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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 15th September, 2023

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BAIL APPLN. 2698/2023

SANJAY KUMAR PUNDEER

..... Petitioner

Through: Mr. Dhruv Gupta & Mr. Anubhav
Garg, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Aman Usman, APP for the State
with Insp. Nitin Kumar & Insp.
Meena Yadav, P.S. Dabri.
Mr. Arun Yadav, Advocate for LR of
the victim.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeks the following prayers:

“(a) Pass an order directing that the petitioner be granted default/statutory bail in FIR No. 747/2021 dated 07.09.2021, P.S. Dabri, registered u/s 302/34 IPC r/w 25 & 27 Arms Act, being tried as Session Case No. 174/2022 titled “State Vs. Rajeev Gupta @ Ramu & Drs.” and subjudice before the court of Sh. Vipin Kharb, Ld. ASJ, South-West, Dwarka District Courts, New Delhi;

(b) set-aside the impugned order dated 07.06.2023 passed by the court of Sh. Vipin Kharb, Ld. ASJ, South-West, Dwarka District Courts, New



Delhi in FIR No. 747/2021 dated 07.09.2021, P.S. Dabri, being tried as Session Case No. 174/2022 titled “State Vs. Rajeev Gupta @ Ramu & Drs.”;

(c) pass any other order/orders which this Hon’ble Court may deem fit and proper in the present case.”

Background

2. Briefly stated, the facts of the present case are as under:

- i. The present FIR was registered on 07.09.2021 at the instance of one Manoj Gupta who alleged while he and his friend Chaman (‘the deceased’) were sitting and talking, Rajeev Gupta @ Ramu and Sanjay Singh Pundeer @ Kaku (‘the applicant’) came. They were carrying a *katta* and a knife, respectively.
- ii. It was alleged that thereafter, the said persons, alongwith some other boys surrounded the complainant and the deceased. Ramu shot the deceased with a *katta* and thereafter, the applicant stabbed him with a knife multiple times.
- iii. The deceased was taken to the hospital. The MLC of the deceased reflected that he was ‘declared brought dead’.
- iv. The present FIR was registered under Sections 302/34 of the Indian Penal Code, 1860 (‘IPC’) and Sections 25/27 of the Arms Act, 1959.
- v. During the course of investigation, all the relevant exhibits were seized and sent to the Forensics Science Laboratory (‘FSL’) for further examination. The knife which is alleged to have been used by the applicant in commission of the offence was also seized and sent to FSL for examination.



- vi. The applicant and co-accused Kumar Pal Singh were arrested on 08.09.2021.
- vii. Co-accused Rajeev Gupta @ Ramu was arrested on 11.09.2021. One country made firearm pistol (*desi katta*) with one used cartridge and one live .315 bore cartridge was recovered from his possession.
- viii. On 08.09.2021, the applicant was remanded to police custody for two days, i.e., till 10.09.2021. Thereafter, the applicant was remanded to judicial custody on 10.09.2021.
- ix. Upon completion of investigation, the chargesheet in the present case was filed on 02.12.2021 *qua* the accused persons including the present applicant. The applicant and co-accused Rajeev Gupta @ Ramu were chargesheeted for offences under Sections 302/34/120B of the IPC and Sections 25/27 of the Arms Act. Co-accused Kumar Pal Singh was chargesheeted under Section 120B of the IPC.
- x. The cause of death of the deceased was opined as “*haemorrhagic shock consequent upon firearm and stab injuries to multiple vital organs via injury no. 1 to 7, all of which are sufficient to cause death in ordinary course of nature*”.
- xi. In the chargesheet that was filed in the present case, it was stated that the FSL report of all the exhibits was awaited and a supplementary report in terms of Section 173(8) of the CrPC would be filed placing the results on record.
- xii. On 06.12.2021, the learned Metropolitan Magistrate-02, Dwarka Courts, New Delhi took cognizance of offences under Sections 302/120B/34 of the IPC.



