

Ritu Chhabaria vs Union Of India on 26 April, 2023

Author: Krishna Murari

Bench: C. T. Ravikumar, Krishna Murari

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 60 OF 2023

RITU CHHABARIA

... PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

... RESPONDENT(S)

JUDGMENT

KRISHNA MURARI, J.

1. The present writ petition under Article 32 of the Constitution of India has been filed by the writ petitioner herein seeking the release of her husband on default bail. The writ petition also raises an issue of grave importance of personal liberty enshrined under Article 21 of the Constitution of India.

FACTS

2. Briefly, the facts relevant to the present writ petition are that an FIR was lodged under Section 120(B) read with Section 420 of the Indian Penal Code, 1860 (for short, 'IPC') along with Sections 7,12 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, wherein the writ petitioner's husband was not named.

3. Subsequently, two supplementary chargesheets were filed, wherein the writ petitioner's husband (hereinafter referred to as "accused") was made a prosecution witness in the supplementary chargesheet dated 26.05.2020. Multiple other supplementary chargesheets were later filed, and the accused was not named in any of the said chargesheets.

4. The investigation was then transferred to another investigating officer, and the accused was then arrested by CBI and was remanded to custody on 28.04.2022. Multiple other supplementary

chargesheets were then filed, wherein the accused herein was named as a suspect, and the remand of the accused under Section 309(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.PC') was renewed and was continued from time to time, and he was never released on default bail.

5. Subsequently, vide I.A No. 37424/2023, the petitioner sought to incorporate additional grounds and prayers for seeking bail in the writ petition, which was allowed by this Court vide order dated 20.02.2023, and interim bail was granted.

6. It is against this continuation of custody, and the scuttling of relief of default bail, the petitioner herein has filed the present writ. Every Supplementary chargesheet filed, as per the writ petitioner herein, is an attempt to ensure that her husband is not released on default bail. ARGUMENTS ADVANCED BY THE PETITIONER

7. The learned counsel for the petitioner contended that:

I. The Respondent has admitted in writing in the supplementary chargesheet that the investigation is still pending, and in light of the same the trial court ought not to have issued process and remanded the petitioner's husband under Section 309 Cr.PC.

II. The accused's fundamental rights are in prejudice due to continued custody on grounds of investigation not being completed. It was argued that the provisions of the CrPC do not empower continued remand to custody beyond 60 days if the investigation is still in progress. For this, the learned counsel relied on the judgment in the case of M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence.¹ ARGUMENTS ADVANCED BY THE RESPONDENT

8. The learned counsel appearing on behalf of the respondent contended that:

I. The present writ is not maintainable, and for the grant of bail, the accused herein should have either approached the High Court against the order of the Magistrate refusing default bail or filed a Special Leave Petition against the said order invoking provisions of Article 136 of the Constitution of India.

II. The contention of the petitioner that the accused is not named in the FIR is not a relevant submission, as the FIR is not a complete document, and is only the first step to set the criminal procedure in motion. To support the contention, learned counsel relied on the case of State Of Bihar & Others Vs. J.A.C Saldanha & Ors.² III. The supplementary chargesheet filed on 25.06.2022 is a complete document in respect to the offence committed by the persons arraigned in the said supplementary chargesheet, therefore no right to default bail has been accrued in favor of the petitioner's husband. ¹ (2021) 2 SCC 485 ² (1980) 1 SCC 554.

ISSUES

9. In light of the abovementioned arguments raised by the learned counsel for the parties, the following three issues arise for our consideration:-

I. Can a chargesheet or a prosecution complaint be filed in piecemeal without first completing the investigation of the case?

II. Whether the filing of such a chargesheet without completing the investigation will extinguish the right of an accused for grant of default bail?

III. Whether the remand of an accused can be continued by the trial court during the pendency of investigation beyond the stipulated time as prescribed by the CrPC?

PRELIMINARY OBJECTION

10. A preliminary objection has been raised by the learned counsel appearing on behalf of the respondent stating that the present writ is not maintainable before this court on grounds that no relief at such an early stage of the investigation can be granted.

11. We have considered the preliminary objection, however, we are not inclined to concur with the same. It must be remembered that our Constitution has entrusted the Supreme Court with the most important task of protecting civil liberties of individuals, and the society at large. These civil liberties, which manifest themselves in the form of fundamental rights, are what allow the people of this country to effectively negotiate with the state and maintain the parity in power in the social contract between the people and the state. If this Court refuses to exercise its jurisdiction on technicalities in cases of violations of fundamental rights, it will lead to a ripple effect that will result in a dysfunctional social contract, wherein the people of this country would become subject to an arbitrary and unfettered tyranny of the state.

