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

% Date of Decision: 05.03.2024

\+ **CRL.M.C. 8579/2023, CRL.M.(BAIL) 1658/2023**

MR. RAM KISHOR ARORA ..... Petitioner
Through: Mr. R.K. Handoo and Mr.Yoginder Handoo, Mr. T.A. Mir, Ms.Dipti Singh, Mr.M. Singh, Mr.Akshay and Mr.Haresh Gaur., Advocates.

Versus

DIRECTORATE OF ENFORCEMENT & ANR ..... Respondents
Through: Mr. Zoheb Hossain, Special Counsel for ED with Mr.Vivek G., Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present petition filed under Section 482 and 167(2)(a)(ii) Cr.P.C. read with Section 65 of the Prevention of Money Laundering Act, 2002 (*'PMLA'*), the petitioner seeks setting aside of the order dated 14.10.2023 passed by learned ASJ-05, Patiala House Courts, New Delhi, vide which his application seeking default bail under Section 167(2) Cr.P.C came to be dismissed.

2. The facts necessary for the consideration of the present petition are delineated as under:-

As per ED's case, petitioner is the promoter of *M/s Supertech Ltd* (hereafter, the *'Supertech'*). During the period 2017-2023, about 819 homebuyers lodged complaints against *Supertech* and its group companies alleging cheating to the tune of Rs.228 crores. On these complaints, 26 FIRs came to be registered under Section 120B read with Sections 406/420/467/471 IPC by various agencies i.e., EOW, Delhi Police; Haryana Police and U.P. Police. Statedly, investigations are pending in these cases and no chargesheet has been filed till date.

On 09.09.2021, the present case being ECIR/21/STF/2021 came to be registered. The petitioner was arrested on 27.06.2023 and produced before Special Judge, PMLA, who remanded him to ED's custody till 10.07.2023. On 10.07.2023, the petitioner was again remanded to judicial custody for a further period of 14 days, which was continued from time to time. On 24.08.2023, ED filed the complaint against the present petitioner and others. Concededly, this complaint came to be filed within 60 days. Learned Special Judge took cognizance of the same on 26.09.2023.

3. Petitioner has contended that on the date of filing of the prosecution complaint, the investigation was incomplete. This contention is premised on two grounds firstly, that the complaint was not accompanied by the FSL report and secondly, that ED after filing of the complaint has issued summons on 14.09.2023 to one *Anil Kumar Jain*, director of *Supertech*, which implies that investigations are still pending, including against the present petitioner.

4. On the strength of these submissions, the petitioner preferred an application under Section 167(2) Cr.P.C. before the learned Special Judge on 25.09.2023, which eventually came to be dismissed vide the impugned order.

5. In support of his contentions, learned counsel for the petitioner has placed reliance on the decisions in Suresh Kumar Bhikamchand Jain *v.* State

of Maharashtra & Anr.[1], Rakesh Kumar Paul *v.* State of Assam[2] and Fakhrey Alam *v.* State of U.P.[3]

6. Respondent, while contesting the petition, contends that petitioner's role came to the fore after carrying out exhaustive investigation. Though further investigation on certain crucial aspects is pending, the same would not invalidate the complaint already filed against the petitioner. In support of its contention, reliance is placed on the decision in Dinesh Dalmia *v.* CBI[4], Vipul Shital Prasad Agarwal *v.* State of Gujarat & Anr.[5], Abdul Azeez P.V. *v.* National Investigation Agency[6] and Central Bureau of Investigation *v.* Kapil Wadhawan & Anr.[7]

7. The right to default bail has been recognised as a statutory right. This right accrues in favour of an accused, if the chargesheet or complaint as the case may be, is not filed within the stipulated period. The Courts have also in no uncertain terms held that filing of an incomplete chargesheet/complaint would not come in the way of this indefeasible right of the accused.

8. In the present case indisputably, the respondent had filed its complaint within the period of 60 days. The application for default bail came to be filed approximately 30 days after filing of the complaint.