- xiii. *Vide* order dated 03.03.2022, the learned Metropolitan Magistrate committed the matter to the Court of Sessions, since the accused persons had been chargesheeted for offences under Sections 302/34/120B of the IPC and Sections 25/27 of the Arms Act, which were exclusively triable by the Court of Sessions.
- xiv. On 14.03.2023, the first supplementary chargesheet was filed in the present case, by way of which the FSL report in relation to the pistol recovered from co-accused Rajeev Gupta @ Ramu, the bullet lead recovered from the place of incident and the CCTV footage taken from the camera outside the office of co-accused Kumar Pal Singh was placed on record. A sanction order in terms of Section 39 of the Arms Act *qua* co-accused Rajeev Gupta @ Ramu for his prosecution under Section 25 of the Arms Act was also filed alongwith the supplementary chargesheet.
- xv. On 18.04.2023, the second supplementary chargesheet in the present case was filed, by way of which the report of the FSL in relation to DNA analysis of blood samples was placed on record.
- xvi. On 17.05.2023, an application seeking default bail under Section 167 of the CrPC was filed on behalf of the applicant before the learned Trial Court. The said application was dismissed by the learned Additional Sessions Judge-04(SW), Dwarka *vide* order dated 07.06.2023, observing as under:

“In the present case, investigation with respect to the offences mentioned in the FIR is complete in all respects and prosecution has given the opinion that accused persons are liable for the offences u/s. 302/120B IPC read with 25/27 Arms Act. Only



investigation which was not within the control of the 10 and which depends upon the external factors like report from the external agencies was pending and only regarding those reports supplementary charge-sheets have been filed. As complete charge-sheet has already been filed, therefore, right to statutory bail of the accused stands defeated. Accordingly the application in hand is disposed of as dismissed.”

Submissions of behalf of the Applicant/Sanjay Kumar Pundeer

3. Learned counsel for the applicant submitted that the FIR in the present case was registered on 07.09.2021. The chargesheet in the present case was required to be filed within ninety days thereafter, in terms of Proviso ‘a(i)’ to Section 167(2) of the CrPC. It was submitted that although the chargesheet was filed within the stipulated period of time, it was incomplete and therefore, the applicant is entitled to default bail. It was submitted that material documents with respect to the case of the prosecution *qua* the applicant were not placed on record alongwith the main chargesheet dated 02.12.2021. To substantiate the said contention, the following table has been placed on record on behalf of the applicant:

S. No.	Document/Evidence yet to be obtained by the investigating authorities	Relevance as per Prosecution’s Case
1.	The doctor’s opinion regarding the injuries inflicted to the deceased allegedly on account of the knife used by the petitioner	It is the case of the prosecution that the said knife was allegedly used by the petitioner herein while stabbing the deceased and



	herein while allegedly stabbing the deceased	was also one of the grounds for seeking police custody remand of the petitioner for 2 days i.e. from 08.09.2021 till 10.09.2021
2.	Doctor's opinion regarding the injuries inflicted to the petitioner himself on account of the alleged stabbing by the knife	Same as above
3.	The FSL report regarding the pen drive containing the alleged viral CCTV footage allegedly produced by the brother of the deceased PW-5 Sh. Pawan Sehrawat during the investigation, which pen drive had been forwarded to the Physics Division, FSL Rohini, for forensic examination	It is the case of the prosecution that allegedly on 23.09.2021 PW-5 produced a pen drive containing the viral CCTV footage of the crime, for which forensic examination is pending and can definitely be a very relevant evidence for the present case.
4.	FSL report regarding pen drive marked "PD-A" which had been forwarded by Cyber Forensic Division, FSL Rohini, to its Physics Division, vide its examination report dated	The said footage has been sought to be proved for establishing the presence of the petitioner near the scene of crime on the date of incident i.e. 07.09.2021 and can be relevant factor for the trial.



