

**HIGH COURT OF JAMMU AND KASHMIR & LADAKH
AT JAMMU**

Bail App. No. 96/2023

Reserved on: 16.06.2023

Pronounced on: 14.07.2023

Yatin Yadav and others

...Petitioner(s)

Through :- Mr. Vikram Sharma, Sr. Adv. with
Mr. Sachin Dev Singh, Advocate
Mr. Nitin K. Gupta, Advocate
Mr. Vivek Gaur, Advocate
Mr. Gourab Gaur, Advocate
Mr. Pankaj Bastora, Advocate

v/s

UT of J&K.

.....Respondent (s)

Through :- Mrs. Monika Kohli, AAG

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1. Petitioners have invoked Section 437 of Code of Criminal Procedure, 1978 (for short Cr.P.C.) read with Article 226 of the Constitution of India to implore for their enlargement on statutory bail in terms of Section 167(2) Cr.P.C.

2. Before a closer look at the grounds urged in the present petition, it shall be apt to have an overview of the background facts of the case.

3. The Government of J&K through Deputy Secretary, GAD, directed investigation into allegations of irregularities in written examination for the posts of Sub Inspector in the J&K Police conducted by J&K Services Selection Board (JKSSB), through CBI, on the basis of report of Enquiry Committee constituted

by the Government. The stand of the Government is that report of Enquiry Committee *prima facie* reveals criminal conspiracy amongst officials of JKSSB, M/s Merit Trac, Bengaluru, beneficiary candidates and other accused persons causing gross irregularities in the conduct of written examination for the posts of Sub Inspectors in J&K Police. Consequently, Crime No. RC0042022A0008-CBI/ACM/JAMMU came to be registered under Section 120-B IPC read with Section 420 IPC against officials of J&KSSB, M/s Merit Trac, Bengaluru, beneficiary candidates and other accused persons on 03.08.2022.

4. The investigation culminated into filing of final report in terms of Section 173 Cr.P.C. on 12.11.2022 against 33 accused persons, some unknown private persons, officials of M/s Meritrac Services Private Ltd. and officials of JKSSB in the court of learned Chief Judicial Magistrate, (CJM), Jammu It is pertinent to mention that role of each accused has been delineated in the charge sheet. The investigating agency has concluded that accused have committed offences punishable under Sections 420-B IPC read with Sections 420, 411, 408, and 201 IPC.

5. Petitioners preferred separate applications for “default bail” in terms of Section 167(2) Cr.P.C. and learned CJM, Jammu vide impugned order dated 31.01.2023 declined the plea by holding that since charge sheet stands filed, Court has already taken cognizance of the offences, there are sufficient grounds to proceed and case is at the stage of consideration of charge/discharge, therefore, petitioners are not entitled to the default bail.

6. Petitioners have questioned the impugned order passed by learned CJM, Jammu, vide which, their plea for “default bail” has been declined by the trial

court, on the solitary premise that learned trial Court has failed to appreciate the real import of Section 167(2) Cr.P.C. According to the petitioners, the investigating agency found two sets of conspiracy. Though it investigated the smaller conspiracy with respect to the petitioners, according to which, petitioners got access of the question papers of Sub Inspector examination and provided the same to beneficiary candidates as also revealed to other accused persons present in Jammu where question papers were circulated, however, the larger conspiracy, as per the report of the Enquiry Committee to unearth the criminal conspiracy amongst officials of JKSSB, M/s Merit Trac, Bengaluru, beneficiary candidates and other accused persons is still underway. Petitioners, by referring to various observations made in the charge sheet have submitted that since investigation into larger conspiracy of the case is admittedly underway, therefore, charge sheet filed by the investigating agency in the trial court is a ruse to defeat the indefeasible right of the petitioners for “default bail” under Section 167(2) Cr.P.C.

7. Countervailing the stand taken by the petitioners, the respondent-UT is affront with the contention that accused-petitioner No. 1, Yatin Yadav, being the mastermind, has conspired with rest of the petitioners/accused to leak the question paper and sold the same to the candidates in lieu of money. He is alleged to have entered into a criminal conspiracy with accused-petitioner No.2, Pardeep Kumar, an employee of printing press, namely, M/s KVR Infosys Pvt. Ltd., pursuant thereto, Petitioner No. 2 committed criminal breach of trust, stole the question papers and handed over same to the accused-petitioner No.1-Yatin Yadav. It is further alleged that in furtherance of this conspiracy, Petitioner No.1-accused Yatin Yadav contacted rest of the accused persons, including the