12. Article 32 of the Constitution of India provides remedies for enforcement of rights conferred by this Part. The said Article reads as under:-

“32. Remedies for enforcement of rights conferred by this Part-(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.” Article 32 falls within Part III of the Constitution which deals with fundamental rights and thus the right to invoke Article 32 is a fundamental right in itself, that exists to protect and safeguard the other fundamental rights guaranteed by Part III of the Constitution. We may usefully refer to the following observations of a Constitution Bench of this Court made in the case of K.S. Puttaswamy & Anr. vs. Union Of India & Ors.³ :-

“A constitutional democracy can survive when citizens have an undiluted assurance that the Rule of Law will protect their rights and liberties against any invasion by the State and that judicial remedies would be available to ask searching questions and expect answers when a citizen has been deprived of these, most precious rights.”

13. Further, another Constitution Bench of this Court in the case of K.K Kochunni, Moopil Nayar vs. State of Madras & Ors. ⁴ as early as 1959, has observed that the Court must exercise its jurisdiction in matters where there is an abuse of fundamental rights. The relevant paragraphs of the said judgment are being extracted hereunder:

3 (2017) 10 SCC 1 4 1959 Supp (2) SCR 316 “Further, even if the existence of other adequate legal remedy may be taken into consideration by the High Court in deciding whether It should issue any of the prerogative writs on an appli-

cation under Article 226 of the Constitution, as to which we say nothing now - this Court cannot, on a similarground, decline to entertain a petition under Article 32, for the right to move this Court by appropriate proceedings for the enforcement of the rights conferred by Part I of the Constitution is itself a guaran- teed right. It has accordingly been held by this Court in Romesh Thappar v. State of Madras [1950 SCC 436 1950 SCR 594] that under the Constitution this Court is constituted the protector and guarantor of fundamental rights and it cannot, consistently with the responsibility so laid upon it, refuse to entertain appli- cations seeking the protection of this Court against infringement of such rights, although such applications are made to this Court in the first instance without resort to a High Court having concurrent jurisdiction in the matter. The mere existence of an adequate alternative legal remedy cannot per se be a good and sufficient ground for throwing out a petition under Article 32, if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is prima facie estab- lished on the petition.”

14. It is also pertinent to note that the relief of statutory bail under Section 167(2) of the Cr.PC, in our opinion, is a fundamental right directly flowing from Article 21 of the Constitution of India, and the violation of such a right, as mentioned above, directly attracts consideration under Article 32 of the Constitution. In such circumstance, we are not inclined to agree with the preliminary objections raised by the learned counsel for the respondent regarding the maintainability of this petition under Article 32 of the Constitution and the said objection, therefore, stands rejected. ANALYSIS

15. Before we deal with the issues framed, we find it pertinent to mention that in the present case, this Court is not dealing with the merits of the case and as such is not inclined to make any

observations regarding the same. Every court, when invoked to exercise its powers, must be mindful of the relief sought, and must act as a forum confined to such relief. In the present case at hand, this Court is not a court of appeal, but a court of writ, and therefore is inclined to limit its jurisdiction only to the personal liberty of the writ petitioner's husband and the impugned points of law.

16. For the purpose of deciding the issues framed by us, we deem it appropriate to trace the history of the provision of default bail, and the reasons which led the legislature to incorporate the existing provisions in the new statute. Under Section 167 of the Code of Criminal Procedure, 1898, which was the Act that governed criminal procedure before the enactment of CrPC presently in force, an accused, either under judicial or police custody, could be remanded only for a maximum period of 15 days. For a ready reference Section 167 of the 1898 Code is being reproduced herein:-

“Procedure when investigation cannot be completed in twenty-four hours. - (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer in charge of the police station or the police officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(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. If he has not 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 no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the State Government shall authorise detention in the custody of the police.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing. (4) If such order is given by a Magistrate other than the District Magistrate or Sub-Divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.”

