

Delhi High Court

Avinash Jain vs Central Bureau Of Investigation on 18 May, 2023

Neutral Citation Number:- 2023:DHC:3429

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 04th May, 2023

Pronounced on: 18th May, 2023

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BAIL APPLN. 583/2023 & CRL.M.(BAIL) 274/2023

AVINASH JAIN

Through:

Mr. Vikas Pahwa, Senior Advocate with Mr. Mudit Jain, Mr. Pra Pandey, Mr. Arun Kanwa, Ms.N Jain & Mr. Rudraksh Nakra, Advocates.

Versus

CENTRAL BUREAU OF INVESTIGATION

Through:

Mr. Anupam S. Sharma, Special Prosecutor, CBI with Mr. Rip Sharma, Ms. Harpreet Kalsi, Mr.Prakarsh Airan and Mr. Ab Batra, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (CrPC) seeks the following prayers:

□A. Pass necessary orders and directions, thereby directing for grant of statutory / default bail to the Petitioner and directing for the release of the Petitioner from custody in FIR bearing No. RC2232020A0009 dated 19.11.2020 u/s 120B r/w 420, 468 and 471 of the IPC and 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 registered by CBI, ACV, New Delhi, on such terms and conditions as may deem fit and proper.

AND B. Pass necessary orders and directions, thereby setting aside the order dated 10.02.2023 passed by the Ld. Trial Court in the matter BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 titled as □CBI vs. M/s Arise India Ltd.' in IA No. 1/23 in CBI Case No.10/2023 pertaining to FIR bearing No. RC2232020A0009 dated 19.11.2020 u/s 120B r/w 420, 468 and 471 of the IPC and 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 registered by CBI, AC-V, New Delhi.

AND C. Pass any other necessary and appropriate orders and direction, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice.

Background

2. The present FIR was registered on the basis of a complaint received from S. Bavani Sankaran, Deputy General Manager, State Bank of India, SBI (SBI) on behalf of a consortium of six banks alleging that M/s Arise India Ltd. (The company) and its directors, including the present applicant alongwith other unknown public servants availed credit facilities from the said consortium of banks led by the SBI and diverted the borrowed funds for purposes other than those for which they were released. The loan account of the company was declared as a Non-Performing Asset (NPA) by the SBI on 27.02.2017 and subsequently by other banks in the consortium, with a total outstanding amount of Rs. 512.67 Crores. After a forensic audit, the account of the company was declared as a 'fraud' by the SBI on 27.05.2019.

3. On the basis of the aforesaid complaint, the present FIR was registered against M/s Arise India Ltd., Avinash Jain (applicant herein), Virender Mishra, Rajnish, unknown public servants and other unknown private persons under Section 120B read with Sections 420, 468 and 471 of the Indian Penal Code, 1860 (IPC) and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (PC Act) for causing wrongful loss of public money on 19.11.2020. The applicant was arrested on 14.11.2022 in the BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 said FIR for offences under Section 120B read with Sections 420, 468 and 471 of the IPC and Section 13(2) read with 13(1)(d) of the PC Act. He was produced before the learned Special Judge on 15.11.2022 and remanded to judicial custody for one day. Thereafter, after five days in police custody granted vide order dated 16.11.2022, he was remanded to judicial custody on 21.12.2022. The CBI filed a chargesheet, dated 30.12.2022, on 06.01.2023 qua the applicant and other accused persons under Section 120B read with Sections 420 and 471 of the IPC and substantive offences thereof. In the said chargesheet, it was stated that further investigation was continuing in terms of Section 173(8) of the CrPC.

4. An application for default bail under Section 167(2) of the CrPC was moved on behalf of the applicant herein on 01.02.2023, which was dismissed vide order dated 10.02.2023 passed by Sh. Raghubir Singh, Special Judge (PC Act) (CBI) - 18, Rouse Avenue District Courts, New Delhi. While dismissing the application, the learned Special Judge observed as under:

¶1. On the basis of the findings given hereinabove, it becomes clear that the investigating agency had filed the Charge Sheet u/s 173 Cr.

P.C qua 08 accused persons including the applicant/accused well before the expiry of 60 days period by keeping the option of further investigation 'open' as per provisions u/s 173 (8) Cr. P.C as the requisite permission u/s 17A was in the process and it was beyond the control of the IO to conduct & conclude the investigation in the absence of the same. The right to statutory bail stands defeated once the Charge Sheet is filed within the stipulated period as held in Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra & Ors., SLP (Crl) No.147/2013 and as reaffirmed by the Apex Court in

SFIO Vs. Rahul Modi & Ors. Hon'ble the Apex Court has gone to the extent of saying that even the aspect of not taking cognizance was not at all to be considered for the purpose of default bail. Accordingly, the application in hand is disposed of as dismissed. BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:-2023:DHC:3429 Submissions on behalf of the Applicant/Avinash Jain

5. Learned Senior Counsel appearing on behalf of the applicant submitted that the FIR in the present case was registered on 19.11.2020 under Section 120B read with Sections 420, 468 and 471 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act qua four accused persons, as named in the FIR, including the present applicant. Pursuant thereto, the applicant was arrested on the 14.11.2022 and vide order dated 16.11.2022, passed by the learned Special Judge, he was remanded to five days police custody. Thereafter, on 21.11.2022, the applicant was remanded to judicial custody. The CBI filed the chargesheet on 06.01.2023 qua the applicant under Sections Section 120B read with Section 420 and 471 of the IPC and substantive offences thereof.

6. Learned Senior counsel appearing on behalf of the applicant submitted that the aforesaid chargesheet is incomplete and was filed only to defeat the right of the applicant under Section 167(2) of the CrPC. It was further submitted that the aforesaid chargesheet is incomplete on account of following factors:

i. The FIR in the present case was registered under Section 120B read with Sections 420, 468 and 471 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act, however, the chargesheet was not filed qua the offences committed under the PC Act and Section 468 of the IPC.

ii. The FIR contained eleven allegations, all of which were not investigated. It was submitted that a perusal of the chargesheet would reflect that only five allegations have been investigated by the CBI, thereby rendering the chargesheet incomplete. Learned Senior Counsel BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:-2023:DHC:3429 drew the attention of this Court to Para 16.26 of the chargesheet wherein the said five allegations have been listed. Para 16.26 reads as under:

□Investigation has revealed several instances which establish the culpability of the above said accused persons. The Issues which have been brought on record are as following: A. Manipulation of Books or Accounts by way of inflating turnover.

B. Excess Working Capital limit sanctioned to M/s Arise India Ltd.

C. Induction of Promoters' Contribution by debiting working Capital Finance (CC) and using the funds through circular transactions. □D. Submission of inflated Stock & Receivables statements to Banks to avail higher Drawing Power E. Diversion of Cash Credit Facilities to acquire Fixed Assets.□ It was submitted that even qua the present applicant, the investigation cannot be stated to be complete since allegation number seven, as mentioned in the FIR, pertains to him but has not been investigated.

iii. The chargesheet was not filed qua all the accused persons named in the FIR, inasmuch as investigation qua accused - Virender Mishra and Rajnish is stated to be pending. Learned Senior Counsel drew the attention of this Court to Para 16.76 of the chargesheet, wherein it is stated as under:

□ That further Investigation is being continued u/s 173(8) of Cr.PC to investigate the role of Shri Virender Mishra and Shri Rajnish (both FIR named accused), role of public servants to collect other relevant documents and examination of witnesses and to investigate any other fact if crop up during further investigation. BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 By way of illustration, learned Senior Counsel, also placed on record, the following chart:

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7. Learned Senior Counsel, thereafter, drew the attention of this Court to the order dated 06.01.2023 passed by the learned Principal District and Sessions Judge-cum-Special Judge (PC Act) (CBI), Rouse Avenue District Court wherein it has been recorded that it would be proper if the chargesheet was returned to the CBI so as to enable them to complete the investigation after ascertaining the role of the public servants. In the said order, it has been recorded as under:

□ Since the further investigation as regards the above mentioned both accused persons and the role of bank officials is to be investigated on receipt of approval u/s 17 A of PC Act, there is no reason for the CBI to file the charge-sheet without completion of investigation in the matter.

It is not out of place to mention that when the charge-sheet is filed for IPC offences alone, the same is being assigned to the court of CMM/ACMM for trial and if later on the provisions of PC Act are invoked in the case, the case becomes triable by the court of Special Judge. And in such a scenario whatever time is spent in trial before the CMM/ACMM turns to be sheer wastage. And that being so, it is desirable that the investigation is completed once for all clearly pointing out whether it is a charge-sheet or a closure report for offences under the PC Act so that the matter be dealt with accordingly.

In view of the same, it will be appropriate and desirable that the charge-sheet be returned to the CBI to complete the investigation including the role of the public servants and submit the report only after that.

8. Learned Senior Counsel submitted that vide order dated 16.01.2023, the learned Special Judge categorically recorded that the fact that the delay of 25 months in making an application for sanction under Section 17A of the PC Act in itself, prima-facie renders the manner of investigation as unfair. The learned Special Judge, in the said order dated 16.01.2023, recorded as under:

BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 ¶The Charge Sheet in the present matter had been filed by the IO on 06.01.2023 and the matter was placed by the Filing Agency Official before the Ld. Principal District & Sessions Judge on the very day. The Ld. Principal District & Sessions Judge assigned the same to this Court vide order of that day itself while observing certain glaring ambiguities in the Charge Sheet.

In para no. 16. 75 of the Charge Sheet, it has been mentioned that for approval or the Competent Authorities qua the Public Servants/Bank Officials has been sought for as per the provision u/s 17 A. However, clandestinely it has nowhere been made clear in the entire Charge Sheet as to on which date, month or even the year the requisite letter etc., was written for the permission qua Bank Officials as per Section 17 A of the PC Act 1988. On being inquired, IO has apprised that such letter of request through the lead or the Branch was sent addressed to the Chief Vigilance Officer, State Bank of India, Vigilance Deptt. Corporate Centre, 8th Floor, Madame Cama Road, Mumbai-400021 as on 16.12.2022. Learned Senior Counsel further drew the attention of this Court to the compliance report dated 27.01.2023 filed by the CBI pursuant to the said order dated 16.01.2023 passed by the learned Special Judge, wherein the CBI admits that further investigation has been kept open to ascertain the role of Virender Mishra and Rajnish - both of whom were named in the FIR. CBI further admits that during the course of investigation, the role of public servants/bank officials had come to light and thus, appropriate sanction under Section 17A of the PC Act has been sought from the relevant authorities, vide a request letter dated 16.12.2022.

9. Learned Senior Counsel drew the attention of this Court to the complaint filed by the SBI, and specifically, to the following portions thereof:

9. Grave irregularities The Bank is not suspecting the committed by public involvement of its staff in the fraud servants perpetrated by the accused persons.

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12. Action taken by the Staff accountability has been BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 bank against the public examined, dealt with and closed by servants including Chief General Manager (MCG-111) departmental vide Note dated 21.01.2018.

proceedings initiated. If Investigative Officer in the Staff so, details thereof Accountability Report dated 15.09.2017 has not observed any mala fide on the part of the dealing officials nor has pointed out any negligence discernible on the part of dealing officers which could be attributed to the slippage in Asset quality. However, involvement of unknown persons and public servants may also be examined during investigation.

It is submitted that the FIR in the present case was registered for commission of offences under the PC Act without prior approval or sanction in terms of Section 17A of the PC Act and thus, any investigation conducted in furtherance of the said FIR is illegal. Learned Senior Counsel draws the

attention of this Court to paragraphs 16.73 and 16.75 of the chargesheet, wherein it has been stated as under:

□16.73 Investigation therefore, has clearly established commission of cognizable offence by M/s. Arise India Limited, Avlnash Jain, Amit Jain, Naresh Chand Jain, Anju Jain, Pankaj Jain, Mohan Singh Chauhan and Mukesh Kumar therefore chargesheet is being filed for launching prosecution against (1) Avinash Jain, (2) Amit Jain, (3) Naresh Chand Jain. (4) Anju Jain. (5) Pankaj Jain, (6) Mohan Singh Chauhan and (7) Mukesh Kumar u/s 120-B r/w 420 and 471 of Indian Penal Code and substantive offences thereof. Prosecution is also recommended against M/s Arise India Limited U/s 420 IPC.

xxx 16.75 That during investigation role of certain public servants / Bank Officials came to light for violations/omissions/comissions/ sanctioning/dibursing/ monitoring of credit facilities granted to M/s Arise India Limited. Prior approval of the competent authorities of concerned banks have been sought as per Section 17A of The BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 Prevention of Corruption (as amended in 2018) Act, 1988 for conducting investigation of the offences against the said public servants/ bank officers. Learned Senior counsel appearing on behalf of the applicant submits that upon a bare reading of the aforesaid paragraphs of the chargesheet, it is apparent that the investigation qua the offences under the PC Act was still underway and therefore admittedly, the chargesheet filed was incomplete. It is further submitted that this position is further apparent from the supplementary chargesheet dated 01.04.2023 filed by the CBI, which has been placed on record alongwith additional status report. Learned Senior Counsel draws attention of this Court to paragraphs 16.7 & 16.8 of the said supplementary chargesheet, wherein it has been stated as under:

□16.7 That, as the prior approval u/s 17-A of PC Act, 1988 had been declined/refused by the Competent Authority against the public servant and role of any other public servants/bank officials did not surface, the investigation qua offences under PC Act (as amended in 2018) Act, 1988 against the public servants is closed. 16.8 That further investigation is being continued u/s 173(8) of Cr.PC to invetsigate the role of Shri Virender Mishra and Shri Rajnish (both FIR named accused), to collect other relevant documents and examination of witnesses and to investigate any other fact, if crop up during further investigation

10. Learned Senior Counsel submitted that as per the supplementary chargesheet, sanction in terms of Section 17A of the PC Act was sought on 16.12.2022 from the Chief Vigilance Officer, State Bank of India, whereas, the complaint was filed on behalf of a consortium of six banks, all of which have also been named in Para 16.22 of the chargesheet. Learned Senior Counsel submitted that since the sanction sought by the CBI was denied vide BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 the letter dated 23.02.2023, the investigation qua offences under the PC Act was continuing when the chargesheet was filed on 06.01.2023.

