2024:DHC:7570

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

% ***Reserved on: 23rd August, 2024***
Pronounced on:30th September, 2024

\+ **BAIL APPLN. 2017/2023**

ANKUSH JAIN
(THROUGH PAROKAR SH. SUNIL KUMAR JAIN)
S/o Sh. Sunil Kumar Jain
R/o 7-C, Flag Staff Road,
Civil Lines, Delhi-110054
New Delhi-110054 .....Petitioner

Through: Dr. Sushil Kumar Gupta, Ms. Sunita Gupta and Mr. Sakshit Bhardwaj, Advocates.

versus

DIRECTORATE OF ENFORCEMENT
Through its Assistant Director,
Directorate of Enforcement
Pravartan Bhawan, APJ Abdul Kalam Road,
New Delhi-110011. .....Respondent

Through: Mr. Zoheb Hossain, Special Counsel for ED with Mr. Vivek Gurnani and Mr. Kartik Sabharwal, Advocates.

\+ **BAIL APPLN. 2079/2023**

VAIBHAV JAIN
(THROUGH PAROKAR SMT. SWATI JAIN)
S/o Sh. Ajit Prasad Jain
R/o- 22A/9, Rajpur Road,
Civil Lines, Delhi-110054 ....Petitioner

Through: Dr. Sushil Kumar Gupta, Ms. Sunita Gupta and Mr. Sakshit Bhardwaj, Advocates.

versus

DIRECTORATA OF ENFORCEMENT
Through its Assistant Director,
Directorate of Enforcement
Pravartan Bhawan, APJ Abdul Kalam Road,
New Delhi-110011. .....Respondent

Through: Mr. Zoheb Hossain, Spl. Counsel for ED with Mr. Vivek Gurnani and Mr. Kartik Sabharwal, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Two aforesaid Bail Applications under Section 439 read with Section 167(2) of the Code of Criminal Procedure *(hereinafter referred to as 'Cr.P.C., 1973')* has been filed on behalf of the petitioner Ankush Jain and Vaibhav Jain respectively, for grant of bail in CC No. 23/2022 ECIR/HQ/14/2017 dated 30.08.2017.

2. ***Briefly stated***, FIR No. RCAC12017 A0005 was registered by CBI on 24.08.2017 against Sh. Satyendar Jain for amassing Assets disproportionate to his known sources of income i.e. under Section 13(1)(e) of the Prevention of Corruption Act, 1988 (*hereinafter referred to as 'PCA, 1988')*. The petitioners, *Mr. Ankush Jain* and *Mr. Vaibhav Jain* were arrayed as co-accused on the premise that they were intentionally aiding the public servant for projecting his movable assets as their own assets, by virtue of Section 109 of the Indian Penal Code, 1860 *(hereinafter referred to as 'IPC, 1860').* The Charge-Sheet has been filed by the CBI against the co-accused, Mr. Satyendar Jain and other accused persons including the petitioners, for the offence under Section 13(1)(e) read with Section 13(2) of the *Prevention of Corruption Act, 1988.*

3. Subsequently, the ECIR bearing No. ECIR/HQ/14/2017 has been registered by the Enforcement Directorate (ED) against Mr. Satyendar Jain and others.

4. The petitioners, Mr. Ankush Jain and Mr. Vaibhav Jain were arrested on 30.06.2022. Mr. Ankush Jain was remanded to judicial custody on

06.07.2022 and Mr. Vaibhav Jain was remanded to judicial custody on 11.07.2022. It is claimed by them that in order to defeat the rights of the petitioners to get bail under Section 167 (2) of Cr.P.C., filed incomplete Complaint against them on 27.07.2022 while further investigations were still pending and are still going on. The cognizance was taken by the Court on the said incomplete Complaint on 29.07.2022. This is evident as the Investigating Agency had filed an Application on 13.01.2023, to interrogate the petitioner and for recording the statements which was allowed by the Ld. Special Judge on 16.01.2023.

5. Furthermore, during the pendency of the investigation, ED has issued summons to Ms. Sushila Jain, Ms. Indu Jain, Ms. Swati Jain, for investigations on 05.12.2022 and to Mr. Sunil Kumar Jain on 22.12.2022. Pursuant to the summons, Ms. Sushila Jain joined the investigation on 14.12.2022, Ms. Indu Jain and Ms. Swati Jain joined the investigation on 14.12.2022 and on 15.12.2022 respectively and Mr. Sunil Kumar Jain joined the investigation on 11.01.2023, 19.01.2023, 23.01.2023 and 02.02.2023. These facts clearly establish that the Investigating Agency is still conducting the investigations after the expiry of the statutory period as provided under Section 167(2) of Cr.P.C. Act, which shows that the Complaint filed against the present applicants, was incomplete and filed only to defeat the right of the petitioners to default fail.