petitioners, named in the charge sheet, and asked them to solicit candidates for sale of leaked question papers. It is further contention of the respondent that individual role of each of accused person including the petitioners, detailed in the charge sheet, is sufficient to indicate that petitioners are habitual offenders as their role has also been revealed, during investigation, in respect of leakage of question papers of Accounts Assistants (Finance) and Junior Engineer (Civil) Exams conducted by JKSSB. According to the respondent, petitioners are the main players in the criminal conspiracy to leak the question papers of J&KPSI, collected huge amount of cash in lieu of sale of said papers, concealed proceeds of crime and destruction of evidence. It has also been submitted that earlier bail applications filed by the petitioners were dismissed by learned 2nd Additional Sessions Judge, Jammu and learned CJM, Jammu on merits.

8. It is further contention of the respondent that there is ample documentary and oral evidence against the petitioners including statements under Section 164 Cr.P.C., CDRs, records of booking of hotels, statements of drivers, data of toll plaza and statements of bank accounts etc. to prove their complicity and substantiate charges against them.

9. It is categoric stand of the respondents that investigation against the petitioners is complete and since charge sheet against them stands filed within time in terms of Section 167 Cr.P.C., therefore, they are not entitled to the statutory “default bail” in terms of sub section (2) of the said provision.

10. Heard arguments and perused the file.

11. Contention of petitioners, in the present case and the star argument of Mr. Vikram Sharma, learned Senior Counsel is that respondents have filed the charge

sheet without completing investigation against the petitioners and co-accused named in the FIR qua various offences and transactions, therefore, petitioners are entitled to “default bail” in terms of Section 167(2) Cr.P.C. Learned Senior Counsel would further submit that filing of the charge sheet in the present case was nothing but a subterfuge or ruse of the respondent-investigating agency to defeat indefeasible right accrued to the petitioners to “default bail” under Section 167 (2) Cr.P.C. Learned Senior Counsel has taken this Court through various stages of investigation mentioned in the charge sheet to submit that it can be determined from a perusal of the allegations set out in the charge sheet that investigation in the present case qua all the offences and major aspects of investigation against the petitioners is still underway. Learned senior counsel has submitted with vehemence that it is duty of the constitutional courts to protect the liberty of citizens, as practice of the investigating agencies of filing incomplete charge sheets or piecemeal charge sheets, as a ploy to defeat right of statutory bail, has been deprecated by Hon’ble Supreme Court in various authoritative pronouncements. He has relied upon a couple of judgments passed by Delhi High Court titled; **Avinash Jain v. Central Bureau of Investigation** reported as **2023 DHC 003429** and **CBI v. Kapil Wadhwan [CRL.M.C. 6544/2022 CRL.M.A. No. 25503/2022 dated 30.05.2023]** to buttress the submissions.

12. *Ex adverso*, Mrs. Monika Kohli, learned Sr. AAG vehemently argued that investigation in the present case is pending against other accused persons with respect to different aspects of the case and same would not justify grant of “default bail” to the petitioners against whom investigation stands concluded, a complete charge sheet stands filed within time and learned trial court has taken cognizance because there is sufficient evidence against the petitioners to face

trial. Mrs. Kohli would submit that merely because investigation regarding involvement of co-accused with respect to certain facets of the case was going on, it would not mean that investigation qua petitioners was incomplete and solely because co-accused have not been charge sheeted, would not give them right to be released on “default bail”. Learned counsel for the respondent would, thus, submit that there is no merit in the argument propounded by learned Sr. Counsel appearing for the petitioners with respect to charge sheet being incomplete against the petitioners. She has relied upon **Sri. Santosh v. State of Karnataka [Criminal Petition No. 101403 of 2021 dated 03.08.2021]**.

13. Article 21 of the Constitution of India provides that “*no person shall be deprived of his life and personal liberty except according to procedure established by law.*” Such procedure cannot be arbitrary, unfair or unreasonable as held by Constitutional Bench of Hon’ble Supreme Court in **Maneka Gandhi v. Union of India** reported as (1978) 1 SCC 248. The provisions envisaged under sub-section 2 of Section 167 Cr.P.C also in a way are meant to safeguard the life and personal liberty of a citizen and compliment right of an individual life and personal liberty enshrined in the Constitution. Hon’ble Supreme Court in **Uday Mohanlal Acharya v. State of Maharashtra** reported as (2001) 5 SCC 453 dwelling upon the fundamental right to life and personal liberty under Article 21 of the Constitution of India and its co-relation with sub section (2) of Section 167 Cr.P.C. has ruled as below:

“13.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 authorize 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.”