11. Learned Senior Counsel for the applicant placed reliance on *M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence*, (2021) 2 SCC 485, wherein the Hon'ble Supreme Court, while discussing the provision of Section 167(2) of the CrPC held that non-compliance of the said provision would be violative of Article 21 of the Constitution of India and observed as under:

□I. Section 167(2) and the Fundamental Right to Life and Personal Liberty

17. Before we proceed to expand upon the parameters of the right to default bail under Section 167(2) as interpreted by various decisions of this Court, we find it pertinent to note the observations made by this Court in *Uday Mohanlal Acharya* [*Uday Mohanlal Acharya v. State of Maharashtra*, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows : (SCC p. 472, para 13) □3. ... Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution. 17.1. Article 21 of the Constitution of India provides that □no person shall be deprived of his life or personal liberty except according to procedure established by law . It has been settled by a Constitution Bench of this Court in *Maneka Gandhi v. Union of India* [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248] , that such a procedure cannot be arbitrary, unfair or unreasonable. The BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 history of the enactment of Section 167(2) CrPC and the safeguard of □default bail contained in the proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law.

17.2. Under Section 167 of the Code of Criminal Procedure, 1898 (□the 1898 Code) which was in force prior to the enactment of the CrPC, the maximum period for which an accused could be remanded to custody, either police or judicial, was 15 days. However, since it was often unworkable to conclude complicated investigations within 15 days, a practice arose wherein investigating officers would file □preliminary charge-sheets after the expiry of the remand period. The State would then request the Magistrate to postpone commencement of the trial and authorise further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final charge-sheet was filed. The Law Commission of India in Report No. 14 on Reforms of the Judicial Administration (Vol. II, 1948, pp. 758-760) pointed out that in many cases the accused were languishing for several months in

custody without any final report being filed before the courts. It was also pointed out that there was conflict in judicial opinion as to whether the Magistrate was bound to release the accused if the police report was not filed within 15 days.

17.3. Hence the Law Commission in Report No. 14 recommended the need for an appropriate provision specifically providing for continued remand after the expiry of 15 days, in a manner that "while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual". Further, that the legislature should prescribe a maximum time period beyond which no accused could be detained without filing of the police report before the Magistrate. It was pointed out that in England, even a person accused of grave offences such as treason could not be indefinitely detained in prison till commencement of the trial.

17.4. 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 BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 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. The Commission considered the reservation expressed earlier in Report No. 37 that such an extension may result in the 60-day period becoming a matter of routine. However, faith was expressed that proper supervision by the superior courts would help circumvent the same.

17.5. The suggestions made in Report No. 41 were taken note of and incorporated by the Central Government while drafting the Code of Criminal Procedure Bill in 1970. Ultimately, the 1898 Code was replaced by the present CrPC. The Statement of Objects and Reasons of the CrPC provides that the Government took the following important considerations into account while evaluating the recommendations of the Law Commission:

3. The recommendations 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 the 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. 17.6. 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. As is evident from the recommendations of the Law Commission mentioned supra, the intent of the legislature was to balance the need for sufficient time-limits to complete the investigation with the need to protect the civil liberties of the accused. Section 167(2) provides for a clear mandate that the investigative agency must collect the required evidence within the prescribed time period, failing which the accused can no longer be detained. This ensures that the investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This also ensures that the court takes cognizance of the case without any undue delay from the date of BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 giving information of the offence, so that society at large does not lose faith and develop cynicism towards the criminal justice system.

17.7. Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three-Judge Bench of this Court in Rakesh Kumar Paul v. State of Assam [Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401] , which laid down certain seminal principles as to the interpretation of Section 167(2) CrPC though the questions of law involved were somewhat different from the present case. The questions before the three-Judge Bench in Rakesh Kumar Paul [Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401] were whether, firstly, the 90-day remand extension under Section 167(2)(a)(i) would be applicable in respect of offences where the maximum period of imprisonment was 10 years, though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under Section 167(2) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90- day limit is only available in respect of offences where a minimum ten year' imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in lieu of a written application. This was based on the reasoning that the court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows : (SCC pp. 95-96 & 99, paras 29, 32 & 41) ¶29. Notwithstanding this, the basic legislative intent of completing investigations within twenty-four hours and also within an otherwise time-bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete investigations, the legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a prolonged or indefinite period. It is for this reason and also to hold the investigating agency accountable that time-limits have been laid down by the legislature. ...

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32. ... Such views and opinions over a prolonged period have prompted the legislature for more than a century to ensure expeditious conclusion of investigations so that an accused person is not unnecessarily deprived of his or her personal liberty by remaining in prolonged custody for an offence that he or she might not even have committed. In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned counsel for the State.

41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court. (emphasis supplied) Therefore, the courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21.

17.8. We may also refer with benefit to the recent judgment of this Court in *S. Kasi v. State* [*S. Kasi v. State*, (2021) 12 SCC 1 : 2020 SCC OnLine SC 529], wherein it was observed that the indefeasible right to default bail under Section 167(2) is an integral part of the right to personal liberty under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasised that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge-sheet. 17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55
Neutral Citation Number:- 2023:DHC:3429 17.10. With respect to the CrPC particularly, the Statement of Objects and Reasons (supra) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature, namely, ensuring a fair trial, expeditious investigation and trial, and setting down a rationalised procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21. 17.11. Hence, it is from the perspective of upholding the fundamental right to life and personal liberty under Article 21 that we shall clarify and reconcile the various judicial interpretations of Section 167(2) for the purpose of resolving the dilemma that has arisen in the present case.

(emphasis supplied)

12. Learned Senior Counsel also placed reliance on a judgment of the Hon'ble Supreme Court in *Fakhrey Alam v. State of Uttar Pradesh*, 2021 SCC OnLine SC 532, wherein it was held as under:

□3. If we look at the scenario in the present case in that conspectus, the charge sheet under the provisions of law as originally filed on 04.09.2017 were required to be filed within 90 days but was actually filed within 180 days. This was on the premise of the charge under Section 18 of the UAPA Act. However, no charge sheet was filed even within 180 days under the UAPA Act, but post filing of the application for default bail, it was filed after 211 days. Thus, undoubtedly the period of 180 days to file the charge sheet qua UAPA Act had elapsed. We do not think that the State can take advantage of the fact that in one case there is one charge sheet and supplementary charge sheets are used to extend the time period in this manner by seeking to file the supplementary charge sheet qua the offences under the UAPA Act even beyond the period specified under Section 167 of the Cr. P.C. beyond which default bail will be admissible, i.e, the period of 180 days. That period having expired and the charge sheet not having been filed qua those offences (albeit a supplementary charge sheet), we are of the view the appellant would be entitled to default bail in the aforesaid facts and circumstances.

14. We need only emphasize what is already observed in *Bikramjit Singh* case (supra) that default bail under first proviso of Section 167(2) of the Cr. P.C. is a fundamental right BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 and not merely a statutory right as it is, a procedure established by law under Article 21 of the Constitution. Thus a fundamental right is granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) of the Cr. P.C. are fulfilled.

15. In fact in the majority judgment of this Court it has been held that an oral application for grant of default bail would suffice [See. *Rakesh Kumar Paul v. State of Assam*]³. The consequences of the UAPA Act are drastic in punishment and in that context, it has been held not to be a mere statutory right but part of the procedure established by law under Article 21 of the Constitution of India.

16. We are thus of the view that the impugned order(s) are liable to be set aside. The appellant is entitled to default bail under Section 167(2) of the Cr. P.C. in the given facts of the case on the terms and conditions to the satisfaction of the trial Court. (emphasis supplied)

13. Learned Senior Counsel further placed reliance on a judgment of a coordinate bench of this Court in *Chitra Ramkrishna v. Central Bureau of Investigation (CBI) Through the Investigating Officer*, 2022 SCC OnLine Del 3124 wherein it has been held as under:

□13. The legal position pertaining to scope of Section 167(2) of the Code emanating from above referred decisions can be summarised as under:

(i) The object of the Section 167(2) of the Code is to ensure an expeditious investigation and a fair trial and is another limb of Article

(ii) The accused has indefeasible right in his favour for being released on bail on account of default by the investigating agency to complete investigation within the prescribed period.

(iii) It is duty of the courts to ensure that benefit of Section 167(2) of the Code be given to the accused and detention beyond statutory period would be illegal being opposed to the liberty of the accused.

(iv) Section 173 of the Code does not stipulate a piecemeal investigation and filing of incomplete charge-sheet before court and contemplates filing of a final report after completion of the entire investigation of the case in respect of all offences and where several offences are BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 involved in a case. The practice of filing preliminary charge-sheets to seek extension of remand beyond the statutory period should be deprecated.

(v) The charge report can be filed before the court only after the investigation is over and formation of an opinion regarding all the offences alleged against the accused.

(vi) There is a distinction between completion of investigation and further investigation. The further investigation can be resorted to only after the completion of investigation and filing of charge- sheet.

(vii) The investigating agency cannot circumvent Section 167(2) of the Code by filing incomplete charge-sheets. The police report or charge-sheet cannot be send within the meaning of Section 173(2) till the investigation is completed and any report sent before the investigation is completed will not be a police report within the meaning of Section 173(2) of the Code.

(viii) The incomplete charge-sheet filed without completing the investigation cannot be used to defeat the right of statutory bail under Section 167(2) of the Code.

(ix) The right of the accused to statutory bail came to an end once the charge-sheet is filed within the stipulated period. The filing of charge-sheet is sufficient compliance with the provisions of Section 167(2) of the Code and taking of cognizance is not material to Section 167.

(x) There can only be one charge-sheet but there is no restriction on filing of number of supplementary charge-sheets.

(xi) The charge-sheet can be said to be complete when it enable the court to take or not to take cognizance of the offence after application of mind and if certain facets called for further investigation does not render such report anything other than a final report.

(xii) The power of Magistrate to take cognizance is not lost even if the police report is termed as incomplete by the investigating officer.

(xiii) If the charge-sheet is not filed then right for default bail has ripened into status of indefeasibility which cannot be frustrated by the prosecution and the courts on any pretext.

(xiii) Economic offences having deep rooted conspiracies and involving huge loss of public funds, constitute a class apart and need to be viewed seriously.

114. It is reflecting from record that the respondent CBI registered FIR bearing number RC/AC1/2018/A0011 dated 28-5-2018 registered at PS CBI/AC-I for offences punishable under Sections BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 120-B/204IPC and Section 7/12/13(2) read with Section 13(1)(d) of the PC Act and Section 66 of the Information Technology Act, 2000 wherein the petitioner-accused was named or implicated. The respondent CBI received a request from the Ministry of Finance, Government of India vide letter dated 5-3-2022 to investigate the issues arising out of SEBI order dated 11-2-2022 which was passed in the matters pertaining to illegal appointment of the petitioner-accused as □Chief Strategic Advisor (CSA), his redesignation as □Group Operating Officer and □Advisor to MD and other issues. The respondent CBI took up investigation and issue highlighted in the order dated 11-2-2022 was found to be linked with ongoing investigation by the respondent CBI in pursuance of present FIR. The petitioner-accused was arrested on 24-2-2022. The respondent CBI did not complete investigation in respect of all the offences as mentioned in FIR. The respondent CBI has filed charge-sheet before the court concerned on 21-4-2022 i.e. 57th day from the date of arrest only for offences punishable under Sections 13(1)(d) and 13(2) of the PC Act and Section 120-BIPC. The investigation pertaining to other offences under Section 66 of the IT Act, 2000, Section 204IPC and Sections 7 and 12 of the PC Act is still pending and not completed. The Special Judge, CBI has not taken the cognizance on charge-sheet filed on 21-4-2022 against the petitioner-accused and co-accused.

115. Issue which needs judicial consideration and assessment is that whether filing of charge-sheet by the respondent CBI before court concerned on 21-4-2022 pertaining to offences punishable under Sections 13(1)(d) and 13(2) of the PC Act and Section 120-BIPC is sufficient compliance of Section 167(2) of the Code to deny statutory bail or default bail to the petitioner-accused as argued by the respondent CBI or said charge-sheet is incomplete or piecemeal charge-sheet and does not fall within ambit of Section 167(2) of the Code as argued by the learned Senior Counsel for the petitioner-accused.

116. In view of the legal position pertaining to Section 167(2) of the Code as discussed hereinabove, Section 173 of the Code only permits filing of a final report after completion of the entire investigation in respect of all offences and does not permit a piecemeal investigation and filing of incomplete charge-sheet before court. The charge-sheet filed by the respondent CBI is a piecemeal charge-sheet and is not filed in respect all offences subject-matter of present FIR. The respondent CBI is not legally permitted to pick BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 one portion of

investigation and to complete it and thereafter file piecemeal charge-sheet in respect of few offences subject-matter of FIR and to left open investigation in respect of other offences and subsequent filing of charge-sheet in respect of left over offences. This would be complete negation of Section 167(2) of the Code. The investigating agency cannot be permitted to fragment or break FIR for the purpose of different charge-sheets and this will tantamount to negation of Section 167(2) and would against mandate of Article 21 of the Constitution. The practice of filing such types of charge-sheets to seek extension of remand beyond the statutory period was deprecated by the Superior Courts in past. The investigating agency is required to form opinion regarding all offences subject-matter of FIR after completion of entire investigation.

