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

Date of decision: 29th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 932/2022**

HABIBBUR RAHMAN

.....Petitioner

Through: Mr. Jayendra Sevada, Advocate.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for the State with Mr. Vijay Singh, Mr. Vishal Bhiduri, Mr. Prince Mishra, Mr. Darpan Balyan, Mr. Gaurav Wadhwa, Mr. Sarthak Mann and Mr. Rishabh Sharma, Advocates.
SI Habib Khan, ER-I, Crime Branch

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging the Order dated 20.01.2022 passed by Ld. Additional Sessions Judge-03 (Central), Tis Hazari Court, Delhi in Criminal Revision No. 26/2022 by which the Ld. ASJ has rejected the revision petition filed by the Petitioner under Section 397 Cr.P.C and has upheld the Order dated 11.01.2022 passed by the Ld. Chief Metropolitan Magistrate (CMM), (Central), Tis Hazari Court, Delhi rejecting the application filed by the Petitioner seeking default bail under Section 167(2) of Cr.P.C.
2. Shorn of unnecessary details, facts leading to the filing of the present petition are that secret inputs were received from Special Investigation Unit-



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1, Crime Branch, Delhi regarding involvement of some persons based at Delhi, Rajasthan and Uttar Pradesh in anti-national activities, spying and espionage. It was informed that some Army Officials were providing highly classified/confidential information and documents to these persons for monetary benefits and these activities were taking place in Pokhran, Rajasthan. It is stated that as per specific secret intel received by SI Lichhman on 11.07.2021, the Petitioner herein had visited Pakistan and provided secret classified documents pertaining to Indian Army to Pakistan through some individuals based in Delhi which is detrimental for the national security and sovereignty of the country. It is stated that after verification of the intel, information was reduced to writing and a team was constituted which was headed by the Complainant. It is stated that the team reached near the residence of the Petitioner at Pokhran, identity of the suspect was verified and also cross-verified from the secret informer, and the premises of the Petitioner was checked in secret which was found to be locked.

3. Materail on record indicates that the Petitioner's location was ascertained near Diatra, Bikaner-Jaisalmer Highway. It is stated that, thereafter, the raiding party went there, identity of the suspect was confirmed by the secret informer and the Petitioner was approached by the raiding party. It is stated that the Petitioner was apprised of the facts, identity of the raiding party and, thereafter, five-six passersby were asked to join the proceedings but they all refused. It is stated that suspect disclosed his identity as Habib-ur-Rehman (the Petitioner herein) and the polybag which he was carrying was checked and one yellow coloured A-4 size envelop was found containing some documents related to armed forces were found on



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which "Confidential" and "Restricted" was found to be written in bold. The brief description of the documents recovered from the Petitioner are as under:

"(i) Color copy of Confidential documents related to Military Training (2 PPs);

(ii) Color copy of Confidential document Operationalisation of a sensitive Military unit namely AFSOD;

(iii) Color copy of Confidential Intelligence Summary May 2021 bearing No.A/10001/WIS/MI-3;

(iv) Color copies of Restricted - Int. Report, bearing No.DIPAC/3014/AF/IAS dated 03 Jun 21 alongwith two maps;

(v) Color copies of pages of a report from Confidential Military Report."

4. The Petitioner was asked about the documents but he did not give any satisfactory reply as to how he was in possession of these documents. All the above documents were taken into police possession and were got verified / authenticated from the Army HQ, Sena Bhawan, Delhi which confirmed the authenticity of these documents and informed that the seized documents are genuine and exist in their record and are classified and sensitive in nature. Since the documents are classified, any unauthorized disclosure of content of these documents could be expected to cause damage to national security or could be prejudicial to the national interest or would embarrass the Government in its functioning. Consequently, the present FIR No.132/2021 dated 14.07.2021 was registered at Police Station Crime Branch, Delhi



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against the Petitioner for offences punishable under Sections 3 and 9 of the Official Secrets Act, 1923 (*hereinafter referred to as "1923 Act"*).

