

ITEM NO.25

COURT NO.10

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 10107/2023

(Arising out of impugned final judgment and order dated 14-07-2023 in BA No. 96/2023 passed by the High Court Of Jammu & Kashmir And Ladakh At Jammu)

YATIN YADAV

Petitioner(s)

VERSUS

UT OF JAMMU AND KASHMIR & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.163418/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.163464/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 25-08-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Devadatt Kamat, Sr. Adv.
Mr. Asheesh Singh Kotwal, Adv.
Mr. Pankaj Basotra, Adv.
Mr. Arjun Garg, AOR
Mr. Aakash Nandolia, Adv.
Ms. Sagun Srivastava, Adv.
Ms. Shreya Bansal, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The petitioner came to be arrested in connection with the First Information Report bearing Crime No.RC0042022A0008-CBI/ACB/Jammu for the offence punishable under Section 120-B read with Sections 420, 411, 408 and 201, IPC, 1860.

Although there is some discrepancy as regards the exact date of the arrest of the petitioner, yet

the learned senior counsel appearing for the petitioner, upon instructions, submitted that the petitioner was arrested on 17th September, 2022 and was remanded to police custody for a period of two days. Thereafter, on 19th September, 2022, the petitioner was sent to judicial custody.

The investigating agency filed charge sheet on 12th November, 2022 i.e. well within the statutory time period of 60 days, as provided under Section 167 of the Code of Criminal Procedure, 1973. However, the petitioner preferred an application before the trial Court seeking default bail as according to the petitioner although the charge sheet was filed well within 60 days, yet the same being an incomplete charge sheet, could not have been accepted by the trial Court and no cognizance could have been taken on such incomplete charge sheet.

The argument before the Court of Magistrate was that since on the 61st day of his judicial custody, there was no valid and legal charge sheet on record, he was entitled to be released on default bail. Such argument did not find favour with the Court and the bail application accordingly came to be rejected.

The petitioner went before the High Court. The High Court also declined to entertain the bail application taking the view that what is contemplated under the scheme of Sub-Section (2) of Section 167

Cr.P.C. is completion of investigation relating to offence against the accused and not investigation of case or filing of charge sheet under Section 173 Cr.P.C. which would be material for the purpose for determining whether the accused is entitled to the grant of statutory bail or not.

The principal contention canvassed by Mr. Devadatt Kamat, the learned Senior Counsel appearing for the accused is that a plain reading of Section 173 of the Cr.P.C. shows that every investigation must be completed without unnecessary delay and as soon as it is completed, the Officer-in-charge of the Police Station shall forward a report to the Magistrate in the form prescribed. Therefore, there is no question of sending up of a "police report" within the meaning of Section 173, sub-section (2) of Cr.P.C. until the investigation is completed. Any report sent before the investigation is completed will not be a police report within the meaning of sub-section (2) of Section 173 of the Cr.P.C. read with Section 2(r) of the Cr.P.C. and there is no question of the Magistrate taking cognizance of the offence within the meaning of Section 190(1)(b) of the Cr.P.C. on the basis of an incomplete charge-sheet.

Whether the aforesaid understanding of the High Court as reflected in para 27 of the impugned order

is a correct statement of law, needs to be determined by this Court.

Let notice be issued to the respondent-CBI, returnable after two weeks.

Learned counsel appearing for the petitioner is at liberty to serve a copy of the entire paper book of Special Leave Petition to learned counsel appearing for the CBI.

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

(POONAM VAID)
COURT MASTER (NSH)