117. There is no force in the arguments advanced by the Special Public Prosecutor for the respondent CBI that the right of the applicant accused under Section 167(2) of the Code has come to an end immediately after filing of charge-sheet on 21-4-2022 and said right under Section 167(2) cannot be revived due to reason that further investigation is pending within the meaning of sub-section (8) of Section 173 of the Code. As mentioned and discussed hereinabove that there is a distinction between completion of investigation and further investigation. The respondent CBI has conducted and concluded part investigation pertaining to alleged illegalities committed by the co-accused in initial appointment of the petitioner and subsequent redesignation and other related issues but investigation pertaining to allegations made in FIR is still pending which cannot be termed as further investigation within ambit of Section 173(8) of the Code. The further investigation can be resorted to only after the completion of investigation and filing of complete charge-sheet.

118. The decisions rendered in *Dinesh Dalmia v. CBI* [*Dinesh Dalmia v. CBI*(2007) 8 SCC 770 : (2008) 1 SCC (Cri) 36 : 2008 Cri LJ 337] and *Abdul Azeez P.V. v. National Investigation Agency* [*Abdul Azeez P.V. v. National Investigation Agency*(2014) 16 SCC 543 : (2015) 3 SCC (Cri) 534 : AIR 2014 SCW 6537] and cited by the Special Public Prosecutor do not provide much assistance to arguments of the Special Public Prosecutor for the respondent CBI. In *Abdul Azeez P.V. v. National Investigation Agency* [*Abdul Azeez P.V. v. National Investigation Agency*(2014) 16 SCC 543 : (2015) 3 SCC (Cri) 534 : AIR 2014 SCW 6537] , investigation only pertaining BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 to minor details such as the bank account details and mobile phone call details was pending for verification. The Special Court negated submissions for grant of statutory bail. The High Court after going through the charge-sheet found that the materials so disclosed and adverted to in the charge-sheet did show that it was a final report and dismissed the appeal. The Supreme Court observed that the charge- sheet so filed before the Special Court was complete in all respects so as to enable the learned Special Court to take cognizance and merely because certain facets of the matter called for further investigation it does not deem such report anything other than a final report and dismissed the special leave petition. In present case substantial investigation arising out of present FIR is still pending and even allegations as made in charge-sheet filed on 21-4-2022 regarding illegal appointment of the petitioner-accused are also directly related to pending investigation pertaining to abuse of server architecture.

119. In *Dinesh Dalmia v. CBI* [*Dinesh Dalmia v. CBI*(2007) 8 SCC 770 : (2008) 1 SCC (Cri) 36 : 2008 Cri LJ 337] , the Supreme Court observed that a charge-sheet is a final report within the meaning of

sub-section (2) of Section 173 of the Code and is filed if it enables the court to apply its mind as to whether cognizance of the offence thereupon should be taken or not and the power of the investigating officer for making further investigation in terms of Section 178(8) of the Code 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. The investigation arising out of present FIR is incomplete investigation as only one part of investigation regarding alleged appointment of the petitioner- accused is completed and pending investigation qua other offences for which charge-sheet is not filed is still pending. It is not a case of further investigation as argued by the Special Public Prosecutor.

120. There cannot be any dispute to the legal proposition that the purpose of police report under Section 173(2) of the Code is to enable the Magistrate to satisfy himself on issue of taking cognizance or not. The Special Court concerned can take cognizance only in respect of some of offences for which charge- sheet was filed on 21-4-2022 but cannot take cognizance in respect of offence for which investigation is still pending and charge-sheet is not filed. It is not permissible within mandate of legal provisions as contained in Sections 173(2) and 167(2) to take BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 cognizance in piecemeal or in parts. It would amount to negation of indefeasible right given to the accused under Section 167(2) of the Code. The constitutional right under Section 167(2) of the Code and granted to accused in case of non-completion of investigation within stipulated period cannot be interpreted to convenience of investigating agency. In the present case, the respondent CBI itself preferred to club investigation of issues arising out of SEBI order dated 11-2-2022 with investigation of offences subject-matter of present FIR. The investigating agency cannot circumvent Section 167(2) of the Code by filing incomplete charge- sheet and cannot be filed within the meaning of Section 173 (2) till the investigation is completed and any report sent before the investigation is completed will not be a police report within the meaning of Section 173(2) of the Code. The respondent CBI cannot take shelter of filing charge-sheet in respect of offences pertaining to alleged illegal appointment of the petitioner-accused by giving nomenclature of complete charge-sheet or final report as per Section 173(2) of the Code to defeat the right of statutory bail under Section 167(2) of the Code.

121. The Special Judge while dismissing application for grant of statutory bail vide order dated 28-5-2022 did not appreciate legal provisions pertaining to Section 167(2) in right perspective by holding that the charge-sheet was complete containing all the details and was filed by mentioning therein the relevant sections. The Special Judge did not appreciate difference between incomplete investigation and further investigation and accepted both phrases as carrying same meaning. The Special Judge did not correctly observed and held that the charge-sheet filed on 21-4-2022 clearly describes details of all the material collected by the IO/investigating agency during the investigation regarding role played by the co-accused and the petitioner-accused. The charge-sheet filed on 21-4-2022 was confined to the investigation related to alleged illegal appointment of the petitioner-accused and subsequent redesignation and is not related to their role in abuse of server architecture. There can only be one charge-sheet out of investigation although there is no restriction on filing of number of supplementary charge-sheets. The decision in Y.S. Jagan Mohan Reddy v. CBI [Y.S. Jagan Mohan Reddy v. CBI(2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] cited by the Special

Public Prosecutor for the respondent CBI where in one RC several transactions were investigated regarding which separate charge- sheets were filed and the cases were tried as separate cases after BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 taking cognizance and the Supreme Court refused to consider pendency of investigation in other transactions as a ground for bail holding that economic offences are a class apart. It is true that present FIR involves huge financial and economic offences but in present investigation, the offences for which charge-sheet was filed on 21-4- 2022 and offences for which investigation arising out of present FIR is still pending are interconnected and interlinked and cannot be separated and even this reflecting from status report filed by the respondent CBI and written arguments submitted on behalf of the respondent CBI. Moreover, the petitioner-accused was arrested for offences subject-matter of present FIR and her arrest is not confined to offences for which charge-sheet was filed on 21-4- 2022.

122. There is legal force and supported by judicial decisions as mentioned hereinabove that the respondent CBI has failed to complete investigation in respect of all the offences as mentioned in FIR and to file a final report under Section 173 of the Code within stipulated time i.e. sixty days from the date of the arrest of the petitioner-accused and filed an incomplete/piecemeal charge- sheet before the court concerned on 21-4-2022 i.e. 57th day from the date of arrest.

(emphasis supplied)

14. Learned Senior Counsel submitted that in the present case as well, the FIR was registered under Section 120B read with Sections 420, 468 and 471 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act and the chargesheet was filed only under Section 120B read with Section 420 and 471 of the IPC. It was further urged that at the time of filing of the chargesheet, admittedly, the CBI had written to the competent authority seeking approval under Section 17A of the PC Act, which in itself demonstrates that the investigation was continuing with respect to offences under the provision of PC Act mentioned in the subject FIR. It was argued that it has been stated in chargesheet that the role of certain public servants/bank officials had come to light and prior approval under Section 17A of the PC Act has been sought from the competent authority for BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 conducting investigation. Thus, it was submitted that at the time of filing of the present chargesheet, the investigation qua the present applicant was continuing with respect to offences under Section 13(2) read with Section 13(1)(d) of the PC Act.

15. In support of his contentions, learned Senior Counsel has further placed reliance on the following judgments:

i. Fakhrey Alam v. State of Uttar Pradesh, 2021 SCC OnLine SC 532. ii. Bikramjit Singh v. State of Punjab, 2020 (10) SCC 67. iii. Satya Narain Musadi v. State of Bihar, 1980 (3) SCC 152. iv. Dinesh v. State of Madhya Pradesh, Crl. Appeal No. 5380 of 2022 (High Court of Bombay).

v. Alnesh Akji Somji v. State of Maharashtra, Bail Application No. 271 of 2022 (High Court of Bombay).

vi. Kamlesh Chaudhary v. State of Rajasthan, 2020 3 RLW 2507 (Raj). vii. M. China Venkatareddy & Ors. v. State of Andhrapradesh, 1993 SCC OnLine AP 567.

viii. T.V. Sarma v. Smt. Turgakamala Devi & Ors., 1975 (2) APLJ 28. ix. Central Bureau of Investigation v. Chitra Ramkrishna Etc., Special Leave to Appeal (Crl.) 1550-1552/2023.

Submissions on behalf of the Respondent/CBI

16. Per contra, learned SPP for the CBI submits that the application under Section 167(2) of the CrPC filed by the present applicant before the learned Special Judge was misconceived and therefore, rightly rejected by the learned Special Judge vide the impugned order dated 10.02.2023. It was submitted that the allegations in the FIR were investigated and the chargesheet was filed with respect to the allegations in relation to which sufficient evidence was BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 gathered by the Investigating Officer. It is further submitted that as per Section 173 of the CrPC, if the report filed by the investigating agency alongwith material placed alongwith it, is sufficient for the learned Magistrate to take cognizance, then the chargesheet cannot be termed as incomplete. It was further argued that if sufficient evidence is gathered with respect to some of the allegations in the FIR and chargesheet qua them is filed, the same cannot be considered as incomplete. It was pointed out in the present case, there is sufficient evidence on record to prosecute the applicant alongwith other co-accused persons for offences under Section 120B read with Section 420 and 471 of the IPC and substantive offences thereof. It is further submitted that there is no bar on further investigation under Section 173(8) of the Cr.P.C. and on account of further investigation, chargesheet filed qua the present applicant cannot be labeled as incomplete.

17. So far as the provisions of PC Act are concerned, learned SPP submitted that the cognizance of offence under the PC Act is always with respect to the offender and not the offence. It was submitted that in the present case, initially, no public servant could be identified. Therefore, approval for sanction under Section 17A of the PC Act was sought by the Investigating Agency only when such person was identified. It was submitted that in terms of Section 17A of the PC Act, the offences under the said Act cannot be investigated, as the same would be impermissible in law. It is case of the CBI that since approval sought under Section 17A of the PC Act was denied, a supplementary chargesheet for closure of offences was filed with respect to allegations pertaining to Section 13(2) read with 13(1)(d) of the PC Act before the court of competent jurisdiction. In view of the aforesaid report, it was argued, the present issue becomes academic in nature.

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18. Learned SPP placed reliance on a judgment of the Hon'ble Supreme Court in Serious Fraud Investigation Office v. Rahul Modi, AIR 2022 SC 902, wherein it has been held as under:

☐B. The only point that arises for our consideration in this case is whether an accused is entitled for statutory bail under Section 167(2), CrPC on the ground that

cognizance has not been taken before the expiry of 60 days or 90 days, as the case may be, from the date of remand. Section 167(2), CrPC reads as below:

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

xxxxxxx (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 subsection 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 BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 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 be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

9. The issue is squarely covered by a judgment of this Court in Bhikamchand Jain (supra), as contended by the Appellant. It is necessary to closely examine the judgment passed in Bhikamchand Jain (supra). The petitioner in the said case was arrested on 11.03.2012 on the allegation of misappropriation of amounts meant for development of slums in Jalgaon City. The petitioner therein was accused of committing offences punishable under Sections 120-B, 409, 411, 406, 408, 465, 466, 468, 471, 177 and 109 read with Section 34, IPC and also under Sections 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The contention of the petitioner therein was that he could not have been remanded to custody in view of cognizance not being taken for want of sanction within the statutory period of 90 days. The scheme of the provisions relating to remand of an accused first during the stage of investigation and thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within the period prescribed therein, according to this Court in Bhikamchand Jain (supra). This Court held that in the event of investigation not being completed by the investigating authorities within the prescribed period, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. This Court was of the firm opinion that if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. However, once the charge-sheet was filed within the stipulated period, the right of the accused to statutory bail came to an end and the accused would BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 be entitled to pray for regular bail on merits. It was held by this Court that the filing of charge-sheet is sufficient compliance with the provisions of proviso (a) to Section 167(2), CrPC and that taking of cognizance is not material to Section 167. 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. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced, with such Magistrate being vested with power to remand the accused to police custody and/or judicial custody, up to a maximum period as prescribed under Section 167(2). Acknowledging the fact that an accused has to remain in custody of some court, this Court concluded that on filing of the charge-sheet within the stipulated period, 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. This Court clarified that the two stages are different, with one following the other so as to maintain continuity of the custody of the accused with a court.

10. It is clear from the judgment of this Court in Bhikamchand Jain (supra) that filing of a charge-sheet is sufficient compliance with the provisions of Section 167, CrPC and that an accused

cannot demand release on default bail under Section 167(2) on the ground that cognizance has not been taken before the expiry of 60 days. The accused continues to be in the custody of the Magistrate till such time cognizance is taken by the court trying the offence, which assumes custody of the accused for the purpose of remand after cognizance is taken. The conclusion of the High Court that the accused cannot be remanded beyond the period of 60 days under Section 167 and that further remand could only be at the post-cognizance stage, is not correct in view of the judgment of this Court in Bhikamchand Jain (supra).