9. A perusal of the material placed on record reveals that the case relates to default in delivery of flats by *Supertech*, of which petitioner is the promoter director. The allegations relate to siphoning off and diverting the

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[1] (2013) 3 SCC 77
[2] (2017) 15 SCC 67
[3] 2021 SCC OnLine SC 532
[4] (2007) 8 SCC 770
[5] (2013) 1 SCC 197
[6] (2014) 16 SCC 543
[7] 2024 SCC OnLine SC 66

funds received from home buyers to group companies. The diverted funds are alleged to have been used for purchase of land in the name of group companies, instead of completing the projects for which funds were collected. The funds are alleged to be diverted to *M/s Sarv Realtors Private Limited* to the extent of Rs.444 crores; *M/s ASP Sarin Reality Pvt. Ltd.* to the extent of Rs.154.99 crores; *M/s Palash Building Solutions Private Limited* to the extent of Rs.39.94 crores; and *M/s Goodtime Builders Private Limited* to the extent of Rs.14.63 crores. It is also alleged that to hide certain assets i.e., commercial properties purchased in Meerut and Dehradun alongwith certain funds transferred to the petitioner or subsidiary of *R.K. Arora Family Trust* to the extent of Rs.44.25 crores from NCLT proceedings, the petitioner siphoned off the same in the guise of back-dated loan agreements. The investigation has revealed that except *M/s Sarv Realtors Private Limited*, the remaining companies were already acquired by the *Supertech Group*. Further, an earlier transaction of Rs.24 crores from petitioner to *Supertech* was converted into a loan @ 24% interest rate, while he himself had availed a major portion of the said loan at the interest rate of only 14%. It is also alleged that *Supertech* rotated its own money and projected it as a loan (without interest) to a subsidiary company, which held prime rent earning properties near Dehradun and Meerut and to alienate the aforesaid properties, the loan from petitioner to *Supertech* was inflated to Rs. 46 crores, whereafter *Supertech* gave its properties worth Rs.21.40 crores and properties of its debtors worth Rs.18.99 crores to a company namely *M/s Damodar Buildengineers Pvt. Ltd.*, which was nominated by the petitioner. Further, during the investigation, a search was conducted at the office premises of *Supertech Ltd.* and certain documents namely loan agreement dated 03.03.2015, notice for repayment of loan dated 01.03.2019 and settlement agreement dated 01.06.2019 were seized. The same were sent for FSL analysis, as there were doubts surrounding their authenticity i.e., these were backdated with the specific intent of siphoning off the assets of *Supertech Ltd*. It is the FSL report of these documents which has not been received and whose non-filing has been raised as a contention by the petitioner.

10. Insofar as the role of the present petitioner is concerned, it is alleged that he was the main decision-maker in *Supertech* at the material time i.e., when the offence was committed. The home buyers approached Supreme Court, whereafter they were allowed to approach NCLT in the capacity of financial creditors. It is alleged that after commencement of the proceedings before the NCLT, the petitioner transferred prime rent earning properties of *Supertech* worth Rs.40 crores to his family trust under the guise of fake and back-dated loan agreements. The bank accounts of the group companies were analyzed, which revealed that the funds received therein were initiated from different accounts of *Supertech* wherein the funds received from the home buyers were deposited. On strength of above investigation, it is alleged that the petitioner is guilty of offence punishable under Section 3 of PMLA.

11. The respondent has filed its reply to the present petition, whereby it has been stated that investigation against the petitioner is complete and the same is evidenced by the criminal complaint dated 24.08.2023, and that only further investigation in terms of Explanation (ii) to Section 44 (1) is being undertaken. As per the complaint filed, it was the applicant who was directly in control of the administrative and financial functions of the said group

companies. It is contended that mere issuance of summons to another Director would not *ipso facto* imply that the investigation against the petitioner is incomplete. The right to further investigate is well recognised under Section 173(8) Cr.P.C.

