



\$~6

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

Date of Decision: 10th March, 2025.

+ **BAIL APPLN. 3836/2024 & CRL.M.(BAIL) 1747/2024 (for interim bail)**

ASHISH PATHAK

.....Petitioner

Through: Mr. Tushar Agarwal, Ms. Tripti Roy,
Mr. Arun Kumar and Mr. Amarjeet
Singh, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

Through: Mr. Ravi Sharma, SPP (CBI) with
Mr. Swapnil Choudhary, Mr. Ishann
Bhardwaj, Mr. Sagar and Ms.
Madhulika Rai Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The present application under Section 483 read with Sections 187(3) and 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (Section 439 read with Sections 167(2) and 482 of the Code of Criminal Procedure, 1973),² seeks grant of default regular bail in the proceedings emanating from FIR No. RC-32(S)/2022/SC-III/ND dated 9th December, 2022 registered at P.S. SC-III/ND, under Section 3 of the Official Secret Act, 1923³ and Section 120-B of the Indian Penal Code, 1860.⁴ The Applicant further seeks setting

¹ ['BNSS']

² ['CrPC']

³ ['OS Act']

⁴ ['IPC']



aside of the order dated 19th September, 2024 passed by the Special Judge, PC Act, Rouse Avenue Courts, rejecting the Applicant's request for regular bail.

Factual Background

2. Briefly stated, the facts leading to the filing of the present petition are as follows:

2.1 The Central Bureau of Investigation⁵ registered Case No. RC-32(S)/2022/CBI/SC-III/ND PS; Special Crime-III, New Delhi under the OS Act on 9th December, 2022. This FIR was registered on the basis of references issued by the Ministry of Home Affairs⁶, New Delhi, wherein MHA transferred the investigation of the FIR No. 0293/2022 dated 20th September, 2022 at P.S. Special Cell, New Delhi Range, Lodhi Colony, New Delhi, to the CBI, culminating in the impugned FIR.

2.2 The FIR pertains to a journalist, namely Vivek Raghuvanshi, who is allegedly involved in the illegal collection of sensitive information. The Applicant was arrested in the said case on 16th May, 2023, following a raid conducted by the CBI at his residential premises.

2.3 The CBI has filed four chargesheets/ prosecution complaints, with the first one being filed on 12th July, 2023.⁷ As per the averments in the 1st Chargesheet, the Applicant was identified as the source from which Vivek Raghuvanshi obtained confidential classified document, *i.e.*, extract of the Annual Acquisition Plan.⁸ Accordingly, he was charge-sheeted under Section 3(1)(c) of the OS Act read with Section 120-B IPC.

⁵ ['CBI']

⁶ ['MHA']

⁷ ['1st Chargesheet']

⁸ ['AAP']



2.4 The Chief Metropolitan Magistrate took cognizance of the 1st Chargesheet on 19th July, 2023, and the matter was subsequently committed to the Sessions Court *vide* order dated 4th August, 2023.

2.5 The Applicant filed a regular bail application before the Special Judge, which was dismissed by order dated 12th September, 2023. Aggrieved, the Applicant challenged the said order before this Court.

2.6 On 17th October, 2023, during the pendency of bail proceedings, the CBI filed 2nd Prosecution Complaint along with Supplementary Chargesheet against the co-accused. Thereafter, the 3rd Prosecution Complaint was filed on 22nd November, 2023, with Paragraph No. 17 of the complaint stating that four additional AAPs were recovered from the Applicant's laptop.

2.7 In light of these developments, the Applicant withdrew his bail application filed before this Court, with liberty to approach the Trial Court at the appropriate stage.

2.8 Thereafter, the Applicant filed an application before the Trial Court, seeking default bail under Section under Section 167(2) CrPC. However, the application was dismissed by order dated 14th March, 2024.

2.9 The Applicant then filed a third bail application before the Special Court, Rouse Avenue, seeking regular bail. During the pendency of this application, the CBI, on 22nd August, 2024, filed the 4th Prosecution Complaint along with supplementary chargesheet against the Applicant and another co-accused. The Special Court (PC Act), *vide* impugned order dated 19th September, 2024, dismissed the Applicant's request for grant of bail.