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15. A close scrutiny of the judgments in Sanjay Dutt (supra), Madar Sheikh (supra) and M. Ravindran (supra) would show that there is nothing contrary to what has been decided in Bhikamchand Jain (supra). In all the above judgments which are relied upon by either side, this Court had categorically laid down that the indefeasible right of an accused to seek statutory bail under Section 167(2), CrPC arises only if the charge-sheet has not been BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 filed before the expiry of the statutory period. Reference to cognizance in Madar Sheikh (supra) is in view of the fact situation where the application was filed after the charge-sheet was submitted and cognizance had been taken by the trial court. Such reference cannot be construed as this Court introducing an additional requirement of cognizance having to be taken within the period prescribed under proviso (a) to Section 167(2), CrPC, failing which the accused would be entitled to default bail, even after filing of the charge-sheet within the statutory period. It is not necessary to repeat that in both Madar Sheikh (supra) and M. Ravindran (supra), this Court expressed its view that non-filing of the charge-sheet within the statutory period is the ground for availing the indefeasible right to claim bail under Section 167(2), CrPC. The conundrum relating to the custody of the accused after the expiry of 60 days has also been dealt with by this Court in Bhikamchand Jain (supra). It was made clear that the accused remains in custody of the Magistrate till cognizance is taken by the relevant court. As the issue that arises for consideration in this case is squarely covered by the judgment in Bhikamchand Jain (supra), the order passed by the High Court on 31.05.2019 is hereby set aside. (emphasis supplied)

19. Learned SPP for the CBI argued that reliance placed by learned Senior Counsel on the judgment of a coordinate bench of this Court in Chitra Ramkrishna (supra) is misplaced inasmuch as the facts therein were completely distinct. It was pointed out that in the said case, the FIR was initially registered under Section 120B read with Section 204 of the IPC, Sections 7, 12 and 13(2) read with Section 13(1)(d) of the PC Act and Section 66 of the Information Technology Act. It was pointed out that during the course of investigation in the said FIR, certain additional information was given to the CBI, on the basis of which the scope for investigation was extended and therefore, the chargeheet was filed with respect to the subsequent information, and not with respect to the original allegations in the FIR. Attention of this Court was drawn to the following paragraphs:

BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 ¶9. It was surfaced during investigation that SEBI had passed an order dated 11.02.22 in the matters pertaining to illegal appointment of Anand

Subramanian as 'Chief Strategic Advisor' (CSA), his re-designation as 'Group Operating Officer' and Advisor to MD' and sharing of internal confidential information of NSE with unknown person by the applicant/accused. The respondent/CBI received a request from the Ministry of Finance, Govt. of India to investigate the issues arising out of SEBI Final Order dated 11.02.2022. The respondent/CBI took up investigation as it has a serious bearing on the integrity and functioning of NSE and in turn on the robustness/integrity of National Financial System and issue highlighted in the order of SEBI dated 11.02.2022 was linked with ongoing investigation by CBI.

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31. The scope of investigation was expanded by the respondent/CBI to include Anand Subramaniam whose appointment was done in consonance with the powers exercised by the Managing Director and increase in the mandate of the work handled by Anand Subramaniam was approved by the Board of Directors. There was no illegality in appointing a person as an advisor or group operating officer in a non-public/non-government institution like the NSE. The much emphasis was laid on the alleged emails exchanged between the applicant/accused and email ID rigyajursama@outlook.com. However said email ID was accessed by Anand Subramaniam, who at that time, was already employed with NSE and was having access to all information.

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87. The learned Senior Counsel for the applicant/accused with regard to entitlement of the applicant/accused for default bail argued that the statutory right to bail U/s 167(2) of the Code is a fundamental right under Article 21 of the Constitution. The applicant/accused in custody since 06.03.2022 and the respondent/CBI has failed to complete investigation in respect of all the offences as mentioned in FIR and to file a Final Report under section 173 of the Code within sixty days from the date of the arrest of the applicant/accused who is in custody for more than 60 days. The respondent/CBI has filed an incomplete/piece-meal charge sheet before the concerned court on 21.04.2022 i.e. 46th day from the date of arrest but investigation qua other offences is pending. He further argued that filing of incomplete/piece meal charge sheet is not permissible as it was filed to deny the right to default bail to the applicant/accused.

BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 The incomplete charge sheet has been filed only with respect to sections 13(1)(d) and 13(2) of the PC Act and section 120 B IPC and not with respect to other offences as alleged in the FIR.

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113. The legal position pertaining to scope of section 167(2) of the Code emanating from above referred decisions can be summarised as under:--

i) The object of the section 167(2) of the Code is to ensure an expeditious investigation and a fair trial and is another limb of Article 21.

ii) The accused has indefeasible right in his favour for being released on bail on account of default by the investigating agency to complete investigation within the prescribed period.

iii) It is duty of the courts to ensure that benefit of Section 167(2) of the Code be given to the accused and detention beyond statutory period would be illegal being opposed to the liberty of the accused.

iv) Section 173 of the Code does not stipulate a piece-meal investigation and filing of incomplete charge sheet before Court and contemplates filing of a final report after completion of the entire investigation of the case in respect of all offences and where several offences are involved in a case. The practice of filing preliminary charge sheets to seek extension of remand beyond the statutory period should be deprecated.

v) The charge report can be filed before the court only after the investigation is over and formation of an opinion regarding all the offences alleged against the accused.

vi) There is a distinction between completion of investigation and further investigation. The further investigation can be resorted to only after the completion of investigation and filing of charge sheet.

vii) The investigating agency cannot circumvent section 167(2) of the Code by filing incomplete charge sheets. The police report or charge sheet cannot be send within the meaning of Section 173 (2) till the investigation is completed and any report sent before the investigation is completed will not be a police report within the meaning of section 173(2) of the Code.

viii) The incomplete charge sheet filed without completing the investigation cannot be used to defeat the right of statutory bail under Section 167(2) of the Code.

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ix) The right of the accused to statutory bail came to an end once the charge sheet is filed within the stipulated period. The filing of charge sheet is sufficient compliance with the provisions of Section 167(2) of the Code and taking of cognizance is not material to Section 167.

x) There can only be one charge sheet but there is no restriction on filing of number of supplementary charge sheets.

xi) The charge-sheet can be said to be complete when it enable the court to take or not to take cognizance of the offence after application of mind and if certain facets called for further investigation does not render such report anything other than a final report.

xii) The power of Magistrate to take cognizance is not lost even if the police report is termed as incomplete by the investigating officer.

xiii) If the charge-sheet is not filed then right for default bail has ripened into status of indefeasibility which cannot be frustrated by the prosecution and the courts on any pretext.

xiii) Economic offences having deep rooted conspiracies and involving huge loss of public funds, constitute a class apart and need to be viewed seriously.

114. It is reflecting from record that the respondent/CBI registered FIR bearing no RC/AC1/2018/A0011 dated 28.05.2018 registered at PS CBI/AC-I for offences punishable under sections 120B/204 IPC and sections 7/12/13(2) read with 13(1)(d) of the PC Act and section 66 of the Information Technology Act, 2000 wherein the applicant/accused was implicated. The respondent/CBI received a request from the Ministry of Finance, Govt. of India vide letter dated 05.03.2022 to investigate the issues arising out of SEBI order dated 11.02.2022 which was passed in the matters pertaining to illegal appointment of Anand Subramanian as 'Chief Strategic Advisor' (CSA), his re-designation as 'Group Operating Officer' and Advisor to MD' and other issues. The respondent/CBI took up investigation and issue highlighted in the order dated 11.02.2022 was found to be linked with ongoing investigation by the respondent/CBI in pursuance of present FIR. The applicant/accused was arrested on 06.03.2022. The respondent/CBI did not complete investigation in respect of all the offences as mentioned in FIR. The respondent/CBI has filed charge sheet before the concerned court on 21.04.2022 i.e. 46th day from the date of arrest only for offences punishable under sections 13(1)(d) and 13(2) of the PC Act and section 120 B IPC. The investigation pertaining to other BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 offences under section 66 of IT Act 2000, section 204 IPC and sections 7 and 12 of the PC Act is still pending and not completed. The Special Judge, CBI has not taken the cognizance on charge sheet filed on 21.04.2022 for want of sanction to prosecute the applicant/accused and Anand Subramanian.

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117. There is no force in the arguments advanced by the Special Public Prosecutor for the respondent/CBI that the right of the applicant/accused under section 167(2) of the Code has come to an end immediately after filing of charge sheet on 21.04.2022 and said right under section 167(2) cannot be revived due to reason that further investigation is pending within the meaning of sub-section 8 of Section 173 of the Code. As mentioned and discussed hereinabove that there is a distinction between completion of investigation and further investigation. The respondent/CBI has conducted and concluded part investigation pertaining to alleged illegalities committed by the applicant/accused in initial appointment of Anand Subramanian and subsequent re-designation and other related issues but investigation pertaining to allegations made in FIR is still pending which cannot be termed as further investigation within ambit of section 173(8) of the Code. The further investigation can be resorted to only after the completion of investigation and filing of complete charge sheet.

118. The decisions rendered in Dinesh Dalmia CBI, 2008 Cri LJ 337 and Abdul Azeez PV v. NIA, AIR 2014 SCW 6537 and cited by the Special Public Prosecutor do not provide much assistance to arguments of the Special Public Prosecutor for the respondent/CBI. In Abdul Azeez P V v. National

Investigation Agency, investigation only pertaining to minor details such as the bank account details and mobile phone call details was pending for verification. The Special Court negated submissions for grant of statutory bail. The High Court after going through the charge-sheet found that the materials so disclosed and adverted to in the charge-sheet did show that it was a final report and dismissed the appeal. The Supreme Court observed that the charge-sheet so filed before the Special Court was complete in all respects so as to enable the learned Special Court to take cognizance and merely because certain facets of the matter called for further investigation it does not deem such report anything other than a final report and dismissed the special leave petition. In present case substantial investigation arising out of present FIR is still pending and even allegations as made in charge sheet filed on BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 21.04.2022 regarding illegal appointment of Anand Subramanian are also directly related to pending investigation pertaining to abuse of server architecture.

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120. There cannot be any dispute to the legal proposition that the purpose of police report under section 173(2) of the Code is to enable the Magistrate to satisfy himself on issue of taking cognizance or not. The concerned Special Court can take cognizance only in respect of some of offences for which charge sheet was filed on 21.04.22 but cannot take cognizance in respect of offence for which investigation is still pending and charge sheet is not filed. It is not permissible within mandate of legal provisions as contained in sections 173(2) and 167(2) to take cognizance in piece meal or in parts. It would amount to negation of indefeasible right given to the accused under section 167(2) of the Code. The constitutional right under section 167(2) of the Code and granted to accused in case of non-completion of investigation within stipulated period cannot be interpreted to convenience of investigating agency. In the present case, the respondent/CBI itself preferred to club investigation of issues arising out of SEBI order dated 11.02.2022 with investigation of offences subject matter of present FIR. The investigating agency cannot circumvent Section 167(2) of the Code by filing incomplete charge sheet and cannot be filed within the meaning of Section 173 (2) till the investigation is completed and any report sent before the investigation is completed will not be a police report within the meaning of section 173(2) of the Code. The respondent/CBI cannot take shelter of filing charge sheet in respect of offences pertaining to alleged illegal appointment of Anand Subramanian by giving nomenclature of complete charge sheet or final report as per section 173(2) of the Code to defeat the right of statutory bail under Section 167(2) of the Code. (emphasis supplied) It was thus argued that the aforesaid judgment is not applicable to the facts of the present case, inasmuch as all the allegations mentioned in the present FIR have been investigated and the chargesheet has been filed with respect to offences as mentioned in the chargesheet. It was argued that the judgments of the Hon'ble Supreme Court in Dinesh Dalmia v. CBI, 2008 BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 CRL. L.J. 337 and Abdul Azeez P.V. & Ors. National Investigation Agency, 2014 AIR SCW 6537 squarely apply to the facts of the present case and therefore, no right has accrued in favour of the present applicant under Section 167(2) of the CrPC.

20. Learned SPP for the CBI further submits that insofar as the contention of the learned Senior Counsel with respect to registration of FIR without prior approval under Section 17A of the PC Act is concerned, attention of this Court was drawn to orders passed by coordinate benches of this Court in Central Bureau of Investigation v. Shyam Sunder Narang, (Order dated 22.02.2023 in W.P. (CRL.) 847/2021), Central Bureau of Investigation v. State Bank Through Rajinder Kumar Dhingra, 2022/DHC/005288 and Central Bureau of Investigation v. Union Bank of India Through Sh. Sanjay Manocha or Succeeding Officer, Union Bank of India (Order dated 24.08.2022 in W.P. (CRL.) 1909/2022). The aforesaid orders were passed with respect to instances where the learned Special Judge had refused to issue search order under Section 93 of the CrPC as there was no prior sanction under Section 17A of the PC Act. The coordinate benches, in the aforesaid orders, have observed that since the concerned public servant was not identified, even if the approval in terms of Section 17A of the PC Act is not taken, the investigation under the provisions of the PC Act would continue for the purposes of identification of the concerned public servant. It is argued that the requirement for approval or sanction under Section 17A of the PC Act would only come into picture once a public servant was identified and thus, there was no bar on an investigation qua offences under the PC Act in general.

