

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.6428 of 2022

ORDER:

Seeking the Court to enlarge the petitioner who is arrayed as accused No.1 in PMLA.SC.No.240 of 2022 that is pending before the Metropolitan Sessions Judge-cum-Special Court under the Prevention of Money Laundering Act, Hyderabad, the present Criminal Petition is filed.

2. Heard the submission Sri T.Niranjana Reddy, learned senior counsel appearing for Sri T.Anirudh Reddy, learned counsel on record for the petitioner, as well as the learned Standing counsel for Enforcement Directorate.

3. The matrix of the prosecution case if narrated in a narrower compass is that Ms Servomax India Private Limited fraudulently availed credit facility of Rs.402 crores from banks on the basis of bogus bills/invoices and subsequently, discounted that amount in the group companies like M/s Murali Krishna Power Controls Private Limited, M/s Neutrino Power Systems Private Limited, M/s Akhila Power Products Private Limited, etc and

thereafter, transferred the said loan amount back to M/s Servomax India Private Limited directly or indirectly on the basis of dummy bills. On suspicion, the erstwhile State Bank of Hyderabad engaged a forensic auditor i.e., M/s Deloitte to conduct forensic audit. It was found that M/s Servomax India Private Limited fudged its debtors list with inflated receivables from non-existing entities or related parties or companies floated by its own employees to avail loan facility fraudulently. Both sales and purchase transactions were made with companies floated by the employees as shareholders/directors. Funds were diverted without actual trade/sales. Thus, M/s Servomax India Private Limited used the LC facilities through the said companies and thereby, involved in diverting/siphoning of funds.

4. The specific allegations that are directed against the petitioner/accused No.1 are that he was a key person holding the position of Managing Director and C.E.O. of M/s Servomax India Private Limited and is responsible for divergence of the proceeds of crime. He committed the

offence of money laundering by being actively involved in the process of acquiring, using, possessing and claiming the same to be untainted property. On his instructions, bogus invoices were issued and related entries were fraudulently used for encashment of funds through LC discounting. The petitioner got indulged in creation and concealment of the proceeds of crime by creating a web of entities by floating them in the name of his employees and rotated funds between them on the basis of bogus transactions to layer and concealed the floated amounts to claim the same as untainted property.

5. Placing much reliance on the aforesaid allegations, the learned Standing Counsel for Enforcement Directorate contended that with the active involvement of the petitioner, M/s Servomax India Private Limited has fudged its debtors list with inflated receivables from non-existing entities floated by its own employees to avail loan facility fraudulently. The learned Standing Counsel also stated that under the directions of the petitioner, M/s Servomax India Private Limited had maliciously approached the

Board of Industrial and Financial Reconstructions (BIFR) for declaring the company as sick with a sole intention to avoid payment of dues to various lenders, Government departments and its employees. The learned Standing Counsel also submitted that the petitioner is the prime conspirator behind release of a total amount of Rs.402 crores by the consortium of banks to M/s Servomax India Private Limited for meeting its working capital demand and completion of projects. The learned Standing Counsel further submitted that the said funds were diverted and thereby, wrongful loss was caused to the consortium of banks. The learned Standing Counsel by stating thus, contended that such being the grave allegations against the petitioner, he is not entitled for bail either under Section 167 (2) or 439 Cr.P.C.

6. Coming to the entitlement of bail under Section 167 Cr.P.C., the learned Standing Counsel had contended that as on the date of filing of the application by the petitioner before the Court below for statutory bail under Section 167(2) Cr.P.C., major part of the investigation was

completed. He contended that charge sheet was also laid within time, but, a prayer was made to permit the complainant to file additional/supplementary charge sheet. The learned Standing Counsel stated that such a request was made as the accused failed to co-operate with the investigating agency during the course of investigation and did not reveal the information with regard to divergence of the proceeds of crime. The learned Standing Counsel also stated that as the predicate agency i.e., CBI has not filed charge sheet till date, the scope of filing supplementary charge sheet was thus kept open. The learned Standing Counsel also stated that the original documents were submitted to the Court on the same day of filing of charge sheet, but without verification, the charge sheet was returned on technical reasons and thus, the compliance of Section 167 Cr.P.C. by filing the charge sheet within time is done and therefore, the petitioner is not entitled for statutory bail. However, the submission of the learned counsel for the petitioner is otherwise.