12. Insofar as the issue of pending FSL report is concerned, this Court takes note of the decision in Dinesh Dalmia (Supra), wherein the Supreme Court was in seisin of a similar issue regarding default bail. In the said case, though a charge-sheet had been filed, it was stated that further investigation on vital points including end use of funds and other foreign investigations were still continuing and that after completion of the remaining investigation, a report would be filed under Section 173 (8) Cr.P.C in due course. It was also mentioned that questioned documents had been sent to GEQD for expert opinion, and the report was awaited, which shall be submitted with additional list of documents. While negating the prayer for default bail, the Court held as under:-

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> *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 the 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.

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13. In Sureshkumar Bhikamchand Jain (Supra), a contention was raised

that though chargesheet/supplementary challan had been filed within the stipulated time, the prosecution had not obtained order of sanction. The Supreme Court held:-

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> *17. In our view, grant of sanction is nowhere contemplated under Section 167 Cr.P.C. 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's case(supra) and in Sanjay Dutt's case (supra) were instances where the charge-sheet was not filed within the period stipulated in Section 167(2) Cr.P.C. and an application having been made for grant of bail prior to the filing of 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.*
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14. Recently, in Kapil Wadhawan (Supra), the Supreme Court was again seized with the issue whether an accused is entitled to default bail if

investigation is pending against the other accused or if the charge-sheet is not accompanied by all the documents. The Supreme Court held as under:-

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22. In view of the above settled legal position, there remains no shadow of doubt 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 report under Section 173 is an intimation to the court that upon investigation into the 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. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). As settled in the afore-stated case, it is not necessary that all the details of the offence must be stated.

23. The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a chargesheet is not filed and the investigation is kept pending against him. Once however, a chargesheet is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a chargesheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the chargesheet, nonetheless for some reasons, if all the documents are not filed along with the chargesheet, that reason by itself would not invalidate or vitiate the chargesheet. It is also well settled that the court takes cognizance of the offence and not the offender. <u>Once from the material produced along with the chargesheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of chargesheet would neither vitiate the chargesheet, nor would it entitle the accused to claim right to get default bail on</u>

the ground that the chargesheet was an incomplete chargesheet or that the chargesheet was not filed in terms of Section 173(2) of Cr.P.C.

(emphasis supplied)

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25. In view of the afore-stated legal position, we have no hesitation in holding that the chargesheet having been filed against the respondents-accused within the prescribed time limit and the cognizance having been taken by the Special Court of the offences allegedly committed by them, the respondents could not have claimed the statutory right of default bail under Section 167(2) on the ground that the investigation qua other accused was pending. Both, the Special Court as well as the High Court having committed serious error of law in disregarding the legal position enunciated and settled by this Court, the impugned orders deserve to be set aside and are accordingly set aside.

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15. In the present case, the respondent has already submitted the requisite documents for obtaining expert opinion from FSL. Preparation of the FSL report is not in the control of investigating agency, though it can take steps for expediting the process. As already noted above, it is the categorical stand of the respondent that investigation against the present petitioner is complete. Mere issuance of summons to another person or seeking leave of the Court to file additional evidence, without there being any other sufficient material to challenge, the petitioner cannot be held to be entitled to a default bail.

16. To the same extent is the decision of Supreme Court in Judgebir Singh @ Jasbir Singh @ Jasbir & Ors. *v.* National Investigation Agency[8] and the decision of the Division Bench of this Court in Syed Maqbool v.

[8] 2023 SCC OnLine SC 543

N.I.A.[9]

17. The conclusion reached by this Court is further fortified by the decision of Co-ordinate Benches of this Court in Suraj *v.* State of Delhi NCT[10], Sanjay Kumar Pundeer *v.* State of NCT of Delhi[11] and Rahmat Gul Shinwari *v.* State (NCT of Delhi)[12].

18. Consequently, I find no merit in the petition and the same is accordingly dismissed. Pending application is disposed of as infructuous.

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MANOJ KUMAR OHRI
(JUDGE)

MARCH 05, 2024/*rd*

[9] 2014 SCC OnLine Del 3966
[10] 2022 SCC OnLine Del 3501
[11] 2023 SCC OnLine Del 5696
[12] Order dated 11.05.2023 passed in BAIL APPLN. 189/2022