	30.12.2022, allegedly containing the CCTV footages from the shop of the accused no. 2 i.e. Sh. Kumar Pal Singh, allegedly extracted from the Digital Video Recorder (DVR) marked as "HDD"	
5.	Sanction order, if any, u/s 39 of the Arms Act, 1959 qua the petitioner	Though no cognizance of any of the offences punishable under Arms Act, 1959 was taken by the courts concerned and would be a factor to adjudicate the charge u/s 25 of the Arms Act, 1959, that has been wrongly framed against the petitioner.

6. Learned counsel for the applicant argued that at the time the main chargesheet was filed in the present case, the FSL report in relation to all the aforesaid material was awaited and therefore, the chargesheet was incomplete. It was further contended that in order to initiate prosecution under the Arms Act, sanction *qua* the present applicant in terms of Section 39 of the said Act was required, which admittedly had not been obtained at the time of filing of the main chargesheet. Similarly, it was submitted that both the supplementary chargesheets filed in the present case were also incomplete inasmuch as subsequent opinion in relation to injuries suffered by the deceased with the



knife and injuries caused to the applicant himself with the said knife was awaited. The report regarding the pendrive allegedly submitted by brother of the deceased containing the footage of the alleged incident was also awaited.

7. It was submitted that the aforesaid exhibits and the FSL examination result is crucial to the case of the prosecution *qua* the applicant. Since the relevant reports were not filed, the main chargesheet, as well as the supplementary chargesheets were incomplete and therefore, the applicant is entitled to default bail. In support of his contentions, learned counsel for the applicant placed reliance on the following judgments:

- i. Chitra Ramkrishna v. Central Bureau of Investigation, (2022) SCC OnLine Del 3124.
- ii. Avinash Jain v. Central Bureau of Investigation, 2023 SCC OnLine Del 2946.
- iii. Vijender & Ors. v. State of Delhi, (1997) 6 SCC 171.
- iv. Krishna Singh v. The State of Bihar, 2011 (2) BLJ 108.
- v. Irfan & Ors. v. State of Uttar Pradesh, Order dated 23.11.2021 passed by the Hon'ble High Court of Allahabad in Criminal Appeal No. 2415/2020.
- vi. State of Uttar Pradesh & Ors. v. Kameshwar & Ors., Order dated 15.02.2019 passed by the Hon'ble High Court of Allahabad in Govt. Appeal No. 3660/2009.
- vii. Kapildeo Baitha v. State of Bihar, (1985) SCC OnLine Pat 211.
- viii. Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67.



- ix. Duo Jou Vireimi v. State of Haryana, Judgement dated 05.04.2022 passed by the Hon'ble High Court of Punjab and Haryana in Criminal Revision No. 2531/2019.
- x. Mohd. Arbaz & Ors. v. State of NCT of Delhi, Order dated 12.07.2023 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) 8164-8166/2021.
- xi. Mohd. Arbaz & Ors. v. State of NCT of Delhi, Order dated 09.11.2022 passed by the Hon'ble Supreme Court in SLP (Crl.) 8166/2021.
- xii. Arif Khan v. State (Govt. of NCT of Delhi), Order dated 28.07.2023 passed by the Hon'ble Supreme Court in SLP (Crl.) 8610/2023.
- xiii. Divyas Bardewa v. NCB, Order dated 01.05.2023 passed by the Hon'ble Supreme Court in SLP (Crl.) 11628/2022.
- xiv. Vinubhai Haribhai Malaviya v. State of Gujarat, (2019) 17 SCC 1.
- xv. Lokesh S. v. State & Anr., Order dated 26.07.2022 passed by the Hon'ble High Court of Karnataka in Criminal Petition No. 284/2020.
- xvi. Sanjay Dutt v. State, (1994) 5 SCC 410.
- xvii. Achpal alias Ramswaroop and Another v. State of Rajasthan, (2019) 14 SCC 599.
- xviii. Fakhrey Alam v. State of Uttar Pradesh, 2021 SCC OnLine SC 532.
- xix. Santosh Kumar and Ors. v. State of Chhattisgarh, MANU/CG/0016/2006.