6. The learned Special Judge dismissed the Bail Application *vide* Order dated 15.05.2023. The Order has been assailed on the ground that the provision of Section 167(2) has not been considered in the right perspective. The Co-ordinate Bench of this Court in the Case of *'CBI vs. Kapil Wadhawan'* Crl.M.C. No. 6544/2022 while dealing with Section 167(2) of

Cr.P.C., had categorically observed that the Magistrate has no power to authorise the detention beyond the statutory period of 60 days or 90 days, depending upon the facts of each case.

7. It was further argued that the Charge Sheet was mandatorily required to be filed only after completion of investigations as provided under Section 173 Cr.P.C.. The Complaint filed before the Court on 27.07.2022, cannot be termed as a report filed on completion of the investigations. Merely because the trial court has taken cognizance, is not relevant for consideration of bail under Section 167 Cr.P.C., as has been observed in the Case of *Suresh Kumar Bhikamchand Jain vs. State of Maharashtra,* (2013) 3 SCC 77. Reliance has also been placed on *Satender Kumar Antil vs. CBI and Anr.*, wherein it was observed that Section 167(2) of Cr.P.C. is the limb of Article 21 of the Constitution of India and the Investigating Agency is under a constitutional duty to conclude the investigations and file the Charge Sheet within the stipulated time failing which the petitioner shall be entitled to default bail. Reliance has been made *Rakesh Kumar Paul vs. State of Assam*, (2017) 15 SCC 67; *Bikramjit Singh vs. State of Punjab*, (2020) 10 SCC 616; *M. Ravindran vs. Directorate of Revenue Intelligence*, (2021) 2 SCC 485; *Ashok Wunilal Main & Anr. vs. Assistant Director, Directorate of Enforcement.* Prayer is thus made that the petitioner be admitted to bail.

8. ***Reply has been filed on behalf of the State*** wherein it has been submitted that the petitioners are not entitled to release on default bail as is claimed by them. Preliminary objection is taken that the present Petition is not maintainable as the learned Special Judge has duly considered all the contentions in this regard and rejected them by way of speaking Order dated 16.01.2023. It was observed that the findings in the Complaint had attained

finality and there was no change of circumstances insofar as the default Bail Application was concerned. Furthermore, the applicants themselves have admitted that the investigations *qua* them, is complete in the Bail Application before the Special Court, as well as this Court. The Complaint under Section 44 read with Section 45 of Prevention of Money Laundering Act *(hereinafter referred to 'PMLA, 2002')* had been filed in the Court on 27.07.2022 i.e. before the expiry of 60 days from the date of arrest of the petitioners. The prosecution Complaint clearly establishes the commission of offence of money laundering punishable under Section 4 of the PMLA Act. The cognizance has been duly taken by the Court on 29.07.2022, on the prosecution Complaint while relying on the documents placed in support of the Complaint. The cognizance could not have been taken **had** the investigations been incomplete and the cognizance has not been challenged till date, by the petitioners.

9. The individual ***role of Mr. Ankush Jain***, the petitioner has been explained in detail. Mr. Ankush Jain made a declaration under Income Disclosure Scheme, 2016 *(hereinafter referred to 'IDS 2016'*) declaring undisclosed income of Rs.8.6 Crores (including 1,53,61,166/- during check period) for a period from 2010-2011 to 2015-2016, in order to save and shield Mr. Satyendar Kumar Jain, thereby concealing the true nature of proceeds of crime. He also prepared back-dated documents with the help of Mr. Sunil Kumar Jain, Mr. Vaibhav Jain and Mr. Jagdish Prasad Mohta in regard to his directorship in *M/s Akinchan Developers Pvt. Ltd*, *Paryas Infosolution Pvt. Ltd. and Indo Metalimpex Pvt. Ltd*. for becoming Directors of the aforesaid Companies from back date for showing his IDS declaration as genuine. The income sought to be disclosed by the applicant, belonged to

accused Mr. Satyendar Jain and their rejection of IDS on this ground was upheld by this Court and confirmed by Hon'ble Supreme Court of India and is thus an undisputed fact.