17. This period of 15 days, however, more often than not, was inadequate to conclude investigations, especially in complicated cases which required a longer and deeper investigation. This lack of time, because of the abovementioned provision of the 1898 Act, led to a widespread practice wherein investigating officers would file preliminary chargesheets after the expiry of the remand period, and subsequently request the magistrate to postpone the commencement of trial and remand the

accused under Section 344 of the 1898 Act for a further time, till the final chargesheet was filed.

18. This practice of filing preliminary chargesheets was first pointed out by the Law Commission of India in its Report No. 14 5 on Reforms of the Judicial Administration, wherein it was stated that in many cases, the accused persons, without the filing of any detailed reports before the courts by the investigating authority, were languishing in jail for a prolonged period of time. It thus recommended that there existed an urgent need for a provision that provided for an appropriate time frame for the completion of an investigation while also safeguarding the personal liberty of the accused.

19. These recommendations made by the abovementioned law commission report were again emphasized by the Law Commission in its Report No. 416, wherein it was explicitly stated that there was an urgent need to protect the civil liberties of accused persons against the misuse of Section 344 of the 1898 Act, wherein the accused persons, on grounds of a preliminary report and pending investigation, were remanded to custody 5 Law Commission of India in Report No. 14, Vol.-I (1958). 6 Law Commission in its Report No. 41 (September, 1969), Para. 14.19. indefinitely. The relevant paragraphs from the said report are being reproduced hereunder:-

“Section 167 provides for remands. The total period for which an arrested person may be remanded to custody-police or judicial-is 15 days. The assumption is that the investigation must be completed within 15 days and the final report under section 173 sent to court by then. In actual practice, however, this has frequently been found unworkable. Quite often, a complicated investigation cannot be completed within 15 days, and if the offence is serious, the police naturally insist that the accused be kept in custody. A practice of doubtful legal validity has therefore grown up. The police file before a magistrate a preliminary or "incomplete" report, and the magistrate, purporting to act under section 344, adjourns the proceedings and remands the accused to custody. In the Fourteenth Report, the Law Commission doubted if such an order could be made under section 344, as that section is intended to operate only after a magistrate has taken cognizance of an offence, which can be properly done only after a final report under section 173 has been received, and not while the investigation is still proceeding. We are of the same view, and to us also it appears proper that the law should be clarified in this respect. The use of section 344 for a remand beyond the statutory period fixed under section 167 can lead to serious abuse, as an arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner. It is, therefore, desirable, as was observed in the Fourteenth Report that some time limit should be placed on the power of the police to obtain a remand, while the investigation is still going on: and if the present time limit of 15 days is too short, it would be better to fix a longer period rather than countenance a practice which violates the spirit of the legal safe-guard. Like the earlier Law Commission, we feel that 15 days is perhaps too short and we propose therefore to follow the recommendation in the Fourteenth Report that the maximum period under section 167 should be fixed at 60 days. We are aware of the danger that such an extension may result in the maximum period becoming the rule in every case as a matter of routine: but we trust that proper supervision by the

superior courts will prevent that. We propose accordingly to revise sub-sections (2) and (4) of section 167 as follows :-

"(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 at a time and sixty days in the whole.

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) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;
- (b) 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.
- (4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate."

20. On the recommendation made by the Law Commission through the aforesaid reports recommending to curtail the abuse of such power, Section 167(2) as it exists today in the statute was incorporated in the Cr.PC, 1973, which provides for a longer period of maximum remand, but also guarantees default bail, to ensure that accused persons are bereft of arbitrary detention.⁷ The Statement of Objects and Reasons of CrPC, 1973 ⁷ Law Commission in its Report No. 41 (September, 1969), Para. 14.19. also refer to the 41st Law Commission Report and inter alia reads as follows:-

"(2).....A comprehensive report for the revision of the Code, namely, the Forty-first Report, was presented by the Law Commission in September, 1969. This report took into consideration the recommendations made in the earlier 1 Reports of the Commission dealing with specific matters namely, the Fourteenth, Twenty-fifth, Thirty-second, Thirty-

third, Thirty-sixth, Thirty-seventh and Fortieth Reports. (3) The recommendation of the Commission were examined carefully by the Government, keeping in view, among others, the following basic considerations-

- (i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;

(ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to individuals involved but also to society; and

(iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community.