2.10 Aggrieved by the dismissal, the Applicant has now invoked the jurisdiction of this Court, seeking grant of default bail under Section 167(2) CrPC.



Applicant's Case

3. Mr. Tushar Agarwal, Counsel for the Applicant, states that the Applicant was arrested on 16th May, 2023 and the maximum period for which he could be held in detention, pending investigation, expired on 14th July, 2023. He contends that the 1st Chargesheet, dated 12th July, 2023, filed by the CBI, was incomplete and intended solely to frustrate the Applicant's right to seek statutory default bail under Section 167(2) CrPC. In support of this contention, Mr. Agarwal makes the following submissions:

3.1 On 16th May, 2023, during a search at the Applicant's residence, certain electronic devices, including his mobile and laptop were seized, and he was arrested on the same day. However, the 1st Chargesheet filed by the CBI was based on only one document recovered from his mobile phone, while further investigation was kept pending. Subsequently, in the 3rd Prosecution Complaint filed on 22nd November, 2023, the CBI, in Paragraph 17, recorded the following :

"17. That during the course of further investigation, the data extracted from the laptop of accused Ashish Pathak was scrutinised and it is revealed that copies of the following four additional Annual Acquisition Plans have also been found stored in his laptop:

S.No	Description of Document	Pages
1.	DRAFT ANNUAL ACQUISITION PLAN 2014-16.	19
2.	ANNUAL ACQUISITION PLAN (MP) 2012-14: IAF. This document is marked SECRET on each page and Appendix A is marked Confidential.	22
3.	DRAFT ANNUAL ACQUISITION PLAN 2012-14 (Navy). This document is marked Confidential in each page.	21
4.	ARMY AAP 2012-14. This document is marked confidential on each page.	27



The above mentioned documents have been sent to the Chief Vigilance Officer, Ministry of Defence, New Delhi for obtaining opinion which is awaited.”

This statement suggests that the four additional documents referenced in the 3rd Prosecution Complaint were already in the possession of CBI at the time of filing the 1st Chargesheet. The seizure memo dated 17th May, 2023 confirms that the laptop containing these documents had already been taken into custody by the CBI.

3.2 The CBI has failed to provide any explanation as to why the 1st Chargesheet did not include these four documents, which were available in the laptop that the CBI had in their possession since 16th May, 2023. This indicates that the CBI, with the sole intention of frustrating the Applicant's right to seek default bail, deliberately filed an incomplete chargesheet on 12th July, 2023.

3.3 The Prosecution's own conduct confirms that the investigation against the Applicant remained ongoing well beyond the statutory period. This is further corroborated by the 2nd, 3rd and 4th Prosecution Complaints/ chargesheets, each of which explicitly states that they were filed as supplementary chargesheets in continuation of the initial chargesheet. This continued investigation, extending long after the statutory period, reinforces the Applicant's claim that the 1st Chargesheet was merely a tactic to deny him the benefit of default bail.

3.4 If the investigation related to the offence for which the Applicant was initially arrested, had revealed further ramifications, any further investigation would continue to relate to the same arrest. Therefore, the period envisaged in the proviso to Section 167(2) would remain



unextendible. On this issue, in *State of Maharashtra v. Bharati Chandmal*,⁹ it has been held as follows:

“11. For the application of the proviso to Section 167(2) of the Code there is no necessity to consider when the investigation could legally have commenced. That proviso is intended only for keeping an arrested person under detention for the purpose of investigation and the legislature has provided a maximum period for such detention. On the expiry of the said period the further custody becomes unauthorized and hence it is mandated that the arrested person shall be released on bail if he is prepared to and does furnish bail. It may be a different position if the same accused was found to have been involved in some other offence disconnected from the offence for which he was arrested. In such an eventuality the officer investigating such second offence can exercise the power of arresting him in connection with the second case. But if the investigation into the offence for which he was arrested initially had revealed other ramifications associated therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to Section 167(2) would remain unextendible.”

3.5 Under Section 173(8) CrPC, an investigating agency has the power to conduct further investigation with formal permission of the court as and when fresh facts come to light after filing of report under Section 173(2) CrPC and for that purpose it need not “keep open” further investigation. However, in the instant case, the CBI has kept investigation pending *qua* other facts in relation to the Applicant.

