



\$~68&69

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

+ CRL.M.C. 9206/2024 & CRL.M.A. 37677/2024

YOGESH SINGH

.....Petitioner

Through: Mr. Anand Prakash Sharma, Mr. CP
Nautiyal, Mr. Akshay Kumar, Ms. Shivani
Bainsla, Advs.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Sunil Kr. Gautam, APP
SI Kishan Chand, PS Dwarka South

69

+ CRL.M.C. 9468/2024

DEEPAK NISHAD

.....Petitioner

Through: Mr. Anand Prakash Sharma, Mr. CP
Nautiyal, Mr. Akshay Kumar, Ms. Shivani
Bainsla, Advs.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Sunil Kr. Gautam, APP
SI Kishan Chand, PS Dwarka South

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

%

19.12.2024

1. These are petitions seeking setting aside of the impugned order dated 13.11.2024 passed in Criminal Revision No. 2271/2024 in the matter titled as “(1) Yogesh Singh and (2) Deepak Nishad vs. The State of (NCT of Delhi)” by the learned Addl. Session Judge (SFTC) , Dwarka Courts, New Delhi wherein the learned Judge dismissed the revision petition and upheld the order passed by the learned JMFC-4, South-



West District, Dwarka Court, Delhi, whereby the application for grant of bail under Section 187(3) of BNSS, 2023 was dismissed on 07.11.2024.

2. In the present case, initially the FIR was registered under section 408 and 34 of IPC and during the course of investigation, section 420/467/471 of IPC were added.
3. It is argued by Mr Sharma, learned counsel for the petitioner that the petitioner is in judicial custody since 04.09.2024 and the chargesheet has not been filed within the stipulated period of 60 days as mandated under Section 187(3) of BNSS, 2023. The petitioner was charged with the offence punishable under Section 467 of IPC which carries an imprisonment for life or imprisonment which may extend to 10 years. Hence, in case the charge sheet is not filed within a period of 60 days, the petitioner is entitled to default bail. The learned JMFC did not agree with the said submission and thereafter, the revision petition was filed which was also dismissed. Hence the present petition is filed.
4. Section 187(3) of BNSS, 2023 reads as under:-

“187.

(3) The Magistrate may authorise the detention of the accused person, 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 sub-section 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 ten years or more;

(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 XXXV for the purposes of that Chapter.”

5. The said section is *pari materia* to Section 167(2) of Cr.PC which reads as under:-

“Section 167. Procedure when investigation cannot be completed in twenty-four hours.

(1).....

(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;]”

6. Learned counsel for the petitioner has heavily relied upon the judgment passed in CRL.REV.P. 363/2020 titled as “**Rajeev Sharma vs. State (NCT) OF DELHI**” and more particularly on paragraphs 17 and 23 which read as under:-

“17. I’m afraid the contention raised by the learned Standing Counsel for the State does not hold good in view of Rakesh Kumar Paul vs. State of Mysore, SLP(C) 2009/2017 where also the Supreme Court was concerned with interpretation of the words “imprisonment for a term of not less than 10 years” appearing in clause (i) of proviso (a) to Sub Section (2) of Section 167 Cr.P.C. 1973, as amended in 1978. The Supreme Court went in great detail analyzing the purpose of amendment since 1898 which contained Section 167 laying down the procedure to be followed in the event the investigation to the offence is not completed within 24 hours. The Court observed that the legislative expectation was the investigation would ordinarily be completed within 24 hours. Section 167 Cr.P.C. was thus enacted with the recommended time limit and again regardless of the nature of offence of the punishment.

.....
.....
.....
23. Thus under the Official Secret Acts for which the petitioner is being tried, though entail punishment which may extend to 14 years but the Section does not talk of minimum period of sentence and thus does not pass the test of clear period of 10 years or more, per Rajeev Choudhary (supra) and Rakesh Paul (supra) and as such the period of challan in this case would be 60 days and thus the impugned order passed by the



learned MM being illegal is set aside and the petition is allowed. The petitioner is thus entitled to default bail; the challan having not been filed within 60 days.”

7. Learned counsel for the petitioner has also relied upon the judgment of **“The State vs. Mr. B.B. Singh And Ors.”** and more particularly paragraph 6 which reads as under:-

“6. In this context, the distinction between the cases where the sentence prescribed is ‘Life imprisonment’ and the cases where sentence could extend up to life imprisonment should be taken note of. For offences under Section 302 IPC or Section 121 IPC the punishment prescribed is ‘Death’ or ‘Imprisonment for Life’. In such cases the court while awarding sentence has to award either the sentence of death or sentence of Life Imprisonment. The court has no option to award a sentence of lesser severity. But in cases where the sentence prescribed is for a term which may extend to life imprisonment, the courts have the option to award less severe sentence, even less than 10 years. Former type of cases will fall within the ambit of proviso (a) (i) to Section 167(2) Cr.P.C. whereas the later type of cases will be covered by proviso (a) (ii) to Section 167(2) Cr.P.C. For an offence under Section 304B, the courts have the option to award sentence of less than 10 years. Obviously such cases will not fall in the category of case for which the sentence could be ‘imprisonment’ for a period of not less than 10 years.”