7. Learned counsel for the petitioner brought to the notice of this Court the following pertinent dates, which are not disputed by the learned Standing Counsel.

Petitioner/accused No.1 was arrested on 18.01.2022.

Charge sheet was filed on 17.3.2022 (58th day).

Charge sheet was returned on the same day.

Bail petition was filed on 19.3.2022 (60th day).

Bail petition was disposed of on 30.5.2022.

Charge sheet was re-presented on 31.5.2022.

8. Basing on the above said crucial dates, the learned counsel for the petitioner contended that as on the date of filing of the bail application, the final report is not before the Court concerned and therefore, the Court below ought to have granted statutory bail to the petitioner, but it did not do so. Hence, aggrieved by the defective order of the Court below the petitioner approached this Court.

9. Learned counsel for the petitioner also contended that when the charge sheet was returned, there was every

obligation on part of the complainant to resubmit the same without any delay, but it was resubmitted with an inordinate delay. Learned counsel further stated that as the authorities failed to resubmit the charge sheet within the stipulated period of 60 days, the petitioner approached the Metropolitan Sessions Judge-cum-Special Court under the Prevention of Money Laundering Act, Hyderabad through CrI.M.P.No.2154 of 2022 under Section 167(2) Cr.P.C. for grant of statutory bail. However, learned Metropolitan Sessions Judge *vide* order dated 30.5.2022 dismissed the bail application stating that charge sheet was filed within the stipulated period. Learned counsel also submitted that the learned Metropolitan Sessions Judge erred in stating that once the charge sheet has been filed within the stipulated period, the indefeasible right of the accused ceases to exist. Learned counsel further contended that the observation of the learned Metropolitan Sessions Judge that the charge sheet was returned merely for production of original documents is false, as it is clearly mentioned in the charge sheet itself that further investigation is pending in the case. Learned counsel

stated that even if the said observation of the Court below that the charge sheet was returned due to non-filing of original documents is presumed to be true, the said fact cannot be held to be a technical defect, but it goes to the core of the case which is capable of changing the course of trial and causing prejudice to the petitioner/accused.

10. Learned counsel for the petitioner also stated that it is the infeasible right of the petitioner to be released on statutory bail after the expiry of 60 days period under Section 167(2) Cr.P.C and the petitioner has been in judicial custody for more than 170 days since the date of his remand. Learned counsel, contradicting the submission of the learned Standing Counsel that the investigation could not be completed within time due to non-cooperation of the accused, stated that the petitioner appeared before the office of Enforcement Directorate and submitted more than 1,200 pages of documents to prove that the transactions were all legitimate and more than that, what further co-operation the investigating agency requires is not known.

11. In continuation of his submission that when no charge sheet is on record on expiry of 60th/90th day as the case may be, the accused is entitled to default bail, the learned counsel for the petitioner relied upon the decision of Hon'ble Apex Court in the case between **Achpal @ Ramswaroop and another Vs. State of Rajasthan**¹.

12. In the above case, a report under Section 173 Cr.P.C. was filed by the Police. However, the said report was filed by a Police officer lower in rank than that of A.S.P which is contrary to the order passed by the High Court. The Magistrate having noted the infirmity, returned the charge sheet to the Police for due compliance. Thus, as on the date of expiry of 90th day, no report under Section 173 Cr.P.C. was on record with the Magistrate. On expiry of 90 days, the accused filed an application for bail invoking Section 167(2) Cr.P.C. The Judicial Magistrate rejected to extend the benefit under Section 167(2) Cr.P.C. The said order was challenged before the High Court. The High Court confirmed the order of the Judicial Magistrate. Ultimately, the matter reached the Hon'ble Supreme Court.

¹ (2019) 14 SCC 599

The Hon'ble Supreme Court while dealing at length with regard to the applicability of Section 167(2) Cr.P.C. to the facts and circumstances of the case, at para 13 of the order held as under:-

“The questions which however arise in the present matter are slightly of different dimension. Here investigation was completed and challan under Section 173 was filed on 5-7-2018. However, just two days before that, an order had been passed by the High Court recording submission of the Public Prosecutor that investigation in the matter would be conducted by a Gazetted Police Officer. The investigation which led to the filing of the report on 5-7-2018, was not in conformity with the statement made before the High Court. It was for this reason that the papers were returned by the Magistrate. All this happened before the expiry of 90th day. Can it be said that the investigation was complete for the purposes of Section 167(2) of the Code so as to deny the benefit to the accused in terms of the said provision. Additionally another issue which arises for consideration is whether the order passed by the High Court could be construed as one under which the period for completing the investigation was extended.”

13. Proceeding with the issue regarding the applicability of Section 167(2) Cr.P.C., the Hon'ble Apex Court ultimately at paras 18 to 21 of the order held as follows:-

“18. The provision has a definite purpose in that; on the basis of the material relating to investigation, the Magistrate ought to be in a position to proceed with the matter. It is thus clearly indicated that the stage of investigation ought to be confined to 90 or 60 days, as the case may be, and thereafter the issue relating to the custody of the accused ought to be dealt with by the Magistrate on the basis of the investigation. Matters and issues relating to liberty and whether the person accused of a charge ought to be confined or not, must be decided by the Magistrate and not by the police. The further custody of such person ought not to be guided by mere suspicion that he may have committed an offence or for that matter, to facilitate pending investigation.

19. In the present case, as on the 90th day, there were no papers or the charge-sheet in terms of Section 173 of the Code for the Magistrate concerned to assess the situation whether on merits the accused was required to be remanded to further custody. Though the charge-sheet in terms of Section 173 came to be filed on 5-7-2018, such filing not being in terms of the order passed by the High Court on 3-7-2018, the papers were returned to the investigating officer. Perhaps it would have been better if the Public Prosecutor had informed the High Court on 3-7-2018 itself that the period for completing the investigation was coming to a close. He could also have submitted that the papers relating to investigation be filed within the time prescribed and a call could thereafter be taken by the Superior Gazetted Officer whether the matter required further investigation in terms of Section 173(8) of the Code or not. That would have been an ideal situation. But we have to consider the actual effect of the circumstances that got unfolded. The fact of the matter is that as on completion of 90

days of prescribed period under Section 167 of the Code there were no papers of investigation before the Magistrate concerned. The accused were thus denied of protection established by law. The issue of their custody had to be considered on merits by the Magistrate concerned and they could not be simply remanded to custody dehors such consideration. In our considered view the submission advanced by Mr Dave, learned advocate therefore has to be accepted.

20. We now turn to the subsidiary issue, namely, whether the High Court could have extended the period. The provisions of the Code do not empower anyone to extend the period within which the investigation must be completed nor does it admit of any such eventuality. There are enactments such as the Terrorist and Disruptive Activities (Prevention) Act, 1985 and the Maharashtra Control of Organised Crime Act, 1999 which clearly contemplate extension of period and to that extent those enactments have modified the provisions of the Code including Section 167. In the absence of any such similar provision empowering the court to extend the period, no court could either directly or indirectly extend such period. In any event of the matter all that the High Court had recorded in its order dated 3-7-2018 was the submission that the investigation would be completed within two months by a gazetted police officer. The order does not indicate that it was brought to the notice of the High Court that the period for completing the investigation was coming to an end. Mere recording of submission of the Public Prosecutor could not be taken to be an order granting extension. We thus reject the submissions in that behalf advanced by the learned counsel for the State and the complainant.