10. Ankush Jain was Director of *M/s Manglayatan Projects Pvt. Ltd.* during the check period. This Company is one of the accused in the Prosecution Complaint filed on 27.07.2022, before the Court. The Company received proceeds of crime amounting to Rs.1,90,00,000/- during the check period in the form of accommodation entries from Kolkata based shell Companies. The applicants transferred land possessed by *M/s Manglayatan Projects Pvt.* Ltd., in the name of his mother Ms. Indu Jain, to frustrate the proceeds of crime.

11. Mr. Ankush Jain has, therefore, money laundered proceeds of crime to the tune of Rs.4,81,16,435/- as untainted in the mode and manner as explained above and detailed in the prosecution Complaint filed under Section 4 of PMLA Act, 2002. The Regular Bail of Mr. Ankush Jain has already been dismissed *vide* Order dated 17.12.2022.

12. **The role of Mr. Vaibhav Jain** in the prosecution Complaint has detailed that in his 'IDS, 2016' he declared undisclosed income of Rs.8.6 Crores including Rs.1,53,61,166/- during the check period from 2010-11 to 2015-16, in order to save and shield Mr. Satyendar Kumar Jain, thereby concealing the true nature of proceeds of crime. He also prepared back dated documents with the help of Mr. Sunil Kumar Jain, Mr. Ankush Jain and Mr. Jagdish Prasad Jain with regard to his Directorship *M/s Akinchan Developers Pvt. Ltd, Paryas Infosolution Pvt. Ltd., M/s Manglayatan Projects Pvt. Ltd* and *Indo Metalimpex Pvt. Ltd.* by becoming Directors of the aforesaid Companies from back date for showing his IDS declaration as

genuine. The income sought to be disclosed by the petitioner, belonged to Mr. Satyendar Kumar Jain and their rejection of IDS on this ground has been upheld by the learned Special Court and confirmed by the Hon'ble Supreme Court of India, thereby establishing them as undisputed facts.

13. Mr. Vaibhav Jain was a Director of *M/s Paryas Infosolutions Pvt. Ltd.* during the check period. This Company which is one of the accused in the prosecution Complaint, had received proceeds of crime amounting to Rs.69,00,000/-, during the check period in the form of accommodation entries from Kolkata based shell Companies. The petitioner transferred the land possessed by *M/s Manglayatan Projects Pvt. Ltd,* in the name of his mother, Ms. Sushila Jain and wife Ms. Swati Jain, to frustrate the proceeds of crime. He thus, was actually involved in money laundering proceeds of crime to the tune of Rs.4,81,16,435/- belonging to Mr. Satyendar Kumar Jain, by projecting it as untainted in the mode and manner as described above. The Regular Bail Application of Mr. Vabihav Jain, was dismissed by the learned Special Court on 17.11.2022.

14. The bails in both the Applications, are opposed on the ground that merely because further investigations were undertaken does not mean that the original prosecution Complaint filed was pursuant to incomplete investigations. Reliance has been placed on *Dinesh Dalmia vs. CBI,* (2007) 8 SCC 770; *Vipul Shital Prasad Agarwal vs. State of Gujarat & Anr.,* (2013) 1 SCC 197; *Abdul Azeez P.V. vs. National Investigation Agency*, (2014) 16 SCC 543 and *Vijay Madanlal Chaudhary and Others vs. Union of India & Ors.,* 2022 SCC OnLine SC 929.

15. It is further submitted that pendency of further investigation does not trigger the right of default bail under Section 167(2) Cr.P.C. for which

reliance is placed on *Central Bureau of Investigation v. R.S. Pai & Ors.* (2002) 5 SCC 82; Suresh Mahata v. State of West Bengal 1997 SCC OnLine Cal 23; *Vipul Shital Prasad Agarwal v. State of Gujarat & Anr*. (2013) 1 SCC 197*; Narendra Kumar Amin v CBI & Ors*. (2015) 3 SCC 417; and *CBI v. Kapil Wadhawan* (2024) 3 SCC 734.

16. It is further stated that No default bail can be granted in a case where cognizance was taken. Reliance is placed on *Alemla Jamir v. NIA 2023 SCC OnLine Del 2490;* and *Mohmed Iqbal Madar Sheik v. State of Maharashtra* (1996) 1 SCC 722.

17. It is further contended that after the prosecution Complaint has been filed, the Bail Application is not maintainable, for which reliance has been placed on *M. Ravindran vs. Directorate of Revenue Intelligence*, (2021) 2 SCC 485; *Nasir Bin Abu Bakr Yafai vs. State of Maharashtra*, (2022) 6 SCC 308; *Sanjay Dutt vs. State through CBI* (1994) 5 SCC 410.

18. On merits, all the averments made in the Bail Petitions, are refuted and it is asserted that the petitioners are not entitled to bail.