5. The Petitioner was arrested on 14.07.2021. Material on record indicates that during interrogation, the Petitioner disclosed the name of one Paramjeet Kumar, Naik Clerk, posted at a Military Establishment in Agra, UP who was providing him with classified documents in lieu of money. The Petitioner further disclosed the name of the Pakistan Handler i.e., Rana Muhammad Qasim Zia @ Alvi @ Moti @ Kamal who was employed with the Pakistan High Commission (PHC), Chanakya Puri, Delhi to whom the Petitioner used to supply information so procured from Paramjeet Kumar, Naik Clerk.

6. The investigation also revealed that the Petitioner was supplying vegetables, fruits and other consumables to the Supply Platoon of Army Service Corps located at Pokhran, Rajasthan on the basis of Power of Attorneys given to him by the actual contractors to whom the contract was awarded by the Army. The Petitioner was having access to the above Area of Supply Platoon Army Service Corps, Pokhran. Accused Paramjeet Kumar was also posted as Naik Clerk with the above Supply Platoon of Army Service Corps, Pokhran, Rajasthan from 2017 to 2019 where he met the Petitioner herein. In the year 2019, the Petitioner visited Pakistan along with his family. Prior to his visit to Pakistan, the Petitioner visited Pakistan High Commission, Delhi for procuring visa, where he came in contact with Rana Muhammad Qasim Zia who allured the Petitioner to provide documents related to Army unit stationed at Pokhran, Rajasthan as the Petitioner was having access to the area of Army Supply Unit at Pokhran, Rajasthan. It was on the allurements and inducement of Pakistan High Commission's official,



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the Petitioner started developing liaison with Naik Clerk Paramjeet Kumar. It was in the knowledge of the Petitioner that Paramjeet Kumar was in dire need of money. Taking advantage of the financial situation of Paramjeet Kumar, the Petitioner induced him. It was on the allurements and inducements of the Petitioner, the Naik Clerk Paramjeet Kumar started providing confidential Army documents to the Petitioner. The Petitioner was further handing over the above classified information / documents to his Pakistan handler Rana Muhammad Oasim Zia either directly or through accused Mohsin Khan and the Petitioner was being paid either directly by the said Pakistan High Commission's official or through Mohsin Khan. The classified documents which were recovered from the possession of the Petitioner were also found stored in the phone memory of accused Naik Clerk Paramjeet Kumar. The accused Mohsin was being provided money by Rana Muhammad Qasim Zia (Pakistan High Commission's official) and then the said money was being transferred to the Petitioner through his friends and to the bank accounts of Naik Clerk Paramjeet Kumar and his family members. In the year 2019, Naik Clerk Paramjeet Kumar was transferred from the Pokhran Unit to one of the highly sensitive unit of Indian Army, based in Agra, Uttar Pradesh. The Petitioner and Naik Clerk Paramjeet Kumar, also remained in touch with each other during this posting. Investigation further revealed that the Petitioner visited Agra to meet Paramjeet Kumar where the accused Paramjeet Kumar provided him with highly classified / confidential information and documents of Indian Army. During the Petitioner's visit to Agra to meet Naik Clerk Paramjeet Kumar, the Petitioner stayed at Mannat Hotel, Sarai Khwaja, Opposite Petrol Pump, Kheria Mod, VIP Road, Agra, Uttar Pradesh. On the directions



