



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

Reserved on: 13.05.2024
Pronounced on: 28.05.2024

+ **CRL.REV.P. 407/2024**

BANTY Petitioner

Through: Mr.Furkan Ali Mirza, Adv.

versus

STATE (NCT OF DELHI) Respondent

Through: Mr.Aman Usman, APP with SI
Deepak, PS Kapashera.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
J U D G M E N T

1. This petition has been filed under Section 397 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 15.03.2024 (hereinafter referred to as 'Impugned Order') passed by the learned Metropolitan Magistrate (10), South-West District, Dwarka Courts, New Delhi (hereinafter referred to as the 'Metropolitan Magistrate') in FIR No.552/2023 registered at Police Station: Kapashera, New Delhi under Sections 394/34 of the Indian Penal Code, 1860 (in short, 'IPC'), rejecting the application filed by the petitioner herein under Section 167(2) of the Cr.P.C. seeking statutory bail.

Brief Facts

2. The above FIR was registered on 10.12.2023, on the statement of one Sh. Gaurav Vij, wherein he alleged that he was robbed of



office i.e. Filing Counter, Facilitation Centre, Dwarka Courts on 11.03.2024 by the concerned Police Official. As per prevailing practice, the same was sent to the Court concerned by the Facilitation centre, Dwarka Courts in due course. The physical form of charge-sheet in question was submitted by the staff of Facilitation Centre, Dwarka Courts on 13.3.2024. However, for the purpose of considering the right of the accused for grant of Statutory Bail u/s 167(2) of the Cr.P.C., the submission of the charge-sheet by the Police Official in this office i.e. Filing Counter, Facilitation Centre, Dwarka Courts, New Delhi may be considered as 11.3.2024 as the same was allocated to the Court concerned in Electronic Form on that day itself.”

8. In the Report dated 09.05.2024, the learned PDSJ has summarised the effect of the Circulars dated 20.07.2020 issued by the then learned Principal District and Sessions Judge (HQs) and 27.10.2021 issued by the Nodal Officer and Centralised Computer Committee, as under:

“In virtue of aforesaid circulars, the procedure of receipt of charge-sheet and its meta data through ICJS Platform in the Delhi District Courts is summarized as here below:

Step-1:

Investigating Officer/Delhi Police uploads/e-file the details of the case/meta data and the charge-sheet in CCTNS Software which is pushed to the ICJS Platform maintained by NIC.

Step-2:

Investigating Officer/Delhi Police physically produce the charge-sheet with Court Staff/Ahlmad of the concerned Court.

Step-3:

The concerned Court Staff/Ahlmad will consume the charge-sheet in CIS through ICJS



Module and will further scrutinize/co-relate the meta data as well as the PDF Files with the physically produced charge-sheet.

Step-4:

In case of any mismatch of PDF files and meta data of the charge-sheet, concerned Court Staff/Ahlmad will reject the said consumed charge sheet in CIS and inform the Investigating Officer/Delhi Police about the said mismatch/shortcomings with a request to remove the same.

- *However, in case, during scrutiny, the contents of meta data and PDF files are found correct, the court staff will make an initials/acknowledgment on the physically produced chargesheet.*
- *Investigating Officer will reach the respective Filing Counter with said acknowledgment.*
- *The official/staff at Filing Counter will verify the same in CIS.*
- *This verification will automatically generate CNR Number as well as Filing Number to the consumed chargesheet.*

Step-5:

Thereafter the Filing Counter official/staff will allocate the said consumed charge-sheet to the concerned Court.

Step-6:

The concerned Court Staff/Ahlmad thereafter register the charge-sheet (through his/her user ID in CIS) and the case is finally registered by the Court concerned in CIS wherein all future proceedings can be recorded/updated.

It is further to apprise that till the time, the case/chargesheet (at Step-6 above) is not registered by the Ahlmad of the concerned Court, the CIS will only reflect the e-filing number and CNR number. It is only after registration of the charge-sheet in the CIS (by the Ahlmad of the concerned Court), the case stands registered and the same starts reflecting in the cause list of the Court concerned and the case proceedings including



uploading of the orders etc. can be initiated in the case.”

9. As far as the filing of the application seeking statutory bail is concerned, the learned PDSJ has confirmed that the said application was filed by the petitioner on 13.03.2024 in the Facilitation Centre, Dwarka Courts, and was sent to the concerned Court of the learned Metropolitan Magistrate on the same day itself at about 10:47 AM.

10. The learned PDSJ along with his report has also annexed a copy of the Circular dated 20.07.2020 issued by the then learned Principal District and Sessions Judge (HQs), which, *inter alia*, frames the following guidelines/instructions for ‘Consuming of Charge Sheet’:

“Consuming of Charge Sheet:

The concerned court staff shall consume the charge sheets pertaining to the Police Station within the jurisdiction of the Court only, check and verify with the hard copy of charge sheet and then the concerned Investigating Officer shall report at the counter earmarked for filing of matter pertaining to establishment of Chief Metropolitan Magistrate at Facilitation Center of the respective court complex.

The dealing official at Filing Counter-Facilitation Centre shall check the metadata of the consumed charge sheet with the hard copy of the charge sheet and verify the same, as per procedure available in NC CIS. After due verification, shall allocate the charge sheet to the court concerned, as per prevailing norms.

After receipt of charge sheet from Filing Counter, the concerned court staff shall again check the hard copy of charge sheet and after due verification and scrutiny shall register the same in NC CIS.”