The occasion has been availed of to consider and adopt where appropriate suggestions received from other quarters, based on practical experience of investigation and the working of criminal courts”

21. A bare perusal of the abovementioned statement of objects strongly indicates that Section 167(2) of the Cr.PC was enacted to ensure that the investigating agency completes the investigation within the prescribed time limit, failing which no accused could be detained if they are willing to avail bail. This position was also laid emphasis on by a three-judge bench of this Court in the case of M. Ravindran Vs. Directorate Of Revenue Intelligence (Supra), the relevant paragraphs of the same are being reproduced hereunder:

“The suggestion made in Report No. 14 was reiterated by the Law Commission in Report No. 41 on The Code of Criminal Procedure, 1898 (Vol. I, 1969, pp. 76-77). The Law Commission re-emphasised the need to guard against the misuse of Section 344 of the 1898 Code by filing "preliminary reports" for remanding the accused beyond the statutory period prescribed under Section 167. It was pointed out that this could lead to serious abuse wherein "the arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner". Hence the Commission recommended fixing of a maximum time-limit of 60 days for remand.

It was in this backdrop that Section 167(2) was enacted within the present day CrPC, providing for time-limits on the period of remand of the accused, proportionate to the seriousness of the offence committed, failing which the accused acquires the indefeasible right to bail.”

22. Further, this legal position was again reiterated in Satendar Kumar Antil vs CBI & Anr.⁸, wherein it was held that Section 167(2) of the Cr.PC is a limb of Article 21 of the Constitution of India, and as such, the investigating authority is under a constitutional duty to expedite the process of investigation within the stipulated time, failing which, the 8 (2021) 10 SCC 773 accused is entitled to be released on default bail. The relevant observations made in the said judgment are as under:-

“Section 167(2) was introduced in the year 1978, giving emphasis to the maximum period of time to complete the investigation. This provision has got a laudable object behind it, which is to ensure an expeditious investigation and a fair trial, and to set down a rationalised procedure that protects the interests of the indigent sections of society. This is also another limb of Article 21. Presumption of Innocence is also inbuilt in this provision. An investigating agency has to expedite the process of investigation as a suspect is languishing under incarceration. Thus, a duty is enjoined upon the agency to complete the investigation within the time prescribed and a

failure would enable the release of the accused. The right enshrined is an absolute and indefeasible one, ensuring to the benefit of suspect.

As a consequence of the right flowing from the said provision, courts will have to give due effect to it, and thus any detention beyond this period would certainly be illegal, being an affront to the liberty of the person concerned. Therefore, it is not only the duty of the investigating agency but also the courts to see to it that an accused gets the benefit of Section 167(2)."

23. It is also to be noted that as per the scheme of Cr.PC, an investigation of a cognizable case commences with the recording of an FIR under Section 154 Cr.PC. If a person is arrested and the investigation of the case cannot be completed within 24 hours, he has to be produced before the magistrate to seek his remand under Section 167(2) of the Cr.PC during continued investigation. There is a statutory time frame then prescribed for remand of the accused for the purposes of investigation, however, the same cannot extend beyond 90 days, as provided under Section 167(2)(a)

(i) in cases where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years and 60 days, as provided under Section 167(2)(a)(ii), where the investigation relates to any other offence. The relevant section further provides that on expiry of the period of 90 days or 60 days, as the case may be, the accused has a right to be released on default bail in case he is prepared to and furnishes bail.

24. This right of statutory bail, however, is extinguished, if the charge sheet is filed within the stipulated period. The question of resorting to a supplementary chargesheet u/s 173(8) of the Cr.PC only arises after the main chargesheet has been filed, and as such, a supplementary chargesheet, wherein it is explicitly stated that the investigation is still pending, cannot under any circumstance, be used to scuttle the right of default bail, for then, the entire purpose of default bail is defeated, and the filing of a chargesheet or a supplementary chargesheet becomes a mere formality, and a tool, to ensue that the right of default bail is scuttled.

25. It is thus axiomatic that first investigation is to be completed, and only then can a chargesheet or a complaint be filed within the stipulated period, and failure to do so would trigger the statutory right of default bail under Section 167(2) of Cr.PC. In the case of Union Of India vs Thamisharasi & Ors.⁹, which was a case under the Narcotic Drugs and Psychotropic Substances Act, 1985, on finding that the investigation was not complete and a chargesheet was not filed within the prescribed period, denial of default bail was held to be in violation of Article 21 of the Constitution of India, and it was further held that even the twin limitation on grant of bail would not apply.