19. Learned Senior Counsel on behalf of the petitioner and learned counsel on behalf of the respondent, have argued essentially on the same lines as stated in their respective Applications and Reply.

20. Submissions heard and record perused.

21. Admittedly, ED had filed the statutory Complaint in the Court on 27.07.2022, which was within the statutory period of 60 days from the date of arrest of the petitioners.

22. Essentially the ground for default bail, which has been agitated by the petitioners, is that the Complaint filed before the Court, was incomplete in so much as with the permission of the Court, the petitioners have been asked

to join the investigations. The taking of cognizance by the Ld. Special Judge cannot ipso facto lead to the conclusion that investigations are complete.

23. The cognizance of the Complaints has been taken by the Ld. Special Judge. The Constitution Bench in *K. Veeraswami vs. Union of India & Ors.,* (1991) 3 SCC 655, the scope of Section 173(2) of Cr.P.C. had been explained, which provides that on completion of the investigations, the police officer investigating into the cognizable offence, shall submit a report. The requirements of the report would be complied if the various details prescribed therein, are included in the report. This report is 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 enquire into the offence and the necessary information is sent to the Court. The report is complete if it is accompanied with all the documents and statement of witnesses as required under Section 175(5). The details of the offence required to be proved to bring home the guilt of the accused during the course of trial by way of adducing acceptable evidence, must be detailed in the police report.

24. In the case of *Kapil Wadhawan* (supra) while referring to the case of *K. Veeraswami* (supra), it was observed that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein, are included in the report. The benefit of proviso to sub-Section 2 of Section 167 of the Code, would be available to the offender only when a Charge-Sheet is not filed or the investigation is kept pending against the accused. Once, the Charge-Sheet is filed, the right ceases, however, the right of the Investigating Officer to pray for further investigation, in terms of sub-Section 8 of 173, is not taken away merely

because the Charge-Sheet is filed against the accused. Ordinarily all documents relied upon by the prosecution should accompany the Charge-Sheet, nonetheless for some reasons if all documents are not filed along with the Charge-Sheet that reason by itself would not invalidate or vitiate the Charge-Sheet. It is well-settled that the Court takes cognizance of the offence and not the offender. Once from the material produced along with the Charge-Sheet, the Court is satisfied about the commission of an offence and cognizance of the offence is taken. It is immaterial whether further investigation in terms of Section 173(8) is pending or not. The pendency of further investigations *qua* the other accused or for production of some documents not available at the time of filing of the Charge-Sheet, would neither vitiate the Charge-Sheet nor would it entitle the accused to claim right to get default bail on the ground of the Charge-Sheet being incomplete or not filed in terms of Section 173(2) Cr.P.C.

25. In view of the aforesaid, while it is rightly contended on behalf of the petitioner that mere cognizance does not prevent the Court to consider whether all the requisite material has been placed before the Court by way of the report under Section 173 Cr.P.C, however, the petitioner *herein* aside from making a claim that the investigations were not completed as not being able to demonstrate in what manner the Charge-Sheet does not disclose the commission of the offence against the petitioner.

26. The *other aspect* which has been contended by the Petitioners is that continuing of further investigations against the petitioners is indicative of the Complaint being incomplete.

27. To appreciate the contention so raised by the petitioners, it would be appropriate to first understand the scope of Default Bail in terms of Section 167(2) of the Code.

28. In the case of *Satender Kumar Antil* (supra), the Apex Court observed that it is the duty of the Agency to complete the investigation within the time prescribed and a failure would entitle the accused to be released on default bail. The right enshrined is an absolute and indefeasible one, inuring to the benefit of suspect, to which due effect must be given by the Courts. Thus, any detention beyond the period would certainly be illegal, being an affront to the liberty of the person concerned. Therefore, it is not only the duty of the investigating agency but also of the Court to ensure that in appropriate cases, the accused gets the benefit of Section 167(2) of the Cr.P.C.

29. Similar observations were made in *Rakesh Kumar Paul* (supra) wherein it was observed that the *'default bail'* is an important right about which millions of countrymen may not be aware because of their ignorance and illiteracy.

30. In the case of *Bikramjit Singh* (supra), the Apex Court referred to which *Uday Mohanlal Acharya vs. State of Maharashtra*, (2001) 5 SCC 453 and observed that where the accused files an Application for bail indicating his right to be released as no charge sheet has been filed within the specified period, there is no discretion with the learned Magistrate except to enquire whether the specified period has elapsed and the challan has not been filed. Once these facts are confirmed, the accused must be released on bail and any remand to judicial custody thereafter would be illegal.