3.6 If an investigating agency deliberately keeps the investigation pending, despite having access to crucial evidence, and then files supplementary chargesheets in a staggered manner, it amounts to a calculated effort to deny the accused the right to default bail. In support of this contention, reliance is placed on *Avinash Jain v. CBI*,¹⁰ wherein it has been observed as under:

⁹ (2002) 2 SCC 121.

¹⁰ 2023 SCC OnLine Del 2946.



“36. 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. In the present case, the chargesheet, as per learned Senior Counsel appearing on behalf of the applicant, is incomplete and therefore, the applicant is entitled to default bail as a matter of right. To demonstrate that the present chargesheet is incomplete in nature, reliance was placed on:

- i. M. Ravindran v. Intelligence Officer, DRI, (2021) 2 SCC 485.*
- ii. Fakhrey Alam v. State of Uttar Pradesh, 2021 SCC OnLine SC 532.*
- iii. Chitra Ramkrishna v. CBI, 2022 SCC OnLine Del 3124.*
- iv. S.M. Furtado v. CBI, 1996 SCC OnLine Ker 112.*
- v. Tunde Gbaja v. Central Bureau of Investigation, 2007 [2] JCC 1306.*

xx

....

xx

....

xx

45. In Chitra Ramkrishna (supra), after a detailed analysis of the precedents on the subject, a distinction was drawn between ‘completion of investigation’ and ‘further investigation’. It was observed that further investigation can be resorted to only after completion of investigation and filing of the chargesheet. It was held that a chargesheet can be filed before the Court of competent jurisdiction only when the investigation with respect to the FIR is complete in all respects and an opinion has been given with regard to the offences alleged against the accused in the FIR. It was held that the investigating agency cannot fragment or break the FIR, and file different chargesheets. It was held that if the investigating agencies are permitted to file a chargesheet piece-meal, it would defeat the right of an accused under Section 167(2) of the CrPC and that would be violative of Article 21 of the Constitution of India. The contention of learned SPP for the CBI was that the said judgment was passed in a different factual context. The said contention does not appeal to this Court, inasmuch as the basic principle of the law that investigation for the offences in relation to which an accused has been arrested, should be complete at the time the chargesheet has been filed will not vary on facts. A supplementary chargesheet is permissible only when certain aspects of



the investigation, which are otherwise complete in the main chargesheet, are still required to be looked into.”

3.7 In the present case, the CBI’s conduct in filing multiple prosecution complaints suggests a deliberate attempt to subvert the Applicant’s statutory right to default bail. The material seized from the Applicant, including his laptop, was already in the possession of the CBI at the time of the 1st Chargesheet dated 12th July, 2023. Despite this, the agency omitted crucial evidence and continued its investigation beyond the statutory period, only to later incorporate the same material in the 3rd Prosecution Complaint dated 22nd November, 2023. This delay in disclosure reinforces the argument that the CBI knowingly filed an incomplete chargesheet to defeat the Applicant’s rights.

3.8 Furthermore, the CBI misled this Court by suppressing material facts. Paragraph No. 17 of the 3rd Prosecution Complaint confirms that the additional AAPs were referred to the Chief Vigilance Officer of the Ministry of Defence for an opinion on 27th September, 2023. However, despite receiving a response from the Ministry of Defence on 8th January, 2024, the CBI falsely claimed, during the arguments in March 2024, that no opinion had been received. This concealment of material facts highlights the Prosecution’s bad faith in depriving the Applicant of his statutory rights.

3.9 The judgement in ***Central Bureau of Investigation vs. Kapil Wadhawan and another***,¹¹ sought to be relied upon by the CBI, is inapplicable to the facts of the present case. The principles enunciated therein do not apply to the present case, as the facts here demonstrate a

¹¹ (2024) 3 SCC 734.



calculated suppression of evidence and a piecemeal approach to chargesheets, rendering the Applicant's continued incarceration unlawful.

Respondent's Case

4. Mr. Ravi Sharma, SPP for the CBI, argues that the Applicant is not entitled to default bail under Section 167(2) CrPC, and makes the following submissions:

4.1 The instant case was taken up for investigation by the CBI on the basis of ID notes dated 07/09th December, 2022 by the MHA, resulting in the registration of the impugned FIR No. 293/2022 dated 20th September, 2022 under Section 3 of the OS Act read with Section 120-B IPC registered at PS Special Cell, Lodhi Colony, New Delhi. The case was thereafter transferred to CBI for investigation.