14. The aforesaid principle was reiterated in **M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence** reported as (2021) 2 SCC 485 whereby Hon’ble Supreme Court has held that *“history of the enactment of Section 167(2) Cr.P.C. 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.”*

15. There is no dispute from the aforequoted crystallized position of law that statutory bail in terms of first proviso to section 167(2) Cr.P.C. is not merely a statutory but a fundamental right as it is a procedure established by law within the meaning of Article 21 of the Constitution of India. However, the entire controversy revolves around the “statutory bail or default bail” in terms of Section 167 Cr.P.C, it is imperative to have a glance over the said provision, which reads thus:

167. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize 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 authorize 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 authorize 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 authorize 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 authorize 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 authorizing 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 authorized to be in the custody of a remand home or recognized social institution.”

16. Section 56 Cr.P.C enjoins upon a police officer making an arrest without warrant, to produce the arrested person before the Jurisdictional Magistrate, or before the officer incharge of a police station, without unnecessary delay, subject, of course, to the provisions contained in the CrPC. In terms of Section 57

Cr.P.C, such arrested person can be detained by a police officer in custody for a maximum period of 24 hours, under all the circumstances of the case, and such period of 24 hours cannot be exceeded in the absence of a special order of Magistrate under Section 167 of Cr.P.C. Section 167 Cr.P.C provides a detailed procedure when investigation cannot be completed in 24 hours and it postulates that if it appears that investigation cannot be completed within a period of 24 hours fixed by Section 57 Cr.P.C, and there are grounds for believing that accusation or information is well found, the officer incharge of the police station or the police officer making investigation, shall forward the accused to the nearest Judicial Magistrate along with copy of the entries in the diary prescribed relating to an accused. Sub Section 2 of Section 167 of CrPC lays down that such Magistrate can authorize the detention of the accused in the custody, as he thinks fit, for a period not exceeding 15 days in the whole. It is evident, as such, that Magistrate can remand an accused to judicial or police custody, for the first 15 days depending upon the facts and circumstances of the case. Proviso (a) (i) appended to Section 167 (2) Cr.P.C stipulates that such a custody cannot exceed 90 days where investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and in terms of Proviso (a) (ii) such detention cannot exceed 60 days where investigation relates to any other offence, with a further stipulation that on the expiry of said period of 90 days or 60 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.

17. It is evident from the scheme of sub section 2 of Section 167 Cr.P.C and proviso appended thereto that a Magistrate can authorize detention of an accused for a total period of 60 or 90 days, as the case may be, provided he is satisfied that adequate grounds exist for doing so. In other words, the Magistrate has no power to authorize the detention of an accused beyond the period of 60 days or 90 days, as the case may be, even if investigation is not concluded. What comes to the fore is that it 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 of determining whether accused is entitled to the grant of statutory bail or not.

18. Reverting to the case, petitioners seek their enlargement on bail on the solitary premise that since it is evident from a perusal of the charge sheet that investigation with respect to main aspect and facets of the case is underway and respondents seek further investigation in terms of sub section 8 of Section 173 Cr.P.C. and to produce further evidence, therefore, investigation of the present case, being incomplete, charge sheet filed by the respondents is nothing but subterfuge to deny statutory bail to the petitioners. Section 173 Cr.P.C. provides as below:

173. Report of police officer on completion of investigation.-

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer of the police station.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

- (a) the names of the parties;**
- (b) the nature of the information;**

- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170;
- (h) Whether the report of medical examination of the woman has been attached where investigation relates to an offence under Section 376, 376A, 376B, 376C or 376D of the Indian Penal Code (45 of 1860).

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation,

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject- matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

19. Section 173 Cr.P.C. aforequoted deals with filing of the report of the Police Officer on completion of investigation and it opens with a caveat that every investigation shall be completed without unnecessary delay. Sub Section (2) provides the procedure of forwarding of police report in the form prescribed by the State Government. It further provides that if the report, is in respect of a case to which Section 170 Cr.P.C. applies, i.e. where there is sufficient evidence or reasonable ground, the officer incharge of a Police Station shall forward the accused under custody to the Magistrate empowered to take cognizance of the offence upon a police report and try the accused or commit him for trial, the police officer shall forward the documents or relevant excerpts thereof, as also statements of witnesses under Section 161 Cr.P.C. as prescribed under section 173(5). It may be underlined that in terms of Section 173(8) Cr. P.C. police is vested with the power to conduct further investigation, in respect of an offence after filing of the report under section 173(2) Cr. P.C. It also provides that where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate further report or report which in common parlance is stated to be the supplementary report.