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of accused Mohsin Khan, money forwarding Agent Bablu Patel forwarded an amount of INR 1,10,000 through five transactions to one Care Chemist. Care Chemist is located at Bikaner and owner of it is one Harun Rashid R/o of Bikaner. The said person is the childhood friend of the Petitioner. The said money was transferred in the above account by accused Mohsin Khan as share of the Petitioner on the directions of the Petitioner himself on account of providing classified documents to Pakistani Handler. The said amount was received by Harun Rashid in his bank account maintained with Kotak Bank, Ridmalsar Purohitan, Bikaner, Rajasthan. On receipt of the above amount, Harun Rashid further transferred the money to the Petitioner. Likewise, an amount of INR 70,000 (through three transactions) was also transferred by Mohsin Khan into the account of one Sameer Khilji, one of the meat suppliers from whom the Petitioner used to buy meat. The above payments were settled towards outstanding payments of the Petitioner by Sameer Khilji. The Petitioner also managed to transfer the money in the account of Paramjeet Kumar, his sister Ms. Kavita Bhardwaj, father Shri Rajesh Kumar and the wife Smt. Pooja through accused Mohsin Khan. Money Forwarding Agents namely Bablu Patel, Sunny Gupta and Abid have confirmed the transfer of money to the accounts of known persons of the Petitioner, accused Paramjeet Kumar and his family members under the directions of accused Mohsin Khan. Relevant details proving the said transfer of money have been taken on record from the money transfer agents, Paytm and concerned banks etc. and concerned persons have also been examined. The transfer confirmations of money sent to the account of accused persons and shared with accused Mohsin Khan by the Money Forwarding Agent through WhatsApp have also been taken on record which



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prove without any doubt that the money was being transferred by the money forwarding agent to the accused persons on the direction of accused Mohsin Khan. The investigation further revealed that mobile bearing No.7881199805 was being used by Rana Muhammad Qasim Zia. On scrutiny of CDR of mobile number 7881199805, it transpired that the same was active on two different mobile handsets having IMEIs i.e., 351632096679712 and 868502034468955 respectively. On search of IMEI No.351632096679712 through Arjun mobile application on which mobile SIM bearing calling number 7881199805 was used, is related to mobile handset model Q MOBILE 181, Company-QMOBILE. Q Mobile is a Pakistan based company having its Headquarter at Karachi, Pakistan. Further details regarding mobile handset bearing IMEI number 351632096679712 were searched through Google, which revealed that the manufacturer of Q MOBILE mobile phone is located at Pakistan. During investigation further details of IMEI No.868502034468955 (2nd IMEI on which mobile SIM bearing calling number 7881199805 was used) was obtained, which on scrutiny revealed that mobile calling number 8905292448, was also used in the above IMEI/handset in which mobile number 7881199805 was being used. It is pertinent to mention here that SIM of mobile calling number 8905292448 was provided by the Petitioner to Rana Muhammad Qasim Zia which the Petitioner procured on the identity of one of his known Omparkash R/o Bikaner, Rajasthan but the alternate number mentioned on CAF of mobile no.8905292448 is of the mobile No. of the Petitioner i.e. 8239078368. During investigation it came on record that mobile No.8905292448 of his Pakistan Handler Rana Muhammad Oasim Zia was found saved in the contact list of mobile phone of the



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Petitioner. A chart depicting usage of both the abovementioned mobile calling numbers being 8905292448 and 7881199805 which were being used by Rana Muhammad Qasim Zia, Visa Officer, Pakistan High Commission, has been prepared. A chart depicting connections / links between arrested accused persons namely, the Petitioner, Naik Clerk Paramjeet Kumar and Mohsin Khan - with each other with Rana Muhammad Qasim Zia, Visa Officer, Pakistan High Commission and leakage and supply of classified information / documents by the accused persons to Rana Muhammad Oasim Zia, has also been prepared to have a better understanding of the present episode. Investigation conducted in the matter has further proved that the accused Paramjeet Kumar was in direct touch with Rana Muhammad Qasim Zia, Pakistan High Commission's official. Mobile numbers being used by Rana Muhammad Qasim Zia found saved in the contacts list of recovered and seized mobile phone of accused Paramjeet Kumar and also there are WhatsApp chats between accused Paramjeet Kumar and Rana Muhammad Qasim Zia found stored in the mobile phone of accused Paramjeet Kumar. There are other chats with Rana Muhammad Qasim Zia found stored in his mobile phone on which message / chats status is showing "Delivered". During investigation, in one of the mobile phones so recovered and seized from the possession of accused Paramjeet Kumar, various incriminating, Highly Confidential material containing top secret and classified information relating to Indian Army, leakage of which is detrimental to national security and sovereignty of the country have been found stored. Accordingly, the printouts of all those documents were taken and were referred to the office of the Directorate General of Military Intelligence/MI-9, Army Head Quarter for the purpose of verification which in turn replied