21. In our considered view the accused having shown their willingness to be admitted to the benefits of bail

and having filed an appropriate application, an indefeasible right did accrue in their favour.”

14. On the same aspect, the learned counsel for the petitioner also relied upon another decision of the Hon'ble Apex Court in the case between ***M.Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence***², wherein the Court at paras 22.4 to 24 of the judgment held as follows:-

“22.4. Quite recently, in *Bikramjit Singh v. State of Punjab* {(2020) 10 SCC 616} , dealing with similar question which arose in an application for default bail under the UAPA, a three-Judge Bench of this Court, after considering the various judgments on the point, observed thus:

“A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge-sheet is filed, the right to default bail becomes complete. It is of no moment that the criminal court in question either does not dispose of such application before the charge-sheet is filed or disposes of such application wrongly before such charge-

² (2021) 2 SCC 485

sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted.”

This decision in *Bikramjit Singh v. State of Punjab*, {(2020) 10 SCC 616} ensures that the rigorous powers conferred under special statutes for curtailing liberty of the accused are not exercised in an arbitrary manner.

23. At the cost of repetition, it must be emphasised that the paramount consideration of the legislature while enacting Section 167(2) and the proviso thereto was that the investigation must be completed expeditiously, and that the accused should not be detained for an unreasonably long period as was the situation prevailing under the 1898 Code. This would be in consonance with the obligation cast upon the State under Article 21 to follow a fair, just and reasonable procedure prior to depriving any person of his personal liberty.

24. In the present case, admittedly the appellant-accused had exercised his option to obtain bail by filing the application at 10.30 a.m. on the 181st day of his arrest i.e. immediately after the court opened, on 1-2-2019. It is not in dispute that the Public

Prosecutor had not filed any application seeking extension of time to investigate into the crime prior to 31-1-2019 or prior to 10.30 a.m. on 1-2-2019. The Public Prosecutor participated in the arguments on the bail application till 4.25 p.m. on the day it was filed. It was only thereafter that the additional complaint came to be lodged against the appellant. Therefore, applying the aforementioned principles, the appellant-accused was deemed to have availed of his indefeasible right to bail, the moment he filed an application for being released on bail and offered to abide by the terms and conditions of the bail order i.e. at 10.30 a.m. on 1-2-2019. He was entitled to be released on bail notwithstanding the subsequent filing of an additional complaint.”

15. Article 21 of the Constitution of India says that no person shall be deprived of his life or personal liberty except according to procedure established by law. Referring this provision, it is time and again enunciated by the Hon’ble Apex Court in series of decisions that it is the heart of the Constitution of India and that it is one of the prominent provisions which safeguards the life and personal liberty of the citizens of the country. One may not dispute the fact that the indefeasible right to default bail under Section 167(2) Cr.P.C. is an integral part of right to

personal liberty under Article 21 of the Constitution of India.

16. Section 167 Cr.P.C. enunciates the procedure to be followed regarding the accused who are in judicial custody where the investigation cannot be completed within 24 hours. The said provision reads as under:-

“Person arrested not to be detained more than twenty- four hours.-

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.”

17. Therefore, in normal course, as soon as the case is registered, it has to be investigated into and in case, the investigation is in progress, narrating the circumstances of the case in writing and the grounds for believing that the accusation or information is well founded, the officer incharge of the Police Station or the investigating Officer is

under obligation to transmit to the nearest Judicial Magistrate a copy of the entries in the relevant diary and at the same time has to forward the accused.

18. Coming to Section 167(2) Cr.P.C., it reads as under:-

“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 the 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 any 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.”