26. Further, in the case of Ashok Munilal Jain & Anr. Vs. Assistant Director, Directorate of Enforcement¹⁰, it was held that the right of default bail under section 167(2) CrPC was held to be an indefeasible right of the accused even in matters under PMLA.

27. Therefore, in light of the abovementioned discussions, it can be seen that the practice of filing preliminary reports before the enactment of the present CrPC has now taken the form of filing chargesheets without actually completing the investigation, only to scuttle the right of default bail. If we were to hold that chargesheets can be filed without completing the investigation, and the same can be used for prolonging remand, it would in effect negate the purpose of introducing section 167(2) of the 9 (1995) 4 SCC 190 10 (2018) 16 SCC 158 CrPC and ensure that the fundamental rights guaranteed to accused persons is violated.

28. We have carefully perused the judgments relied upon by the learned counsel for the respondent, however, none of the judgments relied upon permit the abuse of remand under Section 309(2) of the CrPC by permitting the filing of incomplete chargesheets only to scuttle the right of statutory bail.

29. The judgment in State of West Bengal vs. Salap Service Station & Ors. 11 relied upon by the respondent was rendered, not in the context of default bail, but only in the context of entitlement u/s. 173(8) of the CrPC to place on record further evidence in support of the chargesheet already filed.

30. Further, the judgment of Dharam Pal vs. State Of Haryana & Ors. 12, relied upon by the respondent, refers to the power of Constitutional Courts to transfer investigation. In Para 21 of the said judgment, it has been stated that Section 173 empowers the police officer to conduct an investigation to file a report on the completion of the investigation and section 173(8) CrPC allows the conduct of further investigation. However, this judgment also does not talk about default bail and the misuse of the filing of 11 1994 Supp (3) SCC 318 12 2016 (4) SCC 160 supplementary chargesheets. It is also important to note that the judgment of Ram Narain Popli vs. CBI 13 and Rajesh Ranjan Yadav vs. CBI 14 have also not dealt with the issues being considered by us in the present matter.

31. In light of the abovementioned discussion, the judgments relied upon by the learned counsel for the respondent are clearly distinguishable as issues being considered herein were not considered therein and reliance placed by the learned counsel for the respondents on the said pronouncements is totally misfounded.

32. In view of the above mentioned discussions, the issues framed by us stand answered as under:-

I. Without completing the investigation of a case, a chargesheet or prosecution complaint cannot be filed by an investigating agency only to deprive an arrested accused of his right to default bail under Section 167(2) of the CrPC.

II. Such a chargesheet, if filed by an investigating authority without first completing the investigation, would not extinguish the right to default bail under Section 167(2) CrPC.

13 (2003) 3 SCC 641 14 (2007) 1 SCC 70 III. The trial court, in such cases, cannot continue to remand an arrested person beyond the maximum stipulated time without offering the arrested person default bail.

CONCLUSION

33. In the instant case, it is clear from the facts that during the pendency of the investigation, supplementary chargesheets were filed by the Investigation Agency just before the expiry of 60 days, with the purpose of scuttling the right to default bail accrued in favour of the accused. This factual position was missed by the trial court, and instead of offering default bail to the accused, the trial court mechanically accepted the incomplete chargesheets filed by the Investigating Agency, and further continued the remand of the accused beyond the maximum period specified. The Investigating Agency and the trial court, thus, failed to observe the mandate of law, and acted in a manner which was manifestly arbitrary and violative of the fundamental rights guaranteed to the accused.

34. Even at the cost of repetition, we find it pertinent to mention that the right of default bail under Section 167(2) of the CrPC is not merely a statutory right, but a fundamental right that flows from Article 21 of the Constitution of India. The reason for such importance being given to a seemingly insignificant procedural formality is to ensure that no accused person is subject to unfettered and arbitrary power of the state. The process of remand and custody, in their practical manifestations, create a huge disparity of power between the investigating authority and the accused. While there is no doubt in our minds that arrest and remand are extremely crucial for the smooth functioning of the investigation authority for the purpose of attaining justice, however, it is also extremely important to be cognizant of a power imbalance. Therefore, it becomes essential to place certain checks and balances upon the Investigation Agency in order to prevent the harassment of accused persons at their hands.

35. With the above findings and conclusions, the interim order of bail passed in favor of the accused is made absolute, and the present writ petition is, accordingly, disposed of.

.....,J.

(KRISHNA MURARI)J.

(C. T. RAVIKUMAR) NEW DELHI;

26th APRIL, 2023