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that the documents are classified and sensitive in nature. Since the documents are classified, any unauthorized disclosure of content of these documents could be expected to cause damage to National security or could be prejudicial to the National interest or would embarrass the Government in its functioning. Disclosure statements of other arrested accused persons and further investigation conducted in the present matter clearly prove active involvement of the Petitioner in the present case. From the investigation conducted in the matter, it is proved beyond doubt that Rana Muhammad Qasim Zia in a well-orchestrated criminal conspiracy hatched by him and acting hand-in-glove with the Petitioner, Naik Clerk Paramjeet Kumar and Mohsin Khan had procured the highly sensitive / classified information and documents pertaining to Indian Army from accused Paramjeet Kumar through the Petitioner and the accused Mohsin Khan. The said confidential documents were accessed by the accused Paramjeet by virtue of his official duty and he got access to the same by stealing the same from the rooms of different officers of AFSOD Unit by using the duplicate key which he got prepared from a key maker. Accused Mohsin Khan destroyed the mobile being used by him to contact Rana Muhammad Qasim Zia after the arrest of the Petitioner and Paramjeet. Accordingly, on the basis of evidence available on records, disclosure statements of arrested accused persons and the examination of witnesses etc., Sections 409/201/381/457/120B/380/457/34 IPC were also added in the present FIR.

7. Since the accused persons were under the judicial custody, Chargesheet for offences punishable under Sections 3 and 9 of the 1923 Act read with Sections 409/201/380/381/457/120B/34 IPC was filed on 12.10.2021 against accused persons, namely, the Petitioner, Paramjeet



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Kumar and Mohsin Khan. Supplementary chargesheet was also filed on 07.01.2022. *Vide* Order dated 17.12.2021, Ministry of Home Affairs, Govt of India, IS-I Division, in pursuance of the provisions under Sub-Section (3) of Section 13 of the 1923 Act has authorized DCP Crime, Delhi to lodge a complaint against the accused persons including the Petitioner herein under Sections 3 and 9 of the 1923 Act in the present FIR No.132/2021 in a Court of competent jurisdiction.

8. The Petitioner, thereafter, filed an application under Section 167(2) Cr.P.C before the Ld. CMM claiming grant of default bail, which was heard on 11.01.2022, by contending that sanction had not been obtained under Section 13 of the 1923 Act and, therefore, chargesheet was not a complete chargesheet, hence, the Petitioner was entitled to default bail after a period of 60 days from the date of his arrest. The Ld. CMM vide Order dated 11.01.2022 rejected the application of the Petitioner for default bail stating that just because sanction was not filed it does not mean that investigation is not complete or chargesheet is incomplete and the chargesheet has been filed much prior to the filing of the application under Section 167(2) Cr.P.C and, therefore, right of default bail does not arise. The Ld. CMM also held that even on merit, the Petitioner does not deserve bail due to gravity and alarming nature of the offence committed by him. The said Order dated 11.01.2022 passed by the Ld. CMM was challenged before the Revisional Court under Section 397 Cr.P.C by filing a Criminal Revision No. 26/2022 which was rejected vide the Order dated 20.01.2022. The Ld. Revisional Court placed reliance upon a Judgment passed by the Apex Court in Suresh Kumar Bhikamchand Jain vs. State of Maharashtra, (2013) 3 SCC 77 and held that the filing of the complaint under Section 13(3) of 1923 Act is not a