Submissions on behalf of the State

8. *Per contra*, learned APP for the State opposed the present application and submitted that the investigation *qua* the present applicant is complete in all respects. It was submitted that there is sufficient evidence against the



applicant which was placed on record alongwith the main chargesheet, including the statements of eye-witnesses recorded under Section 161 of the CrPC. It was submitted that the weapon of offence, i.e., knife was recovered at the instance of the applicant herein. Statements of eye-witnesses clearly establish the applicant's involvement in the alleged offence. It was submitted that mere non-filing of FSL report does not render the chargesheet incomplete, especially when there is sufficient incriminating material on record to initiate prosecution against the present applicant.

9. As far as the contention of the applicant regarding non-filing of a sanction order in terms of Section 39 of the Arms Act is concerned, it was submitted that a bare reading of the said provision reflects that sanction in the present case *qua* the applicant was not required.

Analysis and Findings

10. Heard learned counsel for the parties and perused the record.

11. Section 167(2) of the CrPC provides as under:

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



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

(ii) sixty days, where the investigation relates to any other offence,

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

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(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.

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.

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.”

(emphasis supplied)



12. The fundamental right to personal life and liberty under Article 21 of the Constitution of India and its co-relation with 167(2) of the CrPC has been, over the years, clearly established by way of judicial precedents of the Hon'ble Supreme Court of India as well as various High Courts. The right of an accused to default bail under Section 167(2) of the CrPC would arise in a case where the chargesheet is not filed within the stipulated period. The other circumstance giving rise to the right to default bail would be in case where the prosecution files a preliminary or incomplete chargesheet, within the period prescribed for offences mentioned therein and in that process, defeating the right of the accused to statutory bail.

13. In the present case, it is an admitted case that the chargesheet was filed within the stipulated period of ninety days. The issue for consideration in the present case is that whether the main chargesheet as well as the subsequent supplementary chargesheets filed in the present case are incomplete on account of non-filing of documents mentioned in the table given hereinabove?

14. The case of the applicant is that the main chargesheet and the subsequent supplementary chargesheets filed in the present case are incomplete on account of non-filing of the documents, details of which have been given in the table reproduced hereinabove. It is further the case of the applicant that the learned Metropolitan Magistrate had initially taken cognizance of offences under Sections 302/34 of the IPC only and that in itself demonstrates that the chargesheet filed was incomplete.

15. It is pertinent to note that the FIR in the present case was registered under Sections 302/34 of the IPC and Sections 25/27 of the Arms Act. The main chargesheet was filed *qua* the applicant under Sections 302/120B/34 of



the IPC and Sections 25/27 of the Arms Act on 02.12.2021. The true translated version of the said chargesheet records as under:

“The trial be commenced after issuing summons/notices to the witnessed and the accused persons. Upon receiving the FSL result and the weapon of offence i.e. knife from FSL, a subsequent opinion from the doctor would be taken and upon completing the pending investigation, the same shall be filed through supplementary challan.”

The first supplementary chargesheet dated 14.03.2023 records as under:

“Further, the result of Biology and subsequent investigation is pending and the same will be submitted through the supplementary charge sheet before the Hon’ble court. The supplementary charge sheet qua the FSL result is prepared and the same is submitted before the Hon’ble court for taking cognizance.”

The second supplementary chargehseet dated 18.04.2023 records as under:

“Further, the subsequent opinion regarding injuries inflicted to deceased and injuries caused to accused Sanjay Pundir with the weapon of offence ‘Knife’ is yet to be taken and the same is pending. Further, the pen drive containing the viral (CTV footage produced by Pradeep Sherawat has been internally forwarded to the Physics department for examination. The report of which is still pending. The remaining investigation of the present case will be filed before the Hon’ble court through supplementary charge sheet.

The supplementary final report of DNA analysis is prepared and the same is being filed before the Hon’ble court of taking cognizance.”