8. He also relies upon the judgment passed by the High Court of Chhattisgarh in **Shalini Verma v. State of Chhattisgarh, 2019 SCC OnLine Chh 22** and more particularly on para 16 which reads as under:-

“16. From bare perusal of above section, it is clear that the



punishment provided therein is imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, which shows that minimum sentence of imprisonment of 'not less than 10 years' is not there. And therefore, as held by Hon'ble the Supreme Court in the case of 'Rajeev Chaudhary (Supra)' and 'Rakesh Kumar Paul (Supra)', since Section 467 of IPC is not an offence punishable with a minimum of 10 years imprisonment, the period of detention of the accused person in custody would be sixty (60) days instead of ninety (90) days."

9. Mr. Gautam, learned APP opposes the above contentions and states that in the present case, the period for default bail is 90 days.
10. I have heard learned counsels for the parties.
11. The accused person is entitle to default or statutory bail which is recognized under Article 21 of Constitution of India, when the investigation is not completed within the period as specified under section 187(3) of BNSS, 2023/Section 167(2) of CrPC]. The said section divides the offences under two different heads i.e. ninety days and sixty days. Where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more, then the Magistrate can authorize detention of the accused till ninety days and where the investigation relates to any other offence, then the Magistrate can authorize detention of the accused till sixty days.
12. In the present case, the petitioner is charged with the offence *inter alia*, under section 467 of IPC which reads as under:-

"467. Forgery of valuable security, will, etc.— Whoever forges a document which purports to be a valuable security or



a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

13. The judgment of the Hon’ble Supreme Court i.e. “**Rakesh Kumar Paul v. State of Assam**”, (2017) 15 SCC 67 is the fountainhead and the relevant paragraph is extracted below:-

“27. It is true that an offence punishable with a sentence of death or imprisonment for life or imprisonment for a term that may extend to 10 years is a serious offence entailing intensive and perhaps extensive investigation. It would therefore appear that given the seriousness of the offence, the extended period of 90 days should be available to the investigating officer in such cases. In other words, the period of investigation should be relatable to the gravity of the offence — understandably so. This could be contrasted with an offence where the maximum punishment under IPC or any other penal statute is (say) 7 years, the offence being not serious or grave enough to warrant an extended period of 90 days of investigation. This is certainly a possible view and indeed CrPC makes a distinction in the period of investigation for the purposes of “default bail” depending on the gravity of the offence. Nevertheless, to avoid any uncertainty or ambiguity in interpretation, the law was enacted with two compartments. Offences punishable with imprisonment of not less than ten years have been kept in one



compartment equating them with offences punishable with death or imprisonment for life. This category of offences undoubtedly calls for deeper investigation since the minimum punishment is pretty stiff. All other offences have been placed in a separate compartment, since they provide for a lesser minimum sentence, even though the maximum punishment could be more than ten years' imprisonment. While such offences might also require deeper investigation (since the maximum is quite high) they have been kept in a different compartment because of the lower minimum imposable by the sentencing court, and thereby reducing the period of incarceration during investigations which must be concluded expeditiously. The cut-off, whether one likes it or not, is based on the wisdom of the legislature and must be respected.”

(Emphasis added)

14. On perusal, the Hon'ble Supreme Court clearly holds that in cases where the offence is punishable with the sentence of death or imprisonment for life or imprisonment for a term that may extend to 10 years, the extended period of 90 days would be available to the Investigating Officer (IO) for filing the charge sheet. The same is also the view of a Coordinate Bench in ***Amarjeet Singh Dhillon v. State (NCT of Delhi), 2024 SCC OnLine Del 4200***. Relevant para is extracted below:-

“22. What is, therefore, necessary for considering a case of a Default Bail, is the Offence to which the investigation relates. In the present case, the prosecution had started investigating a case in relation to an Offence under Section 467 of the IPC, on 15.05.2022. The Offence under Section 467 of the IPC is punishable with imprisonment for life or with imprisonment of either description for a term which may extend up to ten years.



Therefore, the period of ninety days becomes applicable for the accused to be eligible for Default Bail in case the investigation is not completed within the said period.”

(Emphasis added)

15. On conjoint reading of both the judgments, it is clear that the period available for investigation for the offence punishable under section 467 of IPC is ninety as the said offence is punishable with imprisonment for life or with imprisonment of either description for a term which may extend up to ten years.
16. The judgment of **Rajeev Sharma (supra)** is not applicable to the facts of the present case as the said judgment deals with the offences punishable under the Official Secrets Act.
17. Though in **Mr. B.B. Singh (supra)**, a Coordinate Bench has taken a view that where the sentence is upto 10 years, the Court has an option to award a sentence of less than 10 years, to my mind, will not apply in view of the clear dicta of the Hon'ble Supreme Court in **Rakesh Kumar Paul (Supra)**.
18. Further, the learned counsel for the petitioner has also relied upon **Shalini Verma (supra)**, however, I am bound by the judgment of **Amarjeet Singh Dhillon (supra)** being a view of the Coordinate Bench of this Court.
19. For the said reasons, I find no infirmity in the impugned order dated 13.11.2024 and the order passed by the learned trial court on 07.11.2024.
20. It is clarified that the observations made hereinabove are only for the purpose of deciding the present petition and will have no bearing on the



application for bail as and when filed by the petitioner.

21. The petitions are dismissed in the aforesaid terms.

DECEMBER 19, 2024 / (MS)

JASMEET SINGH, J

Click here to check corrigendum, if any