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21. Learned SPP further placed reliance upon a judgment of the Hon'ble Supreme Court in State of Haryana v. Ch. Bhajan Lal & Ors., 1992 CRL. L.J. 527, and in particular, on the following paragraphs thereof:

¶31. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that "every complaint or information" preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that "every complaint" preferred to an officer in charge of a police station shall be reduced in writing. The word "complaint" which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word "information" was used in the Codes of

1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.

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42. The expression "reason to suspect" as occurring in Section 157(1) is not qualified as in Section 41(a) and (g) of the Code, wherein the expression, "reasonable suspicion" is used. Therefore, it has become imperative to find out the meaning of the words "reason to suspect" which words are apparently clear, plain and unambiguous.

BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55
Neutral Citation Number:- 2023:DHC:3429 Considering the context and the object of the procedural provision in question, we are of the view that only the plain meaning rule is to be adopted so as to avoid any hardship or absurdity resulting therefrom and the words are used and also to be understood only in common parlance. We may, in this behalf, refer to a decision of the Privy Council in *Pakala Narayana Swami v. Emperor* [AIR 1939 PC 47, 51-52 : 66 IA 66 : 40 Cri LJ 364] wherein Lord Atkin said as follows:

"[W]hen the meaning of words is plain it is not the duty of the courts to busy themselves with supposed intentions It therefore appears inadmissible to consider the advantages or disadvantages of applying the plain meaning whether in the interests of the prosecution or the accused. xxx

49. One should not lose sight of the fact that Section 157(1) requires the police officer to have reason to suspect only with regard to the commission of an offence which he is empowered under Section 156 to investigate, but not with regard to the involvement of an accused in the crime. Therefore, the expression "reason to suspect the commission of an offence" would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the first information report as well in the annexures, if any, enclosed and any attending circumstances which may not amount to proof. In other words, the meaning of the expression "reason to suspect" has to be governed and dictated by the facts and circumstances of each case and at that stage the question of adequate proof of facts alleged in the first information report does not arise. In this connection, we would like to recall an observation of this Court made in *State of Gujarat v. Mohanlal J. Porwal* [(1987) 2 SCC 364, 369 : 1987 SCC (Cri) 364] while interpreting the expression "reasonable belief". It runs thus : (SCC p. 369, para 4) "Whether or not the officer concerned had entertained reasonable belief under the circumstances is not a matter which can be placed under legal microscope, with an over-indulgent eye which sees no evil anywhere within the range of its eyesight. The circumstances have to be viewed from the experienced eye of the officer who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of the said circumstances. See also *Pukhraj v. D.R. Kohli* [1962 Supp 3 SCR 866 : AIR 1962 SC

1559] . BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 By way of the aforesaid judgment, learned SPP for the CBI submitted that since there was a reasonable ground to believe that an offence under the PC Act has been committed, therefore, the CBI was justified in registering the FIR under provisions of the PC Act alongwith other provisions of the IPC and carry out the investigation accordingly.

22. The case of the CBI is that on basis of suspicion of the commission of offences under the PC Act by unknown public servants, the present FIR was registered. The offences punishable under the PC Act are person specific, therefore, without identifying a particular public servant, no sanction under Section 17A of the PC Act could be sought. In absence of sanction under Section 17A of the PC Act, the investigation in the present FIR was not conducted for offences punishable under the PC Act. Once such a person was identified during the course of investigation in the present FIR, the requisite sanction was sought. However, the same was not granted and therefore, a supplementary chargesheet for closure of offences under the PC Act was filed. It was submitted that only because further investigation is continuing, the present chargesheet cannot be stated to be incomplete. Reliance in that regard has been placed on the following judgments:

i. Anantha Satya Udaya Bhaskara Rao Anantha Babu v. The State of Andhra Pradesh, MANU/AP/1718/2022.

ii. Riyazuddin v. State NCT of Delhi, 2023:DHC:2436. iii. Suraj v. State of Delhi NCT, 2022:DHC:963. iv. Ujjwal bajaj v. State of Delhi (N.C.T), Order dated 23.02.2022 in CRL.REV.P. 201/2021.

23. So far as the order dated 06.01.2023 passed by the learned Principal District and Sessions Judge-cum-Special Judge (PC Act) (CBI), Rouse BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 Avenue District Court is concerned, it was pointed out that subsequently, the chargesheet was marked to the learned Special Judge, where it is pending adjudication.

24. On a pointed query from this Court about why the chargesheet was filed before a Special Court if no offences under the PC Act were made out, leaned SPP submitted that since the FIR in the present case was registered under Section 13(2) read with 13(1)(d) of the PC Act, the Special Court would be the court of competent jurisdiction before which the chargesheet would be filed. It was further submitted that since sanction in terms of Section 17A of the PC Act was eventually denied, a supplementary chargesheet for closure of offences under the PC Act was filed. It was thus, contended that if there was no public servant involved, the question of there being a conspiracy with one does not arise and therefore, in that regard, the investigation stood complete.

25. In support of his contentions, learned SPP further placed reliance on the following judgments:

i. Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453. ii. Sanjay Dutt v. State through CBI, Bombay (II), (1994) 5 SCC 410. iii. Central Bureau of Investigation v. Shyam Sunder Narang, Order dated 22.02.2023 in W.P. (CRL.) 847/2021.

iv. Amarjeet Sharma v. Serious Fraud Investigation Office, 2022/DHC/004629.

v. Dilawar Singh v. Parvinder Singh @ Iqbal Singh & Anr., AIR 2006 SC vi. State of Maharashtra v. Sharadchandra Vinayak Dongre & Ors., AIR 1995 SC 231.

BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 vii. Fakhrey Alam v. State of Uttar Pradesh, AIR Online 2021 SC 930. viii. S.M. Purtado and etc. v. Dy. S.P. CBI Cochin and etc., 1996 CLL. L.J.

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ix. Tunde Gbaja v. Central Bureau of Investigation, 2007 [2] JCC 1306. x. Serious Fraud Investigation Office v. Rahul Modi & Ors., AIR 2022 SC 902.

xi. Akash & Ors. v. State of Maharashtra & Ors., MANU/MH/0554/2022. xii. Ranjit Kumar Bohra v. Central Bureau of Investigation, GAHC0010016032022 (Bail Appln. 229/2022) Rejoinder on behalf of the Applicant/Avinash Jain

26. In rejoinder to the submissions made by the learned SPP appearing on behalf of the CBI, learned Senior Counsel for the applicant submitted that as per the charge sheet and the reply filed by the CBI, it is an admitted case that the investigation qua offence under the PC Act in the present case was still ongoing and therefore, the charge sheet cannot be stated to be a complete one.

27. It was further submitted that in an application seeking police remand of the applicant filed before the learned Special Judge, the CBI stated that custody of the applicant was required to ascertain the full import of the alleged 'conspiracy' which also involved public servants and bank officials. Thus, it would be logical to assume that investigation qua the public servants had begun. It was submitted that even though the mandate of Section 17A of the PC Act requires prior sanction before investigating the role of public servants, the same was applied for belatedly. The FIR was registered on 19.11.2020. The applicant was arrested on 14.11.2022 and remanded to judicial custody on 21.11.2022. The sanction was applied for by the CBI only on 16.12.2022. Thus, the applicant was arrested for offences under Section BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 13(2) read with Section 13(1)(d) of the PC Act alongwith other offences under the IPC much before the CBI applied for sanction, meaning thereby, the role of the public servants was already being investigated. Learned Senior Counsel further drew the attention of this Court to the supplementary charge sheet dated 01.04.2023 filed alongwith the Additional Status Report placed on record by the CBI, wherein it has been stated that the CBI was investigating the role of a public servant - Anil Kumar, qua whom sanction under Section 17A of the PC Act was sought. In the said supplementary charge sheet, it has been stated as under:

¶6.4. That, during investigation, role of public servant/Bank Official Sh. Anil Kumar, the then AGM and Relationship Manager, State Bank of India came to light for violations/omissions/commissions in sanctioning/disbursing/monitoring of

credit facilities granted to M/s Arise India limited. Accordingly, prior approval of the Competent Authority of concerned bank was sought as per Section 17 A of the Prevention of Corruption (as amended in 2018) Act, 1988 vide request letter dated 16.12.2022 for investigating the role of the said public servant/bank officer. The copy of the CBI letter dated 16.12.2022 is submitted as Annexure □A'. Discussion

28. Heard learned counsel for the parties and perused the record. Provision

29. Section 167(2) of the CrPC reads as under:

□(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 -

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(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 be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution. (emphasis supplied) BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429

30. 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 & Ors., 1996 SCC OnLine Ker 112. v. Tunde Gbaja v. Central Bureau of Investigation, 2007 [2] JCC 1306.

31. Per contra learned SPP for the CBI submitted that the aforesaid decisions were based on a different set of facts and circumstances. It was pointed out that the decision in Fakhrey Alam (supra) was rendered with respect to a factual background wherein the FIR was initially registered for offences for which the stipulated period for filing of chargesheet in terms of Section 167(2) of the CrPC was 180 days. After the lapse of the stipulated period, chargesheet was filed for lesser offences and therefore, it was held that BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 the chargesheet was incomplete. It was further pointed out that in Tunde Gbaja (supra), for the offences under which the FIR was registered, the stipulated time period to file a chargesheet was 90 days. However, the chargesheet was filed only for an offence under the Foreigners Act, 1946, which was not a part of the FIR, within 60 days of arrest and therefore, the chargesheet was held to be incomplete. Learned SPP

for the CBI drew a distinction on the basis of the fact that in the present case, the offences for which the FIR was registered were all punishable up to seven years and therefore, the stipulated period for filing the chargesheet would have been 60 days. It is urged that since the chargesheet was filed within the stipulated period of 60 days, therefore, the present chargesheet cannot be called incomplete and as being filed only to defeat the right of the applicant under Section 167(2) of the CrPC.

Issue

32. The issue for consideration in the present case for this court is whether the chargesheet, filed under Section 120B read with Section 420 and 471 of the IPC and substantive offences thereof, in a case where the FIR was registered under Section 120B read with Sections 420, 468 and 471 of the IPC and Section 13(2) read with Section 13(1)(d) of PC Act while stating that further investigation is continuing with respect to offences under the PC Act is an incomplete chargesheet?

Precedents

33. For determining the said issue, it would be relevant to refer to some precedents cited at the bar:-

33.1. In Fakhrey Alam (supra), the FIR was registered under Sections 420, 467, 468, 471 and 120B of the IPC; Sections 3, 5 and 30 of the Arms Act, BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 1950 and Section 18 of the Unlawful Activities (Prevention) Act, 1967 (‘UAPA’). The investigating agency was granted 180 days to file the chargesheet. The chargesheet was filed within 180 days of the appellant's arrest qua all the offences stated in the FIR except UAPA as required sanction was not received. A supplementary chargesheet qua offences under UAPA was filed after expiry of 180 days. While granting bail to the appellant, the Hon'ble Supreme Court held as under:

¶3. If we look at the scenario in the present case in that conspectus, the charge sheet under the provisions of law as originally filed on 04.09.2017 were required to be filed within 90 days but was actually filed within 180 days. This was on the premise of the charge under Section 18 of the UAPA Act. However, no charge sheet was filed even within 180 days under the UAPA Act, but post filing of the application for default bail, it was filed after 211 days. Thus, undoubtedly the period of 180 days to file the charge sheet qua UAPA Act had elapsed. We do not think that the State can take advantage of the fact that in one case there is one charge sheet and supplementary charge sheets are used to extend the time period in this manner by seeking to file the supplementary charge sheet qua the offences under the UAPA Act even beyond the period specified under Section 167 of the Cr. P.C. beyond which default bail will be admissible, i.e, the period of 180 days. That period having expired and the charge sheet not having been filed qua those offences (albeit a supplementary charge sheet), we are of the view the appellant would be entitled to default bail in the aforesaid facts and circumstances. 33.2. In S.M. Furtado (supra), the Hon'ble High Court of Kerala held as under:

□2. The other question is, whether the CBI was right in filing a 'charge report' without making a final report in respect of the offences alleged to have been committed by the petitioners under the Official Secrets Act, 1923 and other enactments. Standing counsel for the CBI pointed out that since the investigation in respect of the offences other than the one under the Official Secrets Act has already been completed, the CBI is entitled to file a final report under S. 173 of the Code so far as those offences are concerned. Therefore, BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 according to him, the further remand of the petitioners to judicial custody was legal, under S. 309(2) of the Code.

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14. The investigation under S. 167 of the Code can be one involving one or more offences against the accused persons. The investigation of a case cannot be split up in such a way to file piece-meal reports before Court. Section 173 of the Code does not stipulate a piece-meal investigation and filing of incomplete charge sheet before court. It contemplates filing of a charge/refer report after completion of the entire investigation of the Case in respect of all offences and where several offences are involved in a case, a charge report could be laid before court only after the investigation is over and formation of an opinion regarding all the offences alleged against the accused. Admittedly, for the offence under S. 3 of the Official Secrets Act, 1923, the maximum punishment prescribed is 14 years of imprisonment. Therefore, under S. 167(2) of the code, the maximum period of the accused could be detained in custody is 90 days. That period was over on 10-4-1996, the date on which the CBI had filed a report in Court in respect of offences other than the one under the Official Secrets Act. Admittedly, the petitioners are even now in custody and now more than 130 days have elapsed since then.