16. The Hon’ble Supreme Court, in **Dinesh Dalmia v. CBI, (2007) 8 SCC 770**, held as under:

“**19.** A charge-sheet is a final report within the meaning of sub-section (2) of Section 173 of the Code. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence



thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him may not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, in our opinion, law does not require that filing of the charge-sheet must await the arrest of the accused.

20. Indisputably, the power of the investigating officer to make a prayer for making further investigation in terms of sub-section (8) of Section 173 is not taken away only because a charge-sheet under sub-section (2) thereof has been filed. A further investigation is permissible even if order of cognizance of offence has been taken by the Magistrate.

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38. It is a well-settled principle of interpretation of statute that it is to be read in its entirety. Construction of a statute should be made in a manner so as to give effect to all the provisions thereof. Remand of an accused is contemplated by Parliament at two stages; pre-cognizance and post-cognizance. Even in the same case, depending upon the nature of charge-sheet filed by the investigating officer in terms of Section 173 of the Code, a cognizance may be taken as against the person against whom an offence is said to have been made out and against whom no such offence has been made out even when investigation is pending. So long a charge-sheet is not filed within the meaning of sub-section (2) of Section 173 of the Code, investigation remains pending. It, however, does not preclude an investigating officer, as noticed hereinbefore, to carry on further investigation despite filing of a police report, in terms of sub-section (8) of Section 173 of the Code.

39. The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed



and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of Section 173 of the Code.”

(emphasis supplied)

Further, the Hon’ble Supreme Court, in **Suresh Kumar Bhikamchand Jain v. State of Maharashtra and Another, (2012) 3 SCC 77**, held as under:

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

(a) 11-3-2012 — The petitioner arrested and remanded to police custody;

(b) 25-4-2012 — First charge-sheet filed against the four accused;

(c) 1-6-2012 — Supplementary charge-sheet filed in which the petitioner is named;

(d) 30-7-2012 — The trial court rejected the petitioner’s prayer for grant of bail;

(e) 13-9-2012 [*Suresh v. State of Maharashtra*, Criminal Application No. 3568 of 2012, order dated 13-9-2012 (Bom)] — The High Court confirmed the order of the trial court;

(f) 2-10-2012 — Application filed under Section 167(2) CrPC before the trial court;

(g) 5-10-2012 — The trial court rejected the application under Section 167(2) CrPC.

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



17. In our view, grant of sanction is nowhere contemplated under Section 167 CrPC. What the said section contemplates is the completion of investigation in respect of different types of cases within a stipulated period and the right of an accused to be released on bail on the failure of the investigating authorities to do so. The scheme of the provisions relating to remand of an accused, first during the stage of investigation and, thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within 60 days and offences punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, within 90 days. In the event, the investigation is not completed by the investigating authorities, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. Accordingly, if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. The said provision has been considered and interpreted in various cases, such as the ones referred to hereinbefore. Both the decisions in *Natabar Parida case* [(1975) 2 SCC 220 : 1975 SCC (Cri) 484] and in *Sanjay Dutt case* [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] were instances where the charge-sheet was not filed within the period stipulated in Section 167(2) CrPC and an application having been made for grant of bail prior to the filing of the charge-sheet, this Court held that the accused enjoyed an indefeasible right to grant of bail, if such an application was made before the filing of the charge-sheet, **but once the charge-sheet was filed, such right came to an end and the accused would be entitled to pray for regular bail on merits.**”

(emphasis supplied)

17. With regard to requirement sanction *vis-a-vis* default bail under Section 167(2) of the CrPC, in **Judgebir Singh alias Jasbir Singh Samra alias Jasbir and Others v. National Investigation Agency, 2023 SCC OnLine SC 543**, the Hon’ble Supreme Court took note of the decision in **Suresh**



Kumar Bhikamchand Jain (*supra*) and held that a chargesheet filed without sanction would not be deemed incomplete. It was held as under:

“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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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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63. Thus, we answer Issue No. 1 holding that filing of a chargesheet is sufficient compliance with the provisions of Section 167 of the CrPC and that an accused cannot claim any indefeasible right of being released on statutory/default bail under Section 167(2) of the CrPC on the ground that cognizance has not been taken before the expiry of the statutory time period to file the chargesheet. We once again, reiterate what this Court said in *Suresh Kumar Bhikamchand Jain* (supra) that grant of sanction is nowhere contemplated under Section 167 of the CrPC.”

