

ITEM NO.1

COURT NO.1

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 (Crl.) No(s).4145/2022

(Arising out of impugned final judgment and order dated 11-03-2022
in BA No. 2586/2021 passed by the High Court of Delhi at New Delhi)

CHRISTIAN MICHEL JAMES

Petitioner(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION

Respondent(s)

(WITH IA No. 66376/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

WITH

SLP(Crl) No. 4327/2022 (II-C)

(WITH IA No. 68173/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

Date : 07-02-2023 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s) Mr. Aljo K. Joseph, AOR
Mr. M S.Vishnu Shankar, Adv.
Mr. Sriram P., Adv.

For Respondent(s) Mr. Sanjay Jain, A.S.G.
Mr. Zoheb Hussain, Adv.
Mr. B.K. Satija, Adv.
Mr. Adit Khorana, Adv.
Mr. Annam Venkatesh, Adv.
Ms. Sairica Raju, Adv.
Mr. Rahul Mishra, Adv.
Mr. Ashutosh Ghade, Adv.
Mr. Zoheb Hussain, Adv.
Mr. Bhuvan Mishra, Adv.
Mrs. Swati Ghirdiyal, Adv.
Mr. Arkaj Kumar, Adv.
Ms. Ashima Gupta, Adv.
Mr. Annam Venkatesh, Adv.
Mr. Mukesh Kumar Maroria, AOR
Mr. Arvind Kumar Sharma, AOR

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

- 1 Counsel appearing on behalf of the petitioner relied on the provisions of Section 436A of the Code of Criminal Procedure 1973¹ in aid of the submission that the petitioner has completed half of the maximum sentence and is, therefore, entitled to bail.
- 2 We are not inclined to accept the submission of the petitioner. The extradition decree in Dubai, on which the petitioner places reliance, provides as follows:

“Whereas the case is related to the extradition of Christian James Michael, British citizen, to the Indian authorities on charge of “misuse of occupation or position, money laundering, collusion, fraud, misappropriation and offering illegal gratification”. Whereas the merits of the extradition request are briefed in that the Indian authorities requested the UAE to extradite Christian James Michael, British citizen, on charge of misuse of position or job, money laundering, collusion, fraud, misappropriation and offering illegal gratification within the territory of the requesting country. An arrest warrant was issued by the court in the requesting state.”

(emphasis supplied)

- 3 The purport of the decree is to cover several offences which have been highlighted above. Counsel appearing on behalf of the petitioner has placed reliance on the extract from the extradition decree which contains a reference to the provisions of Sections 415, 420 and 120B of the Indian Penal Code 1860² and Section 8 of the Prevention of Corruption Act 1988³.

1 “CrPC”

2 “IPC”

3 “PC Act”

- 4 The submission of the petitioner is that the unamended provision of the PC Act provided for imprisonment for a term which shall not be less than six months, but which may extend to five years. The provisions of Section 8 were initially amended by Act 1 of 2014 and subsequently, substituted by Act 16 of 2018. It has been submitted that the maximum term of imprisonment for the offence under Section 420 IPC is seven years whereas under the unamended provisions of Section 8 of the PC Act, it was five years. Since the petitioner was arrested on 4 December 2018, it has been submitted that he has already undergone over four years and two months of under trial custody and bearing in mind the provisions of Section 436A of CrPC, he is entitled to be released on bail on completing half the maximum term of imprisonment.
- 5 Section 436A provides as follows:

“436A. Maximum period for which an undertrial prisoner can be detained.-- Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.--In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

6 The first proviso to Section 436A stipulates that the Court may for reasons to be recorded in writing order the continued detention of the person for a period longer than one half of the maximum period of imprisonment specified for that offence or release him on bail instead of a personal bond with or without sureties.

7 Article 17 of the Extradition Treaty between India and the UAE contains the following provision:

- “1 The person to be extradited shall not be tried or punished in the requesting State except for the offence for which his extradition is sought or for offences connected therewith, or offences committed after his extradition, If the characterisation of the offence is modified during the proceedings taken against the person extradited, he shall not be charged or tried, unless the ingredients of the offence in its new characterisation, permit extradition in conformity with the provisions of this Agreement.
2. If the person extradited had the liberty and means to leave the territory of the State to which he was extradited, and he did not leave within thirty days subsequent to his final release or left during that period, but voluntarily returned, he may be tried for the other offences.”

8 From the above extract, it is evident that the person to be extradited shall not be tried or punished in the requesting State except for the offences for which his extradition is sought or for offences connected therewith.

9 Section 21 of the Extradition Act 1962 is in the following terms:

- “21. Accused or convicted person surrendered or returned by foreign State not to be tried for certain offences.—Whenever any person accused or convicted of an offence, which, if committed in India would be an extradition offence, is surrendered or returned by a foreign State, such person shall not, until he has been restored or has had an opportunity of returning to that State, be tried in India for an offence other than—

(a) the extradition offence in relation to which he was surrendered or returned; or

(b) any lesser offence disclosed by the facts proved for the purposes of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made; or

(c) the offence in respect of which the foreign State has given its consent.”

- 10 In the present case, the extradition offences in relation to which the petitioner was returned appears from the text of the extradition decree of the Dubai authorities, which has been extracted earlier. The extradition decree has to be read together with the provisions of Article 17 of the India-UAE Extradition Treaty.
- 11 The CBI initially registered a regular case on 12 March 2013. The charge-sheet was submitted on 31 August 2017. The CBI has filed a supplementary charge-sheet on 17 September 2020. Further investigation under Section 173(8) is stated to be in progress.
- 12 In the backdrop of the above discussion, it has emerged before the Court that the fundamental basis on which the petitioner has sought bail, namely, under the provisions of Section 436A, cannot be accepted as valid. Besides the provisions of Sections 415 and 420 read with Section 120B IPC and Section 8 of the PC Act, the petitioner is alleged to have committed offences under Section 467 IPC which is punishable with upto life imprisonment. In this backdrop, the provisions of Section 436A would not stand attracted in the present case.
- 13 For the above reasons, we are not inclined to accept the submission of the petitioner that he was entitled to the grant of bail on the foundation of Section 436A. The Single Judge of the High Court has, while declining bail, also adverted to the circumstances in which the petitioner was required to be extradited from the UAE to face trial in India. We, therefore, find no merit in the Special Leave Petitions. The Special Leave Petitions are accordingly dismissed. However, we

clarify that the present order shall not come in the way of the petitioner moving the trial court afresh for the grant of regular bail.

14 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR