on behalf of the respondent/CBI. Moreover, the applicant/accused was arrested for offences subject matter of present FIR and her arrest is not confined to offences for which charge sheet was filed on 21.04.22.

13. In view of these decisions, it would have to be seen whether the charge-sheet was complete in respects of the offences which were mentioned in the FIR. The FIR was relatable to offences under Section 489 B, 489 C and 120 B of the IPC. The charge-sheet dated 26th October 2021 was filed for offences punishable under Sections 489 B, 489 C, 120 B of the IPC. There was no offense of Section 420 IPC made out in the said FIR. However, having discovered a forged Aadhaar card during the investigation, a further investigation was done relating to the said Aadhaar card and a supplementary charge-sheet was filed on 23rd May 2022. As per the supplementary charge-sheet, a color photocopy of Aadhaar card was recovered on which the name Rohit was found with the photograph of the accused Riyazuddin. His original Aadhaar card with his picture and his name had already been recovered during the personal search. The address noted in the Aadhaar card 438231281964 was attempted to be verified by searching the address which was recorded on the Aadhaar card. The house in Laxmi Nagar, Delhi noted in the Aadhaar card was not found and no address was found either. Thereafter, the Investigating

Authorities decided it be sent for verification to UIDAI at Pragati Maidan who stated that if any information is needed from them then according to the Aadhaar Act of 2016 order of the Hon'ble Delhi High Court would have to be brought forth.

14. Therefore, an application was moved for filing a petition in this Court for getting verification report of the Aadhaar card from UIDAI. In these circumstances, the supplementary charge-sheet was filed adding the offences under Sections 419 and 420 of the IPC. It is stated in the supplementary charge-sheet that the investigation of the case was still in progress considering that there were awaiting orders from the Hon'ble Delhi High Court to obtain UIDAI final verification report and the final charge-sheet under Section 173 (8) would be filed on a subsequent date.

15. It would be therefore evident that as regards the offences mentioned in the FIR, the initial charge-sheet filed was complete in all respects and therefore the petitioner cannot be entitled to default bail in that regard. It was only the discovery of the Aadhaar card which required verification and a subsequent investigation and upon discovery that it was a fake Aadhaar card which also needs to be verified, consequently offences under Section 419 and 420 of the IPC were added. This would not fall foul of the decisions noted herein above considering that an additional offence was discovered pursuant to a further investigation which is not precluded as per Section 173(8) which provides for "*further investigation in respect of an offence*". This was not a case where the offence of Sections 419 and 420 was noted in the FIR and for which the charge sheet ought to have been filed within the prescribed time under Section 167(2) but a discovery of a further fact which was relatable to an additional offence which

was thereafter added by a supplementary charge-sheet. The detention of the accused under Section 167(2) was in respect of offences for which the investigation was underway and in respect of which the charge-sheet was filed within the prescribed time. The discovery of yet another offence from the articles recovered from the accused would not preclude a further investigation and the addition of a charge under another offence at a subsequent stage. In *Tunde Gbaja*(*supra*), the charge-sheet was filed pertaining only to the offences under the Foreigners Act within a prescribed time but for the other offences under the Official Secrets Acts, IPC etc., the supplementary charge-sheet was filed later. In the said case, the FIR was registered against the accused for offences punishable under Sections 120B, 489A to 489E of the IPC. It was later discovered that he was in violation of the provision of the Foreigners Act, wherein charge-sheet was filed within the stipulated time of 60 days. Therefore, the decision in *Tunde Gbaja* was distinguishable and in the considered opinion of this Court, the petitioner would not be entitled to seeking default bail.

16. As regards the issue of regular bail, it is noted that the petitioner has not sought the relief of regular bail in the instant petition and an oral prayer was made in this regard by the Ld. Counsel for the petitioner particularly in light of the serious medical condition of the wife of the petitioner. The petitioner is at liberty to move a petition seeking regular bail which will be considered on its own merits by the court before which it is presented. It is clarified and reiterated that this decision deals only with the instant petition where the prayer for statutory bail has been made.

17. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of

statutory bail and shall not be construed as an expression on merits of the matter.

18. Accordingly, the petition is dismissed. The petitioner is not entitled to statutory bail and is at liberty to move for regular bail, if so desired. Pending applications (if any) are disposed of as infructuous.

19. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

20. Order/Judgment be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 11, 2023/RK