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16. This court further held that when S. 173 speaks of completion of investigation, it must ordinarily be taken to refer to completion of investigation of all the facts and circumstances relating to the case, whether the transaction involves one offence or plurality of offences and a final report or charge sheet under S. 173 could be filed only after completion of the investigation in the case relating to all the offences arising in the case. We are in respectful agreement with the said finding arrived at by U.L. Bhat, J., as he then was. Viewed in that light, it must be held that the □charge report' stated to have been filed by the CBI on 10-4-1996 cannot be said to be a final report as contemplated under S. 173 of the Code and we must say that the prosecution was not justified in making piece-meal charge report in respect of various offences alleged to have been committed by the petitioners. In the absence of completion of the investigation of the case against the petitioners, we hold that the Magistrate cannot take cognizance of the case as contemplated under S. 309 of the Code.

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19. Thus, in the light of the report filed by the C.B.I., a further investigation in respect of the offences under the Official Secrets Act, IPC, Act and the Order is necessary. If final report is laid before court and the magistrate takes cognizance of the offence, a further report under S. 173(8) of the Code regarding commission of offences or involvement of the accused in connection with the other offences can be made. But in the absence of a final report in respect of all the offences, it cannot be said that a final report under S. 173(2) in respect of the offences alleged to have been committed by the petitioners under the Official Secrets Act could be legally filed by invoking the provisions of S. 173(8) of the Code. The finding of the court below to the contra is, in our view, illegal.

20. Admittedly, no final report has been filed by the CBI against the petitioners in respect of the various offences. In its absence, the prosecution is not justified in resorting to S. 173(8) of the code to submit a further report in respect of the alleged involvement of the petitioners under the Official Secrets Act, IPC, Act and the other. Since the investigation of the case is not complete, we find no reason to deny the statutory bail to the petitioners under S.

167(2) of the Code. (emphasis supplied) 33.3. In Tunde Gbaja (supra), a learned Single Judge of this Court was presented with a situation where an FIR was registered under Sections 489A, 489B, 489C, 489D and 489E read with Section 120B of the IPC, however, a charge-sheet was filed only under Section 14 of the Foreigners Act, albeit, within 60 days of the applicant's arrest. After considering the decision of the Hon'ble Supreme Court in Uday Mohanlal Acharya v. State of Maharashtra, AIR 2001 SC 1919 and the decision of the Hon'ble High Court of Kerala in S.M. Furtado (supra), it was held that even though the investigating agency has a right to file a supplementary chargesheet in terms of Section 173(8) of the CrPC, they cannot be permitted to file an incomplete chargesheet. While granting bail to the applicant, the Court held as under:

20. It is well known that the court takes cognizance of the crime, not the offender. The argument that the respondent filed a BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 charge-sheet, within time, when it did, is not correct. The charge-sheet pertains only to the offence under the Foreigners Act, for which, as per proviso to Section 167 (2) had to be filed within 60 days. But for the other offences, in respect of which the period prescribed, for filing the charge sheet is 90 days, no charges were indicated. Though the right of the investigating agency to file a supplementary charge sheet, or a further report (under Section 173(8) pursuant to order of the court) cannot be disputed, yet the fact remains that there cannot be part charge sheet, as has been contended in the present case. Therefore, following the decision in S.M. Furtado's case, as well as the Supreme Court ruling in Uday Mohanlal Acharya, it has to be concluded that the petitioner is entitled to be enlarged on bail. This is without prejudice to such other rights the respondents may have in law, to place further materials in support of the case, before the trial Court. 33.4. In C. Parthasarthy v. Director of

Enforcement, 2022 SCC OnLine TS 1075, the Hon'ble High Court of Telangana observed that the chargesheet in the subject case was filed within 60 days of the applicant's arrest but was not one on the basis of which cognizance could have been taken. It was held that a report in terms of Section 173 of the CrPC cannot be treated as a 'final report' unless investigation is complete, which admittedly was not the case therein. After canvassing the law laid down on the subject by the Hon'ble Supreme Court, the Court granted to bail to the applicant therein and held as under:

¶4. Section 167(2) of the Cr.P.C. obligates the investigative agencies to complete the investigation in a time bound manner. The object behind incorporating a time limit to complete investigation was explained by a full bench of the Supreme Court in Ravindran (Supra).

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15. From the above decision, it is clear that a time limit for completing investigation was incorporated in order to ensure that the accused does not languish in jail for the investigative authority's failure to complete investigation. It was held that the right to statutory bail accrues on a person if the charge sheet is not filed within the prescribed BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 period of sixty days. The said right to bail is indefeasible and is interlinked with personal liberty as envisaged under Article 21 of the Constitution of India.

16. This Court would like to clarify as to when a person is entitled for statutory bail under Section 167(2) of Cr.P.C. It was contended on behalf of the Petitioner that Section 167(2) of Cr.P.C. comes into operation if no cognizance is taken within the prescribed period. The said contention cannot be accepted. The test to determine whether a person is entitled for bail under Section 167(2) of Cr.P.C. is not the date of taking cognizance but the date of filing charge sheet. In other words, the right of statutory bail ceases to exist the moment a charge sheet is filed within the prescribed period of sixty or ninety days.

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23. From the above decisions, it is clear that a charge sheet can be filed only after the completion of investigation. Investigation is said to be completed if sufficient material is collected by the Investigating Officer based on which cognizance can be taken under Section 167 of the Cr.P.C. It was contended by the Respondent that the complaint dated 19.03.2022 is a charge sheet and only further investigation is being carried out which is permissible under Section 44(1)(d)(ii). The said contention cannot be accepted.

24. The Designated Court has extended the remand of the accused on 31.03.2022 and subsequently on 13.04.2022 under Section 167(2) of the Cr.P.C. on the ground that investigation is pending. This clearly indicates that the complaint dated 19.03.2022 was filed without completing the investigation. Therefore, the complaint dated 19.03.2022 is an incomplete complaint/charge sheet. Further, if complaint dated 19.03.2022 was filed after completion of investigation, the Designated

Court would have taken cognizance of the offence. Not taking cognizance of the offence when complaint dated 19.03.2022 was already filed indicates that investigation is incomplete. Therefore, complaint dated 19.03.2022 cannot be treated as a complaint/charge sheet under Section 173(2) of the Cr.P.C. The Supreme Court in Ravindran (Supra) discussed how the Investigating Officers used to file preliminary charge sheets to seek extension of remand beyond the statutory period. It was to discourage such abuse of process that a statutory limit of sixty days was incorporated in Section 167(2) to complete the investigation and file the charge sheet. In the present case, the Respondent cannot file a complaint without completing the investigation and seek extension of remand beyond the statutory period of sixty days. A complaint/charge sheet filed BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 without completing the investigation cannot be used to circumvent the right of statutory bail under Section 167(2) of the Cr.P.C.

25. The Bombay High Court in Sharadchandra Vinayak Dongre v. State of Maharashtra had to deal with a similar situation. The State contended that charge sheet was already filed but the investigation is yet to be completed. The Court therein drew a distinction between completion of investigation and further investigation. It held that it is only after the completion of investigation and filing of charge sheet that further investigation can be resorted to. In other words, Section 173(8) of the Cr.P.C. comes into picture only after completion of investigation and filing of the charge sheet under Section 173(2) of the Cr.P.C. Further, the court held that by filing incomplete charge sheets, the State cannot circumvent Section 167(2) of the Cr.P.C.

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27. At the cost of repetition, this Court holds that the complaint dated 19.03.2022 was not a final complaint based on which cognizance could have been taken. A complaint/report cannot be treated as final report unless the investigation is completed, In the present case, the investigation is admittedly not completed and the statutory period of sixty days expired on 21.03.2022. Therefore, in the absence of complete investigation and absence of filing a final complaint, the Petitioner is entitled for statutory bail under Section 167(2) of the Cr.P.C.

28. It was sought to be contended on behalf of the Respondent that the Petitioner was remanded not under Section 167 of the Cr.P.C. but under Section 309 of the Cr.P.C. The said contention is ex facie misconceived. The Supreme Court in Dinesh Dalmia v. CBI has held that Section 309 of the Cr.P.C. comes into operation only after cognizance of the offence is taken. In the present case, no cognizance is taken till date. (emphasis supplied) 33.5. In Chitra Ramkrishna (supra), a coordinate bench of this Court was dealing with an application for statutory bail filed in a case where the FIR was registered under Section 120B read with Section 204 of the IPC and Sections 7, 12 and 13(2) read with Section 13(1)(d) of the PC Act and Section 66 of the Information Technology Act, 2000 ('IT Act'); whereas the chargesheet, on the 46th day from the date of arrest of the applicant therein was filed under Sections 13(1)(d) and 13(2) of the PC Act and Section 120B of the IPC. It BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 was stated that further investigation qua offences under Sections 7 and 12 of the PC Act, Section 204 of the IPC and Section 66 of the IT Act was continuing.

It was held that the chargesheet so filed was incomplete. It was observed that the mandate of Sections 173(2) and Section 167(2) of the CrPC does not permit a Court to take cognizance piece-meal or in parts as that would inevitably negate the right of an accused to statutory/default bail. It was further observed that Section 167(2) provides for a right which cannot be interpreted to the convenience of the investigation agency. While allowing the application for bail, it was held as under:

□16. In view of the legal position pertaining to section 167(2) of the Code as discussed hereinabove, Section 173 of the Code only permits filing of a final report after completion of the entire investigation in respect of all offences and does not permit a piece-meal investigation and filing of incomplete charge sheet before Court. The charge sheet filed by the respondent/CBI is a piece meal charge sheet and is not filed in respect all offences subject matter of present FIR. The respondent/CBI is not legally permitted to pick one portion of investigation and to complete it and thereafter file piece meal charge sheet in respect of few offences subject matter of FIR and to left open investigation in respect of other offences and subsequent filing of charge sheet in respect of left over offences. This would be complete negation of section 167(2) of the Code. The investigating agency cannot be permitted to fragment or break FIR for the purpose of different charge sheets and this will tantamount to negation of section 167(2) and would against mandate of Article of 21 of the Constitution. The practice of filing such types of charge sheets to seek extension of remand beyond the statutory period was deprecated by the Superior Courts in past. The investigating agency is required to form opinion regarding all offences subject matter of FIR after completion of entire investigation.

117. There is no force in the arguments advanced by the Special Public Prosecutor for the respondent/CBI that the right of the applicant/accused under section 167(2) of the Code has come to an end immediately after filing of charge sheet on 21.04.2022 and said right under section 167(2) cannot be revived due to reason that further investigation is pending within the meaning of BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 sub-section 8 of Section 173 of the Code. As mentioned and discussed hereinabove that there is a distinction between completion of investigation and further investigation. The respondent/CBI has conducted and concluded part investigation pertaining to alleged illegalities committed by the applicant/accused in initial appointment of Anand Subramanian and subsequent re- designation and other related issues but investigation pertaining to allegations made in FIR is still pending which cannot be termed as further investigation within ambit of section 173(8) of the Code. The further investigation can be resorted to only after the completion of investigation and filing of complete charge sheet. (emphasis supplied) 33.6. In *Riyazuddin v. State NCT of Delhi*, 2023 SCC OnLine Del 2073, a coordinate bench of this Court had the occasion to examine the question of default bail in a case where an FIR was registered under Sections 489A and 489C read with Section 120B of the IPC, the applicant was arrested and remanded to judicial custody and a chargehseet was filed, while keeping further investigation open. Upon filing of the first chargesheet, the Court took cognizance of offences under Sections 471, 489B, 489C, 120B of the IPC. Upon filing of a supplementary chargesheet under Sections 419 and 420 of

the IPC over six months later, the Court took cognizance of offence punishable only under Section 420 of the IPC. The Court, in the said case, was of the opinion that the initial chargesheet was complete in all respects qua the offences mentioned in the FIR and thus, the applicant's plea for default bail was rejected. It was held as under:

¶5. It would be therefore evident that as regards the offences mentioned in the FIR, the initial charge-sheet filed was complete in all respects and therefore the petitioner cannot be entitled to default bail in that regard. It was only the discovery of the Aadhaar card which required verification and a subsequent investigation and upon discovery that it was a fake Aadhaar card which also needs to be verified, consequently offences under Section 419 and 420 of BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 the IPC were added. This would not fall foul of the decisions noted herein above considering that an additional offence was discovered pursuant to a further investigation which is not precluded as per Section 173(8) which provides for further investigation in respect of an offence. This was not a case where the offence of Sections 419 and 420 was noted in the FIR and for which the charge sheet ought to have been filed within the prescribed time under Section 167(2) but a discovery of a further fact which was relatable to an additional offence which was thereafter added by a supplementary charge-sheet. The detention of the accused under Section 167(2) was in respect of offences for which the investigation was underway and in respect of which the charge-sheet was filed within the prescribed time. The discovery of yet another offence from the articles recovered from the accused would not preclude a further investigation and the addition of a charge under another offence at a subsequent stage. In Tunde Gbaja (supra), the charge-sheet was filed pertaining only to the offences under the Foreigners Act within a prescribed time but for the other offences under the Official Secrets Acts, IPC etc., the supplementary charge-sheet was filed later. In the said case, the FIR was registered against the accused for offences punishable under Sections 120B, 489A to 489E of the IPC. It was later discovered that he was in violation of the provision of the Foreigners Act, wherein charge-sheet was filed within the stipulated time of 60 days.

Therefore, the decision in Tunde Gbaja was distinguishable and in the considered opinion of this Court, the petitioner would not be entitled to seeking default bail. (emphasis supplied) 33.7. The Hon'ble High Court of Bombay (Nagpur Bench) dealt with an application seeking default bail in Akash & Ors. v. State of Maharashtra & Ors., 2022 (2) Bom CR(Cri) 461. In the said case, initially, the FIR was registered under Sections 302, 201, 120B, 364 and 212 read with Section 34 of the IPC, Section 4 and 25 of the Arms Act, 1959 and Section 142 of the Maharashtra Police Act. During the course of investigation, the investigating officer formed an opinion that the accused ought to be prosecuted for offences committed under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 of Organised Crime Act, 1999 (MCOCA'). The provisions with respect to MCOCA came to be added on 13.08.2021. The Special Public Prosecutor,

then made an application seeking detention of the accused persons for a period upto 180 days, as provided for in MCOCA. The learned Special Judge rejected the said application and the chargesheet was filed qua the offences which were originally mentioned in the FIR, within 90 days of arrest. An application filed on behalf of the accused persons for default bail was dismissed by the learned Special Judge. While dismissing an appeal against the said order, the Hon'ble High Court of Bombay held as under:

□6....In this case charge-sheet has been filed within 90 days. It is not clear whether the further investigation would be carried out or not.

Even if the investigating officer decides to carry out the investigation it would be his prerogative as provided under Section 173(8) of the Cr.P.C. The charge-sheet filed before expiry of 90 days is a complete charge-sheet for the principal offence of murder and other offences. The verdict of the Hon'ble High Court of Bombay (Nagpur Bench) in the aforesaid case is distinguishable with the present case on its facts inasmuch as in the present case, it is an admitted position that provisions of the PC Act were invoked in the FIR at the very first instance and in the original chargesheet that was filed on 06.01.2023, further investigation qua the offences under the PC Act itself was stated to be ongoing. 33.8. In *Ranjit Kumar Borah v. Central Bureau of Investigation*, 2022 SCC OnLine Gau 563, the FIR was registered under Sections 120B of the IPC read with Sections 7, 8 and 11 of the PC Act and the chargesheet was filed qua the same offences within 60 days of arrest. However, further investigation, for want of opinion from the CFSL was kept open. While observing that the materials gathered thus far by the investigating agency were sufficient to BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 constitute the alleged offences and only ancillary aspects of the investigation were pending, the Hon'ble High Court of Gauhati rejected the application for default bail. It was held as under:

□39. The power vested upon the investigating agency by section 173(8) of the Cr. P.C. is a wide power. The said sub-section opens up with the wordings □Nothing in this section shall be deemed to preclude further investigation... which is in the nature of a non obstante clause giving overriding powers. Under this provision, the investigating agency shall not be precluded by anything in the section from making further investigation in respect of the report which has been submitted under sub-section (2) and on obtaining further evidence, the same should be forwarded to the Magistrate in the form of a further report or reports regarding such evidence wherein the provisions of sub-sections (2) to (6) shall apply.

40. When the investigating agency itself has come to a finding that the substantive offences have been made out, as recorded in paragraphs 16.23 and 16.24 of the charge sheet, this court in deciding a bail application cannot enter into the merits of such findings which are matters, strictly within the domain of the investigating agency. In any case, the said findings are neither the subject-matters of challenge nor required to be dealt with by this court, as no such occasion has arisen.

41. As noted above, the contents of paragraph 16.25 of the charge sheet would reveal that further investigation may be required mainly with regard to the amount of Rs. 2,12,99,000 which has been recovered from the residence of Shri Vijay Kumar Upadhyay which was not specifically mentioned at the time of lodging of the FIR. A bare look at the FIR would reveal that apart from the present three petitioners, other unknown public servants and private persons, are also involved. Section 173(8) of the Cr. P.C. having empowered the investigating agency to make further investigation, this court is unable to accept the submission made on behalf of the petitioners that they are entitled to default bail.

42. Though the entire thrust on behalf of the petitioners was on default bail which has been negated by this court, as held above, the attempt to make out a case for regular bail is also required to be dealt with even though the said attempt was a frail one.

43. From the side of the petitioners, it has been contended that even the statements of the 27 numbers of witnesses recorded so far, do not make out a case against the petitioners. The said contention is BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 vehemently refuted by the CBI and Shri Keyal, learned standing counsel has also presented before this court a tabular form of the gist of the statements recorded.

44. However, this court is of the opinion that while deciding an application praying for bail, this court would be loath to enter into the said aspect of the matter, as firstly, there is no occasion in a bail application to do so and secondly, any observation made by this court at this stage of consideration of a bail may cause prejudice to either of the parties. While the Code itself provides necessary avenues to pray for discharge before the learned trial court, this court is of the opinion that it would not be prudent to usurp such powers as the same may amount to transgression of jurisdiction. 33.9. In *Anantha Satya Udaya Bhaskara Rao v. State of Andhra Pradesh*, 2022 SCC OnLine AP 2166, a petition was filed before the Hon'ble High Court of Andhra Pradesh seeking default bail in a case where the FIR was registered under Sections 302/201/34 of the IPC and Sections 3(1)(r)(s) and 3(2)(v) of the Scheduled Tribes (Prevention of Atrocities) Act, 1989, however, the chargesheet, though filed within 90 days of arrest, was returned on account of some omissions. An application filed for default bail before the learned Trial Court was dismissed on the ground that the police have filed charge sheet in conformity with section 173(2) of CrPC within the statutory period prescribed and simply because it was returned for not filing the scientific experts' opinion, the same does not confer any right on the petitioner to seek default bail under Section 167(2) of CrPC. The Hon'ble High Court of Andhra Pradesh, as well, dismissed the application for default bail stating that the chargesheet filed was complete inasmuch as it was sufficient for the concerned Court to take cognizance. It was held as under:

□40. The observations made in the above referred decisions in clear and unambiguous terms clarify that, what all required is completion of investigation and not mere filing of charge sheet and thus charge sheets filed without completion of

actual investigation cannot be said BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 to be proper compliance of requirement under section 167(2) of CrPC and that preliminary charge sheets filed without completing the investigation cannot defeat the right of getting default bail.

41. In Velinedipuram relied on by the learned senior counsel for victim, a Division Bench of erstwhile High Court of Andhra Pradesh held at para-4 as follows:

□4. So, what has to be looked into at this stage by the Magistrate is only to see whether any offence was disclosed in the police report and whether the names of the accused, witnesses etc., are furnished. If the names of the accused and the nature of the offence is not disclosed, or cannot be culled out on a reading of the police report, then perhaps it may be a case of non-compliance of the provisions of S. 173(2) of the Code. But, where it is fairly made clear about the names of the accused, the offence involved in the case together with similar other necessary details, even if there are some omissions in some minor particulars like the age of the accused, father's name etc., it cannot be said that there is failure of compliance with S. 173(2). For this view of ours, reliance can be placed on a decision of the Supreme Court reported in Satya Narain v. State of Bihar, (1980) 3 SCC 152 : AIR 1980 SC 506 : 1980 Cri LJ 227, wherein the Supreme Court observing that if the report with sufficient particularity and clarity specifies the contravention of the law which is the alleged offence it would be sufficient compliance, stated as follows--

□Turning now to the charge-sheet submitted in this case it sets out all the details as required by S. 173(2) of the Code. The name of the accused is mentioned. The nature of the offence is mentioned. It is further stated that the information of the offence was given by Mahesh Kant Jha. It is also stated that there was sufficient evidence to proceed against Satya Narain Musadi appellant herein under S. 7 of the Act.

May be that the charge-sheet could have been more informative or the information set out in the charge-sheet could be styled as scanty. Some more details may have been helpful. It, however, could not be said that it did not disclose an offence of which the Magistrate could take cognizance under Sec. 190(1)(b). Ultimately when a Magistrate looks at police report also styled as charge-sheet under S. 190(1)(b) he takes cognizance of an offence upon a police report and prima facie he does so of the offence or offences set out in the report (Vide Darshan Singh Ram Kishan v. State of Maharashtra, (1971) 2 SCC 654 : (1972) 1 SCR 571 at p. 574 : 1971 Cri LJ 1697. And the report under discussion does disclose an offence under S. 7 of the Act . BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429

42. The Division Bench has further held at para No. 5 that non- filing of all the enclosures under Section 173(5) along with the report filed under S. 173(2) is not a ground to release the accused on the premise that full charge sheet is not filed within the stipulated time.

43. In Venkatarayanakota Krishnappa Raghavendra Buvanahalli Muniyappa Nagesh Babu relied on by the learned Additional Public Prosecutor, the Division Bench of High Court of Composite state of Andhra Pradesh this Court while answering reference made to it whether the charge sheet, which was filed within 90 days, but was returned for compliance of certain technical objections of not filing the scientific expert's opinion, is a proper compliance under section 173 Cr.P.C. and whether the same confer any right on the accused to seek bail as a matter of right, as required under Section 167 Cr.P.C., at para-22 held as follows:

□22. We accordingly answer the question referred as under : Once the charge is filed within 90 days, but was returned for compliance of certain technical objections of not filing the scientific expert's opinion, is a proper compliance under Section 173 (2) Cr.P.C. and the same will not confer any right on the accused to seek bail, as a matter of right. Even in a case where the charge sheet is filed after 90 days, but before accused seeks bail availing the benefit under proviso to sub- section (2) of Section 167, his indefeasible right will be extinguished on filing such charge sheet.

44. From the observations made in the aforementioned citations, it is evident that the charge sheet must contain the particulars so as to enable the Magistrate to take cognizance under Section under Sec. 190(1)(b) and charge sheet should be filed after concluding the investigation in all respects and it is further evident that mere return of charge sheet for compliance of certain technical objections of not filing the scientific expert's opinion, is a proper compliance under section 173 Cr.P.C. Analysis and Conclusion

34. The admitted factual position in the present case is as follows:-

i. The FIR bearing No. RC2232020A0009, under Section 120B read with Section 420/468/471 of the IPC and 13(2) read with 13(1)(d) of the PC Act, was registered on 19.11.2020 on the basis of a complaint received BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 from the SBI against M/s Arise India Ltd. and its Directors including the present applicant alongwith □unknown public servants'.

ii. The applicant was arrested on 14.11.2022 for offences under Section 120B read with Sections 420, 468 and 471 of the IPC and 13(2) read with 13(1)(d) of the PC Act. He was produced before the learned Special Judge on 15.11.2020 and was remanded to judicial custody for one day for the purposes of hearing the application of CBI on police custody on 16.11.2020.

iii. On 16.11.2020, on an application moved by the CBI for police custody, the present applicant was remanded to police custody for five days. In the said application, the CBI averred as under: □6. That in view of the aforesaid facts and circumstances, arrest and custodial interrogation of Sh. Avinash Jain was required in order to in order to unearth the whole conspiracy and involvement of other co-accused persons including the role of public servants.

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19. That the custodial interrogation of accused Avinash Jain is required to unearth the criminal conspiracy behind the fraud perpetrated by the borrower company M/s. Arise India Ltd. and to ascertain the diversion & siphoning off of the credit limits availed by the accused company. The custodial interrogation of accused Avinash Jain is also required to ascertain the role of other persons including bank officials, who had aided him in the aforesaid conspiracy. iv. Thereafter on 21.11.2020, on an application moved by the CBI, the applicant was remanded to judicial custody in the aforesaid FIR. v. The CBI sent a letter to the Chief Vigilance Officer, SBI, Vigilance Department on 16.12.2022 seeking approval in terms of Section 17A of BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 the PC Act to investigate the role of one Anil Kumar, the then Assistant General Manager and Relationship Manager at SBI. vi. The chargesheet in the present case was filed on 06.01.2023 under Section 120B read with Sections 420 and 471 of the IPC against the applicant and other accused persons. Apart from the applicant, all the other accused persons were chargesheeted without arrest. Relevant part of the chargesheet reads as under:

□6.73 Investigation therefore, has clearly established commission of cognizable offence by M/s. Arise India Limited, Avinash Jain, Amit Jain, Naresh Chand Jain, Anju Jain, Pankaj Jain. Mohan Singh Chauhan and Mukesh Kumar therefore chargesheet is being filed for launching prosecution against (1) Avinash Jain, (2) Amit Jain, (3) Naresh Chand Jain. (4) Anju Jain (5) Pankaj Jain, (6) Mohan Singh Chauhan and (7) Mukesh Kumar u/s 120-B r/w 420 and 471 of Indian Penal Code and substantive offences thereof. Prosecution is also recommended against M/s Arise India Limited U/s 420 IPC.

xxx 16.75 That during investigation role of certain public servants / Bank Officials came to light for violations/ omissions/comissions/sanctioning/ disbursing/ monitoring of credit facilities granted to M/s Arise India Limited. Prior approval of the competent authorities of concerned banks have been sought as per Section 17 A of The Prevention of Corruption (as amended in 2018) Act. 1988 for conducting investigation of the offences against the said public servants/ bank officers. vii. On 06.01.2023 an order was passed by the learned District and Sessions Judge-cum-Special Judge (PC Act) (CBI), Rouse Avenue District Court, wherein it was recorded that it would be proper if the chargesheet was returned to the CBI so as to enable them to complete the investigation after ascertaining the role of BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 the public servants. It is pertinent to note that no cognizance of the aforesaid chargesheet was taken at that point of time. viii. On 16.01.2023, the learned Special Judge to whom the aforesaid chargesheet was marked, passed an order wherein it was observed as under:

□The Charge Sheet in the present matter had been filed by the IO on 06.01.2023 and the matter was placed by the Filing Agency Official before the Ld. Principal District & Sessions Judge on the very day. The Ld. Principal District & Sessions Judge assigned the same to this Court vide order of that day itself while observing certain glaring ambiguities in the Charge Sheet.