4.2 Upon completion of the initial investigation, the 1st Chargesheet was filed on 12th July, 2023 against the Applicant and co-accused Vivek Raghuvanshi under Section 3(1)(c) of the OS Act read with Section 120-B IPC. This chargesheet expressly stated that further investigation under Section 173(8) CrPC was ongoing to collect additional evidence and examine the role of other suspects. Cognizance was taken on 19th July, 2023, and the case was committed to the Court of Sessions on 4th August, 2023.

4.3 On the basis of further investigation, three more prosecution complaints were filed—against Vivek Raghuvanshi and Rahul Gangal on 17th October, 2023; against Ananj Kumar Tyagi and the Applicant on 22nd November, 2023; and against Rajeev Dandotia and the Applicant on 22nd August, 2024, respectively for the offences for which they have been committed to the Court of Sessions for trial. Even in the said chargesheets, further investigation under Section 173(8) CrPC was kept open.



4.4 The investigation revealed that the Applicant had shared a confidential classified document, *i.e.*, extract of AAP 2021-2023 with co-accused Vivek Raghuvanshi on 15th June, 2021 through Telegram, after obtaining it from co-accused Ananj Kumar Tyagi on 29th May, 2021 through Whatsapp. The Ministry of Defence opined that the said document was confidential and classified, and its possession was covered under Section 3(1)(c) of the OS Act. Further, the Ministry opined that the document was classified as confidential by the CoI Strategic Planning (Plans Coordination and Financial Planning), in whose custody it was kept, and that making physical or digital copies of the AAP is prohibited.

4.5 Further scrutiny of the Applicant's electronic devices led to the discovery of four additional AAPs, *i.e.*, AAP 2012-14 (Army), AAP 2012-14 (Navy), AAP 2012-14 (IAF) and AAP 2014-16 (Army) from the Applicant's laptop, which were sent to Ministry of Defence for opinion. The Ministry opined that AAP 2012-14 (IAF) is classified as secret; AAP 2012-14 (Army) & AAP 2014-16 (Army) as confidential; and AAP 2012-14 (Navy) as draft confidential. These facts were incorporated in the 3rd Prosecution Compliant/ supplementary chargesheet dated 22nd November, 2023.

4.6 In any event, the 1st Chargesheet clearly outlined the offences under the OS Act as well as the IPC against the Applicant. This chargesheet was filed on 12th July, 2023, which was before the expiration of 60 days from the date of the Applicant's arrest on 16th May, 2023. Therefore, notwithstanding the recovery of additional material during the course of the investigation, which led to the filing of supplementary chargesheets, the Applicant is not entitled to the grant of default bail under Section 167(2) CrPC.



4.7 The supplementary chargesheets/ Prosecution Complaints were filed in continuation of the 1st Chargesheet as per Section 173(8) CrPC. Reliance is placed on the judgement of the Supreme Court in **Vinay Tyagi v. Irshad Ali**,¹² wherein the Court observed as follows:

“‘Further investigation’ is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a ‘further investigation’. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as ‘supplementary report’. ‘Supplementary report’ would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a ‘reinvestigation’, ‘fresh’ or ‘de novo’ investigation.”

4.8 To support the contentions noted above, reliance is also placed on the judgements in **Central Bureau of Investigation vs. Kapil Wadhawan and another**,¹³ **Dinesh Dalmia vs. CBI**,¹⁴ **Abdul Azeez P.V. and others vs. National Investigation Agency**,¹⁵ and **Kishan Lal vs. Dharmendra Bafna**.¹⁶

¹² (2013) 5 SCC 762.

¹³ (2024) 3 SCC 734.

¹⁴ (2007) 8 SCC 770.

¹⁵ (2014) 16 SCC 543.

¹⁶ (2009) 7 SCC 685.