31. In the case of *Sanjay Dutt* (supra), the expression "*if not already availed of*" as they appear in Section 167(2) have to be understood to mean

that when an Application is filed by the accused and he is prepared to offer the bail then it has to be held that the accused has availed his indefeasible right even though the Court has not considered the said Application and has not indicated the terms and conditions of bail.

32. Similar observations were made in *M. Ravindran* (supra) and *Rakesh Kumar Paul* (supra) that if an Application for bail has been filed by the accused even though the statutory period or Section 167(2) is not mentioned and this has not been made a specific ground for bail but the Court may still look into the Application and consider whether the petitioner is entitled to bail on account of default in filing the Complaint within the statutory period. It was observed that this entire debate of *default bail* must be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective.

33. *The scope of Section 167(2) of the Code* as detailed in the aforesaid Judgments, is not in dispute. The core question before this Court is under what circumstances can a Complaint filed in the Court can be considered as incomplete. In the present case, the contents of the Complaint disclosed all the ingredients for commission of an offence against the accused and the cognizance is also taken, it is evident that the investigations *qua* the accused for disclosing the commission of the offence, is complete. There may be supplementary investigations undertaken, but the learned Special Judge has rightly observed that incidental or supportive investigations may continue by way of F.S.L. Report, which was to collect such other further details but that in itself would not take away the completeness of the Complaint in so much as the contents of the Complaint discloses all the ingredients for commission

of offence. Mere supplementary evidence, which is only intended to be filed in support of the main Charge Sheet, would not make the Complaint incomplete.

34. The Supreme Court of India in the case of <u>*Dinesh Dalmia vs. CBI,*</u> (2007) 8 SCC 770, had explained that such a right of bail (default) although is a valuable right but is a conditional one; the condition precedent being pendency of the investigation. Whether an investigation in fact has remained pending when the investigating officer has submitted the charge-sheet only with a view to curtail the right of the accused to claim default bail, is essentially a question of fact. *"Such a question strictly does not arise in this case inasmuch as, according to CBI, sufficient materials already available for prosecution of the appellant. According to it, further investigation would be inter alia necessary on certain vital points including end use of the funds.......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 the Section 173 of the Code." It was further observed that "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."

35. Similar observations have been made in the Case of ***Vipul Shital Prasad Agarwal*** (supra) wherein the Apex Court observed that mere undertaking of a further investigation either by the investigating officer on his own or upon the directions of the superior police officer or pursuant to a direction by the Magistrate concerned to whom the Report is forwarded, does not mean that the Report submitted under Section 173(2) is abandoned or rejected.

36. Likewise in ***Abdul Azeez*** (supra), the Apex Court noted that merely because certain facets of the matter called for further investigation, it does not deem such report anything other than a final Report, merely because the bank account details and the mobile phone call details of the petitioner, as mentioned in the Charge-Sheet were yet to be verified. It was further observed that the Charge Sheet was filed before the learned Special Judge was complete in all respects so as to the enable the learned Judge, to take cognizance of the matter.

37. In the case of ***Vijay Madanlal Chaudhary and Others*** (supra) it was observed that Clause (ii) of the Explanation to Section 3 is only an enabling provision permitting to take on record material regarding further investigation against any accused person involved in respect of offence of money-laundering for which Complaint has already been filed, whether he has been named in the complaint or not. Such a provision, in fact, is a wholesome provision to ensure that no person involved in the commission of offence of money-laundering, must go unpunished. It is always open to the Authority authorised to seek permission of the Court during the trial of the

Complaint in respect of which cognizance has already been taken by the Court, to bring on record further evidence which request can be dealt with by the Special Court in accordance with law keeping in mind the provisions of the 1973 Code as well. It is opened to the Authority authorised to file a fresh Complaint against the person who has not been named as accused in the Complaint already filed in respect of same offence of money-laundering, including to request the Court to proceed against such other person appearing to be guilty of offence under Section 319 of Cr.P.C., which otherwise would apply to such a trial.

38. The learned Trial Court has, therefore, rightly concluded that the Complaint filed against the petitioners, were complete in the sense of containing all the necessary ingredients for the commission of the offence. Any further investigations, which are only supplementary in nature which do not make the Complaint incomplete, there being no default in filing the Complaint within the statutory period.

39. The default bail under Section 167(2) of Cr.P.C. is, therefore, rightly denied to the applicants and both the Petitions are hereby dismissed. However, this does not prevent their right to seek Regular Bail on merits.

40. The Petitions are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 30, 2024
RS