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sine qua non for filing of the chargesheet because chargesheet was filed after completion of investigation whereas as the complaint is necessary for only taking cognizance of the offence and both of them operates in different fields. The Ld. Revisional Court held that the bar under Section 13(3) of the 1923 Act is only that cognizance cannot be taken without a complaint but there is no bar in filing of the chargesheet. The Ld. Revisional Court held that the Petitioner is not entitled to default bail, where Investigating Officer filed the chargesheet within the stipulated period. The petitioner will not be entitled to default bail as the Trial Court had not taken cognizance for want of sanction. Filing of chargesheet is sufficient compliance of Section 167(2)(a)(ii) Cr.P.C. Sanction for the prosecution and filing of chargesheet on conclusion of investigation are two different aspects. A chargesheet is filed on conclusion of investigation whereas sanction is filed for prosecution of the accused persons. They stand on separate footings. The Ld. Revisional Court further held that the Petitioner cannot seek default bail on the ground that the chargesheet was filed without sanction and the Court had not taken cognizance of the offences on the basis of chargesheet within statutory period of 90 days and the Petitioner filed the application for default bail before filing of sanction and taking of cognizance of the offences by the trial Court. Filing of chargesheet without sanction and not taking cognizance thereof within stipulated period of 90 days did not confer any right upon the Petitioner to seek default bail. The Ld. Revisional Court held that a mere statement by Investigating Officer in the end of the chargesheet that further investigation is pending would not make the chargesheet incomplete. Even otherwise, an Investigating Officer is entitled to conduct further investigation to collect further evidence.



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9. It is this Order dated 20.01.2022 passed by the Ld. Revisional Court which is under challenge in the present petition.

10. Learned Counsel appearing for the Petitioner contends that sanction under Section 13(3) of 1923 Act is *sine qua non* for filing of the chargesheet and any chargesheet filed without sanction under Section 13(3) of 1923 Act makes the chargesheet incomplete. He states that the maximum punishment for the offences as alleged against the Petitioner under 1923 Act is only three years. He states that the Petitioner was arrested on 14.07.2021 and the incomplete chargesheet was filed on 12.10.2021 and the complete chargesheet was filed only on 07.01.2022 which is beyond the period prescribed. He states that the chargesheet ought to have been filed within 60 days and, therefore, the Petitioner ought to have been granted default bail. He further states that the Investigating Officer and the Complainant in the present case are same, thereby causing grave prejudice to the Petitioner.

11. Heard learned Counsel appearing for the Parties and perused the material on record.

12. Section 13(3) of 1923 Act provides that no Court shall take cognizance of any offence under this Act unless a complaint is made by order of, or under the authority from the appropriate Government and a complaint is lodged by an officer empowered by the appropriate Government in this behalf.

13. Section 13 of the 1923 Act reads as under:

"Section 13. Restriction of trial of offences.

(1) No Court (other than that of a Magistrate of the first class specially empowered in this behalf by the [appropriate Government] which is inferior to that of a



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District or Presidency Magistrate shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by that Court.

(3) No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the [appropriate Government] or some officer empowered by the [appropriate Government] in this behalf.

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in [India] in which the offender may be found.

(5) In this section, the "appropriate Government" means—

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the State Government; and

(b) in relation to any other offence, the Central Government.]"

14. A perusal of Section 13(3) of 1923 Act shows that no sanction is required under the Act for filing of the chargesheet. Even for offences under the IPC, no sanction is required for filing the charge-sheet.



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15. The contention of the learned Counsel for the Petitioner that a chargesheet filed without a complaint is an incomplete chargesheet is not tenable as correctly pointed out by the Courts below that the Petitioner is accused of offences punishable under Sections 3 and 9 of the 1923 Act read with Sections 409/201/380/381/457/120B/34 IPC and the chargesheet can be filed without a complaint and only cognizance cannot be taken without a complaint and, therefore, it cannot be said that the chargesheet was incomplete due to lack of complaint.