Analysis

5. The Court has carefully considered the submissions made by the parties and examined the record. The Applicant has vehemently argued that the 1st Chargesheet was incomplete, and was filed with the intent to frustrate his right to seek default bail under Section 167 CrPC. The CBI, in contrast, has refuted this claim, asserting that the 1st Chargesheet adequately disclosed the offences committed by the Applicant, and that the subsequent chargesheets/prosecution complaints were filed in continuation of the 1st Chargesheet, following ongoing investigation. In light of this, the primary issue for consideration before the Court is whether the Applicant is entitled to grant of default bail on the ground of the 1st Chargesheet being “incomplete”. Accordingly, the Court proceeds to examine whether the 1st Chargesheet was indeed incomplete, as claimed by the Applicant.

6. On this issue, it is imperative to refer to the judgement of the Supreme Court in **K. Veeraswami v. Union of India**,¹⁷ wherein the Court delineated the statutory requirement of a chargesheet/ final report under Section 173(2) CrPC:

“76. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the CrPC. The Section 173(2) 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 and 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 that the statutory requirement of the report under Section 173(2) would be complied with if the various details

¹⁷ (1991) 3 SCC 655.



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) 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). 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.”

7. As observed in **K. Veeraswami**, the final report serves as an intimation to the magistrate that the Investigating Officer has procured sufficient evidence for the court to inquire into the alleged offence. The report is considered to be complete when it includes the relevant documents as well as statements of witnesses as per Section 173(5) CrPC. The Investigating Officer is neither obligated to include any further details, nor to outline every aspect of the offence in the report. The specifics of the offence are required to be proved to establish the culpability by adducing evidence at the subsequent stage of trial.

8. In light of the foregoing legal principles, when we examine the 1st Chargesheet, it can be discerned that it contains the following details:

- (a) The names of the parties involved—the Complainant, Mr. Pramod Chauhan, Inspector, Special Cell, Delhi Police, as well as the accused, *i.e.*, Vivek Raghuvanshi and Ashish Pathak, the Applicant;
- (b) A brief statement of facts outlining the details of the alleged offence and the involvement of the accused persons in the offence under Section



3(1)(c) of the OS Act read with Section 120-B IPC, pertaining to illegal obtaining and collection of sensitive information;

(c) The complaint in the instant case was filed by Mr. Vishal, Dy. Superintendent Police, CBI Security Wing as per the directions of the Government under Section 13(3) of the OS Act;

(d) The indication of the offence being committed by the accused persons, along with their respective roles in the commission of the offence;

(e) The dates of arrest of both the accused, being 16th and 17th May, 2023 respectively;

(f) That the accused persons had not been released on bail;

(g) That the accused persons had been forwarded to the court on 17th May, 2023; and

(h) List of documents and articles.

9. Thus, the inclusion and incorporation of all these prerequisites in the Chargesheet affirms that it meets the statutory requirements set out under Section 173(2) CrPC. The 1st Chargesheet adequately narrated the factual background and the allegations against the accused persons, including the Applicant, for collecting sensitive confidential information related to defence services. Therefore, the 1st Chargesheet provided a sufficient factual and legal foundation for the Prosecution to implicate the accused persons, which was later supplemented through further investigation.

10. The Applicant has also argued that the subsequent chargesheets/prosecution complaints were filed due to the alleged incompleteness of the investigation in the 1st Chargesheet. The Applicant contends that the findings in the 3rd Prosecution Complaint, which were based on the laptop seized from the Applicant at the time of his arrest,



should have been incorporated into the 1st Chargesheet. However, it is crucial to emphasize that the supplementary chargesheets were filed as a continuation of the 1st Chargesheet, in accordance with the provisions of Section 173(8) CrPC, which states as follows:

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

*“(1) xx xx xx
(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).”*

11. In this regard, the Supreme Court in ***Dinesh Dalmia*** clarified that the mere filing of a chargesheet does not preclude the investigating officer from conducting further investigation. The Court also emphasized that the statutory framework of the CrPC does not imply that the investigation stands concluded upon the filing of a chargesheet, but rather permits further investigation even after the chargesheet is filed. The Court held as follows:

“16. 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.

*xx xx xx
28. 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.

29. 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.”