19. Therefore, by the aforesaid provision, it is clear that in a case, which relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years, the investigation is required to be completed within 90 days, and in all other offences within 60 days. It is specifically mentioned that on expiry of the said period i.e., 90 days or 60 days as the case may be, the accused shall be released on bail. Thus, the legislative

intention is to fix time limit to the investigating agency to complete the investigation within 24 hours and in cases, where it is not possible, having regard to the gravity of the offences, the investigating agency is bound to complete the investigation either within 90 days or within 60 days depending upon the offences made out. There is no provision in the entire Code of Criminal Procedure authorizing any of the Courts to extend such period. The above provisions in the Code of Criminal Procedure are aimed at ensuring expeditious investigation, fair trial and more so, to safeguard the life and personal liberty of the citizens against whom accusation is made.

20. In the case on hand, it is clearly brought on record that the petitioner/accused No.1 was arrested on 18.01.2022, the charge sheet was filed on 17.3.2022 and it was returned on the same day. It is also brought on record that on the 60th day (19.3.2022), the petitioner moved an application for grant of bail invoking Section 167(2) Cr.P.C. The said application stood dismissed on 30.5.2022. It is

also clearly brought to the notice of this Court that the charge sheet was re-presented on 31.5.2022.

21. As rightly pointed out by the learned counsel for the petitioner, in case the charge sheet was returned with a formal defect of non-submission of the relevant documents along with it, there is no requirement on part of the investigating agency to take so much time to re-submit the same, that too, for a period of more than two months. Further, as rightly submitted by the learned counsel for the petitioner, even the charge sheet that was subsequently filed makes a clear mention that further investigation is still pending.

22. Having regard to all these factors, this Court is of the view that the investigating agency has not completed its investigation within the statutory period i.e., within 60 days as required under Section 167(2) Cr.P.C. Filing of some set of papers by giving a title “charge sheet” does not mean that the same is filed as a final report on completion of investigation. The mandate of law is that on completion of investigation, the final report/charge sheet has to be

filed within the statutory period in the format as laid down under Section 173 Cr.P.C.

23. However, in the case on hand, it is clearly brought on record that only to get over the obligation of filing of the charge sheet within the statutory period so that the accused would not raise plea of grant of statutory bail under Section 167(2) Cr.P.C., it appears that the respondent has filed a formal charge sheet without any material.

24. As earlier pointed out, in case, the investigation is completed and the final report is filed, and only due to a technical and formal defect the charge sheet was returned, it would not take such a long time i.e., more than two months to re-submit the same. Also, the respondent, who rests its contention that on completion of investigation, the charge sheet was filed and the same was returned due to technical and formal defects, is under obligation and is burdened to satisfy this Court that only due to those reasons, the charge sheet was returned. No such endorsement or the endorsement showing the grounds on

which charge sheet was returned is placed before this Court. Further more, even the charge sheet that is finally filed discloses that the investigation is pending. All these factors clearly point out that the investigating agency, i.e., the respondent could not complete the investigation within the period prescribed. Therefore, an indefeasible right accrued on part of the petitioner/accused No.1 to claim bail invoking Section 167(2) Cr.P.C. Hence, this Court is of the view that the trial Court went wrong in dismissing the said bail application.

25. Ultimately, by all the above discussion, this Court concludes that the petitioner is entitled for statutory bail.

26. Resultantly, the present Criminal Petition is allowed. The order that is rendered by the Court of Metropolitan Sessions Judge-cum-Special Court under the Prevention of Money Laundering Act, Hyderabad, in CrI.M.P.No.2154 of 2022 in ECIR/HYZO/2/2018, dated 30.5.2022 is hereby set aside. The Court of Metropolitan Sessions Judge-cum-Special Court under the Prevention of Money Laundering Act, Hyderabad is directed to enlarge the

petitioner/accused No.1 on bail on his executing a bond for a sum as specified by the said Court. The required conditions regarding the appearance of the petitioner/accused No.1 before the trial Court, surrender of his passport, etc., may also be imposed.

27. As a sequel, pending miscellaneous applications, if any, shall stand closed.

Dr.CHILLAKUR SUMALATHA, J

04.8.2022

Note:

LR copy to be marked.

B/o

dr