(emphasis supplied)

18. In the present case, the investigation *qua* the applicant was complete at the time the first chargesheet was filed, as regards the offences mentioned in the FIR, on 02.12.2021. At the time of filing of the first chargesheet, there was sufficient material on record *qua* the applicant such as statements of eye-witnesses and other material evidence collected and placed on record. Mere non-filing of the FSL Report is not sufficient to conclude that the chargesheet filed in the present case was incomplete. The said report can be filed by way of a supplementary chargesheet. In any case, the case of the prosecution is primarily based on the eye witness account of the complainant. The FSL



report, if any, would be a corroborative piece of evidence. As pointed out hereinabove, even after the filing of the chargesheet, further investigation can continue under Section 173(8) of the CrPC. The opinion of the expert can always be filed before the learned Trial Court by way of supplementary chargesheet. It is further pertinent to note that in the present case, the learned Trial Court had taken the cognizance after the chargesheet was filed and the said order was not challenged by the petitioner.

19. A learned Division Bench of this Court, in **Syed Maqbool v. N.I.A., 2014 SCC OnLine Del 3966**, held as under:

“31. Concerning the other three appeals, the argument proceeds on the reasoning that the Code of Criminal Procedure, 1973 contemplates investigation of cognizable offences to be completed and a report filed in the Court of competent jurisdiction. **The argument is premised on the reason that sub-Section 2 of Section 173 of the Code of Criminal Procedure envisages the filing of the report before a Magistrate empowered to take cognizance of the offence and that the report must be on the completion of the investigation. The forward limb of the argument would be that an incomplete report is no report in the eyes of law. If a complete report is not filed within 180 days, the appellants would be entitled to statutory bail.**

32. Section 173 of the Code of Criminal Procedure reads as under : -

“173. Report of police officer on completion of investigation -

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

(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;



- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170.
- (ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.
- (3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation,
- (4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.
- (5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-
- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
- (b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.
- (6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.
- (7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).
- (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a



further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

33. It is trite that every investigation needs to be completed without unnecessary delay as per the mandate of sub-Section 1 of Section 173. Under sub-Section 2 as soon as the investigation is completed the report has to be forwarded to the Magistrate empowered to take cognizance of the offence. The contents of the report have to be as per sub-clauses (a) to (h) of sub-Section 2.

34. Now, an investigation would be complete if the Investigating Officer is able to gather all the facts, information and evidence as also is able to identify the accused and the requirements of sub-clause (a) to (d) are complied with in respect to the contents of the report. But sub-Section 8 of Section 173, which begins with a non-obstante clause with a deeming provision interwoven, permits further investigation in respect of an offence after a report under sub-Section 2 has been furnished to the Magistrate.

35. It is settled law that every provision of a statute, in so far as the language permits, have to be read in a manner that each and every provision can be given effect to. If there is a conflict, two provisions have to be harmonized.

36. The decision of the Supreme Court reported as (2013) 5 SCC 762 *Vinod Tyagi v. Irshad Ali* recognizes the difference between an investigation, a further investigation and a fresh or de novo or re-investigation. The decision highlights that sub-Section 8 of the Section 173 of the Code of Criminal Procedure, 1973 deals with further investigation and would be of a kind of a previous investigation being continued. The further investigation would relate to discovery of some more evidence pertaining to the same offence. It has to be understood in contradiction to a re-investigation, a fresh investigation or a de novo investigation. **The purpose of a further investigation is to bring the true facts before the Court even if they are discovered at a stage subsequent to the primary investigation. Thus, it cannot be said that if the prosecution prays to the Court that it be permitted to further investigate an offence, the challan filed has to be treated as incomplete. A further investigation is not antithetical to an investigation being completed.**