11. The learned Registrar General in its Report dated 09.05.2024, has also stated the above detailed procedure in terms of the Circulars dated 20.07.2020 and 27.10.2021.

12. The learned Registrar General in its report clarifies that the e-filing rules of the High Court of Delhi-2021 are, however, not applicable to the Charge Sheets.

13. In view of the above Circulars/Instructions, it is to be determined as to when the Charge Sheet for the purposes of Section 167 of the Cr.P.C. stood filed in the present case, and consequently, whether the petitioner is entitled to the statutory bail.

14. Section 167(2) of the Cr.P.C. is reproduced hereinbelow:

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

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(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that:

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



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

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

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

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

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may



Madurai District), 2020 SCC OnLine SC 529 and *Satender Kumar Antil v. CBI*, (2021) 10 SCC 773.

17. In *Sanjay Dutt v. State through CBI, Bombay (II)*, (1994) 5 SCC 410, the Supreme Court, however, emphasised that the indefeasible right accrued to the accused is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Cr.P.C.. I may quote from the judgment as under:

“48. We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4) (bb) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 CrPC ceases to apply. The Division Bench also indicated that if there be such an application of the accused for release on bail



facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 CrPC, it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167 CrPC. The scheme of CrPC is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) CrPC, the Magistrate is vested with authority to remand the accused to custody, both police custody and/or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 CrPC. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court.”

(emphasis supplied)

19. This was reiterated by the Supreme Court in ***Serious Fraud Investigation Office v. Rahul Modi & Ors.***, 2022 SCC OnLine SC 153.



20. In *Judgebir Singh @ Jasbir Singh Samra @ Jasbir and Ors v. National Investigation Agency*, 2023 SCC OnLine SC 543, the Supreme Court, while considering a similar question, and relying on *Suresh Kumar Bhikamchand Jain* (supra) and *Serious Fraud Investigation Office* (supra), observed that:

“57. The aforesaid decision of this Court makes the position of law very clear that once the chargesheet has been filed within the stipulated time, the question of grant of statutory/default bail does not arise. Whether cognizance has been taken or not taken is not relevant for the purpose of compliance of Section 167 of the CrPC. The mere filing of the chargesheet is sufficient.”

21. Therefore, while the statutory bail under Section 167(2) of the Cr.P.C. is not only a Statutory Right but a Constitutional Right guaranteed under Article 21 of the Constitution of India, the accused is entitled to the same only until the Charge Sheet is filed. Once the Charge Sheet has been filed, though after a period of 60/90 days, and the accused till that date has not exercised his right to claim statutory bail, the right shall end and not survive. It is not necessary for the Court to have taken cognizance of the Charge Sheet so filed.

22. In the present case, there is no allegation by the petitioner that the Charge Sheet that was e-filed on 11.03.2024 was any different than the one filed on 13.03.2024 in any manner whatsoever; therefore, the moot question to be determined is as to when the Charge Sheet was filed.

23. As is becoming evident from the reports of the learned PDSJ, the IO filed the Charge Sheet at the Filing Counter, Facilitation Centre



on 11.03.2024. The investigation was, therefore, complete and the Charge Sheet was filed. The same was sent to the Court concerned by the Facilitation Centre in due course, and the physical form of the Charge Sheet was submitted by the staff of the Facilitation Centre, Dwarka Courts, to the staff of the Court of the learned Metropolitan Magistrate, on 13.03.2024, when the staff of the said Court registered the Charge Sheet in the CIS system. Therefore, as far as the completion of the investigation and the filing of the Charge Sheet is concerned, the same stood completed/filed on 11.03.2024.

24. Though the filing of the Charge Sheet is not governed by the e-filing rules of the High Court, detailed procedure in that regard has been laid down in the Circulars dated 20.07.2020 and 27.10.2021, referred to hereinabove. The process and the time that is consumed after the filing of the Charge Sheet on the ICJS, therefore, can not detract from the fact that the investigation is complete and the Charge Sheet in terms of Section 173 of the Cr.P.C. stands filed. The right of the accused to a statutory bail, thereafter shall stand extinguished if the same has not been exercised before such filing, even if the Charge Sheet is filed after 60/90 days. Position may be different if it is later found on scrutiny that the Charge Sheet filed on the ICJS was defective or incomplete. However, this has not even been alleged in the present case. This Court therefore, does not deem it necessary to examine the effect of a defective or incomplete charge sheet being filed on the ICJS by the IO.

25. In terms of Section 173 of the Cr.P.C., as soon as the investigation is complete, *‘the officer in-charge of the police station*



shall forward to the Magistrate empowered to take cognizance of the offence on a police report' a report in the form prescribed by the State and, *inter alia*, including the details mentioned in Section 173 (2) of the Cr.P.C.. Such a report was filed on 11.03.2024 by the police. The same was, therefore, filed within the statutory period and the applicant was, therefore, not entitled to seek statutory bail.

26. In ***Kapil Wadhawan*** (Supra), though the Supreme Court noticed that the Complaint under the Prevention of Money Laundering Act, 2002 had been filed by way of an e-mail on 11.07.2020 and subsequently in a physical form on 13.07.2020, the Court did not consider the effect of the complaint filed by way of an e-mail. The only question considered by the Court was whether the date of remand is to be included or excluded for considering a claim of statutory bail under Section 167(2) of the Cr.P.C.. The said judgment, therefore, would not be relevant to the facts of the present case and to the issue raised herein.

Decision

27. In view of the above, I find no merit in the present petition. The same is dismissed.

NAVIN CHAWLA, J

MAY 28, 2024/ns/am

Click here to check corrigendum, if any