16. The issue as to whether sanction must be filed along with the chargesheet has been decided by the Apex Court in Judgebir Singh alias Jasbir Singh Samra alias Jasbir and Others vs. National Investigation Agency, **2023 SCC OnLine SC 543**, wherein the Apex Court while dealing with the said case under the Unlawful Activities (Prevention) Act, 1967 and the Explosive Substances Act, 1908 has observed as under:

"43. We find no merit in the principal argument canvassed on behalf of the appellants that a chargesheet filed without sanction is an incomplete chargesheet which could be termed as not in consonance with sub section (5) of Section 173 of the CrPC. It was conceded by the learned counsel appearing for the appellants that the chargesheet was filed well within the statutory time period i.e., 180 days, however, the court concerned could not have taken cognizance of such chargesheet in the absence of the orders of sanction not being a part of such chargesheet. Whether the sanction is required or not under a statute, is a question that has to be considered at the time of taking cognizance of the offence and not during inquiry or investigation. There is a marked distinction in the stage of investigation and prosecution. The prosecution starts when the



cognizance of offence is taken. It is also to be kept in mind that cognizance is taken of the offence and not of the offender. It cannot be said that obtaining sanction from the competent authorities or the authorities concerned is part of investigation. Sanction is required only to enable the court to take cognizance of the offence. The court may take cognizance of the offence after the sanction order was produced before the court, but the moment, the final report is filed along with the documents that may be relied on by the prosecution, then the investigation will be deemed to have been completed. Taking cognizance is entirely different from completing the investigation. To complete the investigation and file a final report is a duty of the investigating agency, but taking cognizance of the offence is the power of the court. The court in a given case, may not take cognizance of the offence for a particular period of time even after filing of the final report. In such circumstance, the accused concerned cannot claim their indefeasible right under Section 167(2) of the CrPC for being released on default bail. What is contemplated under Section 167(2) of the CrPC is that the Magistrate or designated Court (as the case may be) has no powers to order detention of the accused beyond the period of 180 days or 90 days or 60 days as the case may be. If the investigation is concluded within the prescribed period, no right accrues to the accused concerned to be released on bail under the proviso to Section 167(2) of the CrPC.

44. *Once a final report has been filed with all the documents on which the prosecution proposes to rely, the investigation shall be deemed to have been completed. After completing investigation and submitting a final report to the Court, the investigating officer can send a copy of the final report along with the evidence collected and other materials to the sanctioning authority to enable the sanctioning*



authority to apply his mind to accord sanction. According sanction is the duty of the sanctioning authority who is not connected with the investigation at all. In case the sanctioning authority takes some time to accord sanction, that does not vitiate the final report filed by the investigating agency before the Court. Section 173 of the CrPC does not speak about the sanction order at all. Section 167 of the CrPC also speaks only about investigation and not about cognizance by the Magistrate. Therefore, once a final report has been filed, that is the proof of completion of investigation and if final report is filed within the period of 180 days or 90 days or 60 days from the initial date of remand of accused concerned, he cannot claim that a right has accrued to him to be released on bail for want of filing of sanction order.

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47. From the aforesaid, it is evident that the order of sanction passed by the competent authority can be produced and placed on record even after the filing of the chargesheet. It may happen that the inordinate delay in placing the order of sanction before the Special Court may lead to delay in trial because the competent court will not be able to take cognizance of the offence without a valid sanction on record. In such an eventuality, at the most, it may be open for the accused to argue that his right to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution. This may at the most entitle the accused to pray for regular bail on the ground of delay in trial. But the same cannot be a ground to pray for statutory/default bail under the provisions of Section 167(2) of the CrPC.

48. The chargesheet is nothing but a final report of police officer under Section 173(2) of the CrPC. Section 173(2) of the CrPC provides that on



completion of the investigation, the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government, stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. As observed by this Court in Satya Narain Musadi v. State of Bihar reported in (1980) 3 SCC 152 at 157 that the statutory requirement of the report under Section 173(2) of the CrPC would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) of the CrPC purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5) of the CrPC. Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e., in the course of the trial of the case by adducing acceptable evidence. (See K. Veeraswami v. Union of India, (1991) 3 SCC 655.)