12. Furthermore, in *Abdul Azeez*, the Supreme Court observed that merely because certain facets of the case require further investigation, it does not alter the fact that the chargesheet filed is a final report. The Court emphasized that continued investigation after the filing of the first chargesheet does not entitle the accused to default bail under Section 167(2) CrPC:

“4. Having gone through the charge-sheet, we are not persuaded to take a different view. The materials adverted to show that it was a final report on the facets investigated into by the investigating agency. Furthermore, the requisite sanctions as required under Sections 18 and 18A of the UAPA and so also under Section 7 of the Explosive Substances Act were also accorded by the concerned authorities. The charge-sheet so filed before the learned Special Court was complete in all respects so as to enable the learned Special Court to take cognizance in the matter. Merely because certain facets of the matter called for further investigation it does not deem such report anything other than a final report. In our opinion Section 167(2) of Cr.P.C. stood fully complied with and as such the petitioners are not entitled to statutory bail under Section 167(2) of Cr.P.C.”



13. Thus, the filing of supplementary chargesheets does not, in itself, render the initial chargesheet incomplete. The law recognizes that an investigation is a dynamic process, and new material may emerge even after the filing of a chargesheet. The Supreme Court, in *Vinay Tyagi v. Irshad Ali*, has clarified that further investigation is a continuation of the primary investigation and does not render the earlier chargesheet invalid or incomplete. In the present case, the Prosecution, in the 1st Chargesheet and the subsequent prosecution complaints, explicitly indicated that further investigation under Section 173(8) was being carried out to examine the roles of other accused or suspected individuals, known/unknown, as well as to gather additional evidence. Accordingly, the subsequent prosecution complaints were merely an extension of the 1st Chargesheet, and do not entitle the Applicant to default bail under Section 167(2), particularly since the 1st Chargesheet fulfilled all the statutory requirements and adequately established “all the offences” against the Applicant.

14. The judgments cited by the Applicant, in the opinion of the Court, are distinguishable and do not apply to the facts of the present case. The Applicant has placed reliance on the Supreme Court’s decision in *Bharati Chandmal*, arguing that if the offence for which the Applicant was initially arrested revealed further ramifications, any subsequent investigation would be deemed to relate to the same arrest. While this legal principle is well-settled, it must be understood in its proper context. In *Bharati Chandmal*, the Supreme Court was dealing with a distinct issue—the commencement of the 90-day period under Section 167(2) CrPC in the context of an investigation requiring approval under the Maharashtra Control of



Organised Crime Act, 1999.¹⁸ The accused in that case had been taken into custody before the formal grant of approval for investigation under MCOCA. In those circumstances, the Court held that any subsequent developments or extensions of the investigation would continue to relate to the original arrest, and that the relevant 90-day period for filing the chargesheet would commence from the date of the accused's initial arrest rather than the date of approval of the investigation. Since the chargesheet was filed beyond the said 90-day period, the accused was found entitled to default bail.

15. The facts of the present case are materially different. Here, the Applicant was arrested on 16th May, 2023, and the 1st Chargesheet was filed on 12th July, 2023, well within the statutory period of 60 days as prescribed under Section 167(2) CrPC for the offences in question. Furthermore, unlike in *Bharati Chandmal*, the supplementary chargesheets in this case were not filed due to any newly emerging ramifications of the original offence; rather, they were filed in the course of a continuing investigation under Section 173(8) CrPC. The subsequent chargesheets merely supplemented the initial investigation and did not alter the fundamental nature of the case or extend the statutory period for filing the chargesheet. Accordingly, the Applicant's reliance on *Bharati Chandmal* to claim entitlement to default bail is misplaced, and does not advance his case in any manner.

16. Further, the Applicant has relied upon the judgment of this Court in *Avinash Jain*, contending that conducting a piecemeal investigation and filing fragmented chargesheets would undermine the accused's right to seek default bail. However, a careful reading of *Avinash Jain* demonstrates that

¹⁸ ['MCOCA']



the principle laid down therein does not support the Applicant's contention. In *Avinash Jain*, the allegations against the accused pertained to (i) diversion of borrowed funds, and (ii) connivance/conspiracy with unknown public servants, pursuant to which the accused was implicated in offences under the IPC as well as the Prevention of Corruption Act, 1988.¹⁹ In that case, the investigating agency filed a chargesheet within the statutory period, but it only addressed the first aspect—diversion of borrowed funds, while the second aspect, concerning offences under the PC Act, was introduced for the first time in a supplementary chargesheet filed after the statutory period had elapsed. The Court held that because the investigation into *all* offences against the accused was incomplete at the time of filing the first chargesheet, the accused could not be denied the benefit of default bail. However, the Court also clarified that a supplementary chargesheet is permissible when additional aspects of an investigation—which are otherwise complete in the *main chargesheet*—require further scrutiny.