In para no. 16. 75 of the Charge Sheet, it has been mentioned that for approval or the Competent Authorities qua the Public Servants/Bank Officials has been sought fur as per the provision u/s 17 A.

However, clandestinely it has nowhere been made clear in the entire Charge Sheet as to on which date, month or even the year the requisite letter etc., was written for the permission qua Bank Officials as per Section 17 A of the PC Act 1988. On being inquired, 10 has apprised that such letter of request through the 1 lead or the Branch was sent addressed to the Chief Vigilance Officer, State Bank of India, Vigilance Deptt. Corporate Centre, 81h Floor, Madame Cama Road, Mumbai-400021 as on 16.12.2022. The learned Special Judge sought clarification from the CBI with regard to procedures/guidelines followed by CBI in an investigation with regard to the alleged bank fraud cases.

ix. In compliance of the aforesaid order dated 16.01.2023 passed by the learned Special Judge, the CBI filed a compliance report dated 27.01.2023, wherein it has been recorded as under: ¶5. That during investigation, role of certain public servants/Bank Officials came to light for violations/ BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 omissions/commissions in sanctioning/disbursing/ monitoring of credit facilities granted to M/s Arise India Limited. Prior approval of the competent authorities of concerned banks have been sought as per Section 17 A of the Prevention of Corruption (as amended in 2018) Act, 1988 vide request letter dated 16.12.2022 for conducting investigation of the offences against the said public servants/ bank officers.

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14. That, in the instant case identification of public servant and attributing the specific omission/commission of act(s) on his part has been the subject matter of investigation and due process for the same has been followed in light of the DoPT Notification dated 03.09.2021 as mentioned above as the same was processed only after collecting and analyzing voluminous documents, which involved but not limited to Financial Statements, ledgers. Stock Statements of the accused company and Sanction Proposal, Disbursement Notes voluminous Bank Statements/Transactions etc. from all the consortium member Banks, during investigation of the case. As the allegations mentioned in the complaint are various and amount involved was huge i.e. to the tune of Rs. 512.67 Crores, the same were to be ascertained before reaching to any conclusion regarding the role of FIR named accused persons and before establishing the identity of unknown public servants. Large number of witnesses were also examined to identify and ascertain the allegations as mentioned in the FIR.

15. That it is also submitted that after reaching to a logical conclusion regarding the commission of offence on the part of the main perpetrator without undue delay and by following all the due procedure established by law, he was taken into police custody on 14.11.2022 and in the meantime, role of co-conspirators including the Bank Official(s) was also looked into.

16. That, It is further submitted that only after ascertaining the specific act(s) of commission or omission punishable under Prevention of Corruption Act, 1988 and attributing the same to a particular public servant(s) and analyzing whether such act(s) are relatable to the official function or duty discharged by such public BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 servant(s) specific to the

office/post held at the time of Commission of the alleged offence, the file was processed and prior approval u/s 17A of PC Act , 1988 was sought with the due approval of the competent authority. (emphasis supplied) x. The applicant filed an application under 167(2) of the CrPC seeking statutory bail on account of filing of an incomplete chargesheet on 01.02.2023. The said application was dismissed by the learned Special Judge vide impugned order dated 10.02.2023. xi. On 01.04.2023, during the pendency of the present application, the CBI filed a supplementary chargesheet wherein it is recorded as under:

□16.7 That, as the prior approval u/s 17-A of PC Act, 1988 had been declined/refused by the Competent Authority against the public servant and role of any other public servants/bank officials did not surface, the investigation qua offences under PC Act (as amended in 2018) Act, 1988 against the public servants is closed.

16.8 That further investigation is being continued u/s 173(8) of Cr.PC to investigate the role of Shri Virender Mishra and Shri Rajnish (both FIR named accused), to collect other relevant documents and examination of witnesses and to investigate any other fact, if crop up during further investigation

35. Examination of the aforesaid facts clearly demonstrates the fact that before filing the chargesheet, the CBI had formed an opinion with respect to the involvement of a public servant for the purposes of offences under the PC Act and therefore, had sought an approval under Section 17A of the said Act on 16.12.2022. In anticipation of such approval, the chargesheet was filed wherein it was stated that the approval has been sought and further investigation is continuing. It is the case of the applicant that the distinction between further investigation and incomplete investigation is that if a BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 chargsheet has been filed with respect to the offences alleged in the FIR, then the same would be complete and if any ancillary investigation with respect to the said offences has to be conducted, then the same can be filed by way of a supplementary chargsheet. However, an incomplete chargesheet would be one if the same has been filed with respect to certain offences mentioned in the FIR without determining or expressing opinion with regard to investigation with respect to the other offences mentioned in the said FIR. In the present case, admittedly, the CBI, at the time of filing the chargesheet did not express any opinion with respect to offences committed under the provisions of the PC Act but it has come on record that the investigation with respect to the aforesaid offences was pending approval of the competent authority under Section 17A of the PC Act and therefore, it was continuing.

36. The contention of the learned SPP for the CBI is that cognizance of an offence under the PC Act is always with respect to the offender and not the offence would be applicable only after a chargesheet under the PC Act is filed. At this point, it is relevant to reproduce Section 17A of the PC Act, which reads as under:

"17-A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.--(1) No police officer shall conduct any enquiry or inquiry or investigation

into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval--

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

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(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month. A bare reading of the aforesaid Section demonstrates that the sanction, as contemplated therein is with respect to 'Investigation qua a public servant'.

37. Reliance was placed by learned SPP for CBI on an order dated 22.02.2023 passed by a coordinate bench of this Court in W.P.(CRL.) 847/2021 titled Central Bureau of Investigation v. Shyam Sunder Narang, wherein it has been observed as under:

¶2. In the present case as correctly argued by Ms. Kalsi, on behalf of Mr. Sharma that the concerned officers of the bank are yet to be identified. She states that once the officers are identified, the permission required under Section 17A of the PC Act, will be taken. The stage of taking permission as of today has not yet arrived. She has drawn my attention to the judgment of 'Satish Pandey Vs Union of India' in Revision Petition 43/2020, wherein the High Court of Chhattisgarh observed:

"In so far as arguments based on Section 17A of the PC Act is concerned, suffice it would be to observe that the officers or employees who would eventually be charged of committing the offence is not yet known, therefore, the stage of application of Section 17A is not yet commenced. Even otherwise, the said provision would be attracted only when their act is found to be relatable to any recommendation made or

decision taken by a public servant in discharge of his official functions or duties."

3. For the said reasons, the order of the Special Judge is not sustainable as the officers, who will be charged of committing the offence under the PC Act, are yet to be identified. Once the officers are identified the BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 permission under Section 17A shall be sought and the due process will be followed including the applicability of Section 17A of the PC. Admittedly, in the present case, the investigation in the present FIR was initiated on 19.11.2020. The investigation was being conducted at the time when the present applicant was arrested on 14.11.2022 for the offences mentioned in the FIR including the provisions of PC Act, as reflected in the application seeking police custody. Investigation further continued during the time when the applicant was in judicial custody. A communication dated 16.12.2022 was sent to the SBI seeking approval under Section 17A of the PC Act with respect to a public servant identified during the investigation before filing of chargesheet. Since the reply to the said communication was not received till the time when the present chargesheet was filed, i.e., on 06.01.2023, the investigation was still continuing, as stated in the chargesheet.

Thereafter the competent authority denied the grant of approval vide a letter dated 23.02.2023. On the basis of said communication, the CBI filed a supplementary chargesheet dated 01.04.2023 with respect to the offences under Sections 13(2) read with 13(1)(d) of the PC Act.

38. 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 BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 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 judgement 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.

39. It is pertinent to note that in the present case, the chargesheet specifically records the fact that further investigation is pending with respect to the offences under the PC Act on account of approval under Section 17A of the said Act. The said chargesheet is silent about any further investigation with

respect to other offence, i.e., Section 468 of the IPC. In this case, the Court of competent jurisdiction before which the chargesheet was filed did not take cognizance, as recorded in the order dated 06.01.2023 passed by the learned Principal District and Sessions Judge-cum-Special Judge (PC Act) (CBI), Rouse Avenue District Court. By filing a supplementary report under Section 173(8) of the CrPC, the CBI cannot change the nature of the first chargesheet as one which can be termed as complete. The investigation arising out of the present FIR is incomplete as only one part of the investigation, i.e, the allegation pertaining to diversion of borrowed funds, is complete and the other part pertaining to connivance/conspiracy with unknown public servants is pending. As pointed out hereinabove, it is an BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 admitted case of the CBI as per the chargesheet itself, that investigation with respect to the role of unknown public servants was being conducted. Further, by way of the supplementary chargesheet, it has come on record that during the course of investigation, a public servant, i.e., Anil Kumar, AGM and Relationship Manager, State Bank of India had been identified, qua whom approval under Section 17A of the PC Act was sought. It cannot be the case of the CBI that public servant would have been chargesheeted for offences under the PC Act without alleging conspiracy with the present applicant. It is pertinent to note that the role of public servant was being examined/inquired into during the investigation of the present FIR with respect to the present applicant. Section 13 of the PC Act, as it stood before the Prevention of Corruption (Amendment) Act, 2018 came into force, reads as under:

□3. Criminal misconduct by a public servant.-- (1) A public servant is said to commit the offence of criminal misconduct,--

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,--

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(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation.--For the purposes of this section, ☐known sources of income means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine. (emphasis supplied) A bare reading of the aforesaid provisions demonstrates that the role of a public servant will be intrinsically connected to a private person. Investigation in this regard cannot be termed as ancilliary or residual, which could be submitted by way of a supplementary chargesheet. Moreover, the stance taken by the CBI keeps changing. From the date of arrest and throughout the period of investigation, till the filing of the chargesheet, it was the case of the CBI that investigation qua unknown public servants was being conducted and after such public servants were identified, approval under Section 17A of the PC Act was sought. However, during the course of hearing of the present application, it was the case of the CBI that since approval under Section 17A was not granted, no investigation qua the offences under the PC BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 Act had taken place. It is an admitted case of the CBI, as per the orders cited by them passed by coordinate benches of this Court, that in an FIR registered under PC Act, investigation can take place without approval under Section 17A of the PC Act, until such time that a public servant is identified.

40. It will be pertinent to observe that the supplementary report under Section 173(8) of the CrPC for closure of investigation qua the offences under the PC Act was filed after the applicant exercised his right under Section 167(2) of the CrPC by moving an application in that regard before the learned Trial Court on 01.02.2023. Closure of an investigation connotes a prior pendency/continuance of the same.

41. The ratio of Chitra Ramkrishna (supra) squarely applies to the present case. In the present case as well, like in Chitra Ramakrishna (supra), the investigation qua offences mentioned in the FIR was not complete. It is not the case of the CBI that at the time of filing of the chargesheet, investigation with respect to the offences under the PC Act was complete and therefore, the chargesheet was filed

with respect to the other offences mentioned in the FIR. The Hon'ble Supreme Court, in *M. Ravindran* (supra) had noted that in case two interpretations of a penal statute are possible, the one leaning in favor of the accused must be adopted. It was held as under:

□7.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

17.10. With respect to the CrPC particularly, the Statement of Objects and Reasons (supra) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature, namely, ensuring a fair trial, expeditious investigation BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 and trial, and setting down a rationalised procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article

21. While relying upon the observations made in *M. Ravindran* (supra), the Hon'ble Supreme Court, in *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51 held as under:

□39. 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, inuring to the benefit of suspect.

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41. 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).

42. It is reflected from the records of the case that the FIR was registered on 19.11.2020 under Section 120B read with Sections 420, 468 and 471 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act. The present applicant was arrested on 14.11.2022 under the aforesaid

sections. The CBI, on 16.12.2022, sought approval from the competent authority under Section 17A of the of the PC Act, but proceeded to file the chargesheet, before the expiry of the stipulated term of 60 days, while keeping the investigation for BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 offences under Section 13(2) read with Section 13(1)(d) of the PC Act open. Therefore, it is clear that the CBI had not completed the investigation with respect to offences under Section 13(2) read with Section 13(1)(d) of the PC Act, for which the applicant was arrested. Permitting the CBI to pick up one aspect of the investigation and file a piece-meal chargesheet with respect to the same and consequently, defeating the right of the applicant to default bail, goes against the mandate of Article 21 of the Constitution, as held by the Hon'ble Supreme Court in M. Ravindran (supra), Fakhrey Alam (supra) and Satender Kumar Antil (supra).

43. In the facts and circumstances of the present case, the application is allowed. The applicant is admitted to default bail under Section 167(2) of the CrPC in case RC2232020A0009 registered by the CBI at PS: AC-V, Delhi upon his furnishing a personal bond in the sum of Rs. 2,00,000/- alongwith two sureties of like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The memo of parties shows that the applicant is residing at B-38, Jain Chowk, Mangala Puri, Palam, New Delhi, NCT of Delhi, South West Delhi - 110045. In case of any change of address, the applicant is directed to inform the same to the Investigating Officer.
- ii. The applicant shall not leave India without the prior permission of the learned Trial Court.
- iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55 Neutral Citation Number:- 2023:DHC:3429 v. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled forthwith.

44. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case pending before the learned Trial Court.

45. The application stands disposed of along with all the pending application(s), if any.

46. Let a copy of this judgment be communicated to the concerned Jail Superintendent.

47. Order be uploaded on the website of this Court, forthwith.

AMIT SHARMA JUDGE MAY 18th, 2023/bsr/sn BAIL APPLN. 583/2023 Digitally Signed By:ANITA BAITAL Signing Date:18.05.2023 18:13:55