37. As regards the contention that in the charge sheet filed a prayer was made to permit the Investigating Officer to continue with the



further investigation and therefrom it has to be inferred that the investigation was not complete, the answer is to be found in the opinion of the Supreme Court in *Vinay Tyagi's* case where it was held that the power of the Investigating Officer under sub-Section 8 of Section 173 of the Code of Criminal Procedure is not restrictive and it is a procedure of propriety that the police seeks permission of the Court to continue '*further investigation*' and file supplementary charge sheet. This approach has been approved by courts in a number of judgments.

38. To put it pithily the mandate of the law would be that if within the statutory period prescribed by law within which a charge sheet has to be filed, if the same is not filed the accused would be entitled to statutory bail; and the charge sheet being the report of the investigation forwarded as per sub-Section 2 of Section 173 of the Code of Criminal Procedure, 1973. The right to statutory bail would terminate with the filing of the charge sheet. The charge sheet filed has to be treated as the report of investigation. The further investigation under sub-Section 8 of Section 173 of the Code of Criminal Procedure supplements the charge sheet already filed and is not to be confused with the report of the investigation contemplated by sub-Section 2 of Section 173 of the Code of Criminal Procedure, 1973."

(emphasis supplied)

20. In view of the observations made in **Judgebir Singh (*supra*)** and **Syed Maqbool (*supra*)**, it is noted that the chargesheet filed in the present case satisfies the conditions contained in sub-clause (a) to (d) of Section 173(2)(i). There is a distinction between filing of a chargesheet and obtaining an expert opinion. The chargesheet is filed upon completion of investigation after the Investigating Officer has found sufficient evidence to prosecute an accused for offences under which the FIR has been registered. The FSL report or any other scientific examination would only be corroborative in nature to the material collected by the Investigating Officer and filed alongwith the chargesheet. Collection of a report of the FSL or a scientific expert, would



therefore, be covered under Section 173(8) of the CrPC. The proposition also finds support from a judgment rendered by a coordinate bench of this Court in **Suraj v. State of Delhi NCT, 2022 SCC OnLine Del 3501**. In the said case, in an application for default bail in a case under Sections 377/34 of the IPC, while taking note of the decisions of the Hon'ble Supreme Court in **Serious Fraud Investigation Office v. Rahul Modi, 2022 SCC OnLine SC 153** and **Suresh Kumar Bhikamchand Jain (supra)**, the coordinate bench observed and held as under:

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

14. At this juncture, it would be pertinent to note that the Petitioner can be convicted on the basis of the testimony of the victim, and the video recording can be collected and filed by way of a supplementary chargesheet and that filing of a chargesheet would entail completion of investigation and that the right to default bail under Section 167 (2) CrPC would not survive. Further, flowing from the 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 chargesheet had been filed well within the time period as stipulated under Section 167(2), the Petitioner is no longer entitled to his right to seek default bail.”

(emphasis supplied)



21. As far as the other judgments relied upon by learned counsel for the applicant are concerned, it is noted that a perusal of the said judgments reflect that they have been rendered in the context of distinct facts and circumstances and do not apply to the facts of the present case. In view of the foregoing discussion, this Court is of the opinion that the chargesheet filed in the present case was not incomplete.
22. In the facts and circumstances of the case, the bail application is dismissed and disposed of accordingly.
23. Pending applications, if any, also stand disposed of.
24. The applicant is at liberty to approach the concerned learned Trial Court seeking bail on merits.
25. It is made clear that the present application is limited to the issue of default bail and nothing stated hereinabove is an opinion on the merits of the case.
26. A copy of this judgement be sent to the concerned Jail Superintendent, for necessary information.
27. Judgment be be uploaded on the website of this Court *forthwith*.

AMIT SHARMA
JUDGE

SEPTEMBER 15, 2023/bsr