17. The facts of the present case are distinguishable from the said case. Here, the 1st Chargesheet comprehensively covered all offences under the IPC and the OS Act, implicating the Applicant based on the recovery of an AAP from his mobile phone. The supplementary chargesheets did not introduce any new offences; rather, they were filed as part of a continuing investigation, which had been explicitly kept open for the examination of additional evidence and the roles of other accused persons. In the course of this further investigation, the CBI discovered four additional classified documents stored on the Applicant's laptop, which were subsequently detailed in the 3rd Prosecution Complaint. Pertinently, these discoveries did

¹⁹ ['PC Act']



not alter the nature of charges against the Applicant or implicate him in any new offence beyond what was already alleged in the 1st Chargesheet.

18. Thus, the supplementary chargesheets merely provided additional evidentiary material against the Applicant in respect of the same offences enumerated in the 1st Chargesheet. The principles laid down in **Avinash Jain** do not assist the Applicant, as this is not a case where the prosecution deliberately omitted certain offences in the initial chargesheet to deny the accused default bail. On the contrary, the filing of supplementary chargesheets was in furtherance of an investigation that had already met the statutory threshold required under Section 173(2) CrPC. Accordingly, the Applicant's reliance on **Avinash Jain** is untenable.

19. The Applicant has also relied upon the judgment of the Madras High Court in **S.M. Furtado v. C.B.I.**²⁰ However, a careful examination of the said decision reveals that it also does not advance the Applicant's case. In **S.M. Furtado**, the chargesheet filed by the CBI was deemed incomplete, as it only addressed offences under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, while omitting other serious offences under IPC, the OS Act, and the Foreigners Order, 1948. The Court concluded that since the investigation into these other offences was still ongoing, the prosecution could not be deemed to have completed its investigation in terms of Section 173(2) CrPC, thereby entitling the accused to default bail. However, the facts of the present case stand on an entirely different footing. Unlike in **S.M. Furtado**, where the prosecution deliberately omitted offences from the initial chargesheet, the 1st Chargesheet in the present case comprehensively covered all the offences

²⁰ 1996 SCC OnLine Ker 112.



alleged against the Applicant—under both the IPC and the OS Act. Thus, the ruling in *S.M. Furtado* does not apply to the present case, as the chargesheet filed against the Applicant was substantively complete at the time of filing, and met the statutory threshold required under Section 173(2) CrPC. The subsequent investigation was within the permissible scope of further investigation under Section 173(8) CrPC and did not affect the legality of the 1st Chargesheet. Accordingly, the Applicant's reliance on *S.M. Furtado* is misplaced and does not support his claim for default bail.

Conclusion

20. In light of the foregoing, it is abundantly clear that the 1st Chargesheet, dated 12th July, 2023, was filed within less than sixty days of the Applicant's arrest on 16th May, 2023, thereby falling well within the statutory period prescribed under Section 167(2) CrPC. The 1st Chargesheet duly complied with all the statutory requisites for a chargesheet or final report, detailing all the necessary information as mandated by Section 173(2) CrPC. Moreover, the 1st Chargesheet comprehensively set out all the offences alleged against the Applicant, both under the IPC and the OS Act, and was not incomplete as contended by the Applicant. The 1st Chargesheet, as well as the supplementary chargesheets/ prosecution complaints consistently and explicitly indicated that further investigation was open to examine the roles of the accused/ suspected and collect additional evidence, a provision permitted under Section 173(8) CrPC. Therefore, the Applicant's assertion that an incomplete chargesheet was filed to frustrate his right to seek default bail is entirely untenable.

21. The Court finds no merit in the present application. Accordingly, the Applicant's request for grant of default bail is dismissed.



22. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and shall not influence the outcome of the Trial.

23. In view of the foregoing, the application is dismissed along with pending application.

SANJEEV NARULA, J

MARCH 10, 2025

d.negi