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54. This Court in the case of Suresh Kumar Bhikamchand Jain (*supra*) had the occasion to consider in detail the question whether cognizance of the chargesheet was necessary to prevent the accused from seeking default bail or whether mere filing of the chargesheet would suffice for the investigation to be deemed complete. The petitioner in the said case was arrested on 11.03.2012 on the allegation of misappropriation of amounts meant for development of slums in Jalgaon City. The petitioner therein was accused of committing offences punishable under Sections 120B, 409, 411, 406, 408, 465, 466, 468, 471, 177 and 109 read with Section 34, IPC and also under Sections 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The contention of the petitioner therein was that he could not have been remanded to custody in view of cognizance not being taken for want of sanction within the statutory period of 90 days. The scheme of the provisions relating to remand of an accused first during the stage of investigation and thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within the period prescribed therein. This Court held that in the event of investigation not being completed by the investigating authorities within the prescribed period, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. This Court was of the firm view that if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of chargesheet having been filed, the court has no option but to release the accused on bail. However, once the chargesheet was filed within the stipulated period, the right of the accused to statutory/default bail came to an end and the accused would be entitled to pray for regular bail on merits. It was held by this Court that the filing of chargesheet is sufficient compliance with the provisions of proviso (a)



to Section 167(2) of the CrPC and that taking of cognizance is not material to Section 167 of the CrPC. The scheme of CrPC is such that once the stage of investigation is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced, with such Magistrate being vested with the power to remand the accused to police custody and/or judicial custody, up to a maximum period as prescribed under Section 167(2) of the CrPC. Acknowledging the fact that an accused has to remain in custody of some court, this Court concluded that on filing of the chargesheet within the stipulated period, 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 of the CrPC. This Court clarified that the two stages are different, with one following the other so as to maintain continuity of the custody of the accused with a court."

17. Further, the Apex Court in Suresh Kumar Bhikamchand Jain (supra) has observed as under:

"17. In our view, grant of sanction is nowhere contemplated under Section 167 CrPC. What the said section contemplates is the completion of investigation in respect of different types of cases within a stipulated period and the right of an accused to be released on bail on the failure of the investigating authorities to do so. The scheme of the provisions relating to remand of an accused, first during the stage of investigation and, thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within 60 days and offences punishable



with death, imprisonment for life or imprisonment for a term of not less than 10 years, within 90 days. In the event, the investigation is not completed by the investigating authorities, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. Accordingly, if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. The said provision has been considered and interpreted in various cases, such as the ones referred to hereinbefore. Both the decisions in Natabar Parida case [(1975) 2 SCC 220 : 1975 SCC (Cri) 484] and in Sanjay Dutt case [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] were instances where the charge-sheet was not filed within the period stipulated in Section 167(2) CrPC and an application having been made for grant of bail prior to the filing of the charge-sheet, this Court held that the accused enjoyed an indefeasible right to grant of bail, if such an application was made before the filing of the charge-sheet, but once the charge-sheet was filed, such right came to an end and the accused would be entitled to pray for regular bail on merits.

18. None of the said cases detract from the position that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as Section 167 CrPC is concerned. The right which may have accrued to the petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 CrPC, it cannot be said that the accused is



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

18. In view of the above, the contention raised by the learned Counsel for the Petitioner that the chargesheet filed without a complaint is an incomplete chargesheet cannot be accepted. The second contention of the learned Counsel for the Petitioner that the chargesheet has been filed beyond the time prescribed also cannot be accepted for the reason that the Petitioner has been charged with the offence punishable under Section 409 IPC which attracts the penalty of life imprisonment and the chargesheet has been filed



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within 90 days which is within the time prescribed. The Petitioner is, therefore, not entitled to default bail under Section 167 Cr.P.C.

19. In view of the above, this Court does not find any merit in the present case and, therefore, is not inclined to interfere with the Impugned Order passed by the Ld. Revisional Court.

20. Resultantly, the petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 29, 2024

S. Zakir