20. Hon'ble Supreme Court in **State of Maharashtra v Sharad Vinayak Dogre & Ors.** reported as **AIR 1995 SC 231** had an occasion to deal with the import and the legislative intent behind Section 173 Cr.P.C. and power of the

Magistrate to take cognizance in terms of Section 190 Cr.P.C. The Apex Court has held that the purpose of submission of the police report with the details mentioned in sub-Section (2) of Section 173 Cr.P.C. is to enable the Magistrate to satisfy himself, whether on the basis of the report and the material filed alongwith the police report, a case for taking cognizance has been made out or not. After applying his mind to the police report and the material submitted therewith, if the Magistrate is satisfied that cognizance of the offence is required to be taken, he shall proceed further in accordance with the provisions of Cr.P.C. The top Court has held that section 190(1)(b) Cr.P.C. provides that a Magistrate has the power to take cognizance upon a police report of such facts as are provided therein, on being satisfied that the case is a fit one for taking cognizance of the offence. Therefore, if the police report and the material filed therewith is sufficient to satisfy the Magistrate that he should take cognizance, his power is not fettered by the label which the investigating agency chooses to give to the report submitted by it under Section 173(2) Cr.P.C.

21. The principle of law enunciated in the aforesaid judgment was reiterated with approval by the Apex Court in **Dinesh Dalmia v CBI** reported as **2008 Cri. L.J. 337**. What comes to fore from the above discussed settled position of law is that it is absolute domain of the Magistrate to decide whether material placed by the prosecution with the charge sheet was sufficient to take cognizance or not as the Apex court has held that power of the Magistrate cannot be controlled by the investigating agency, whose duty is only to investigate and place the facts and the evidence before the Magistrate.

22. I have carefully gone through the case law cited at bar and there is no dispute to the crystallized position of law that report under Section 173(2)

Cr.P.C. is an intimation to the Magistrate that investigating officer has procured sufficient evidence for trial of an accused by the court. A charge sheet is final, if it is sufficient for the court to apply its mind whether cognizance should be taken or not. It is also trite that filing of the charge sheet does not extinguish the statutory right of the investigating agency to conduct further investigation and to submit supplementary report and this does not give the right of statutory bail to the accused. The investigating agency itself is vested with the power to conduct further investigation de hors court orders and leave of the court is not required for submitting supplementary charge sheet. The very purpose of Section 173(8) Cr.P.C. is to accumulate any further or other evidence which may be found against the accused already facing trial. It is also clear that if a court takes cognizance and subsequently directs further investigation the same is not implied that investigation of the case was not complete. Further investigation was defined as continuation of primary investigation and is called supplementary report which is meant to supplement the primary report submitted by the empowered investigating agency. It is settled law that further investigation of a case is not precluded after the filing of the charge sheet. However, accused has indefeasible right in his favour for being released on bail on account of default by the investigating agency to conclude investigation within the statutory period and if the initial investigation arising out of the FIR itself is incomplete, the accused, of course, would be entitled to “default bail”.

23. If the present case is approached with the settled position of law, relating to Section 167(2) Cr.P.C and Section 173 Cr.P.C. discussed above, the question which begs consideration of this Court is whether investigation in the present case *qua* the petitioners, in fact has remained pending and the investigating

officer has submitted the charge sheet with a view to curtail the right of the petitioners or whether the charge sheet filed against the petitioners can be termed as a report having been filed on completion of investigation in terms of Section 173 of Cr.P.C.

24. A careful scrutiny of the charge sheet would reveal that J&KSSB invited bids from reputed bidders with prior experience in conducting examinations in India for empanelment for two years for conducting examinations for various recruitments of J&KSSB. Three times tenders were cancelled. First bid of M/s Merit Trac was rejected on the ground that said company was already blacklisted by two PSUs. However, for subsequent tenders, bid of M/s Meritrac was entertained overlooking the earlier decision. In the fourth tender, L-1 was M/s ND Infosystems and L-2 was M/s Meritrac Services Pvt. Ltd. Though letter of intent was issued to L-1, however, the contract was awarded to L-2 i.e. M/s Meritrac Services Pvt. Ltd. on 11.02.2022 on the ground that L-1 did not satisfy regarding its professionalism and capability. As per the charge sheet, investigation with respect to allegations of irregularity in award of tender to M/s Meritrac is underway. It is clear that petitioners do not figure anywhere with respect to this aspect of the case. Investigation further reveals that M/s Meritrac Services Pvt. Ltd. outsourced the work of printing to M/s Multigraphics Okhala, New Delhi. Though there was no mention of such outsourcing in the agreement between J&K SSB and M/s Merit Trac. M/s Multigraphics further outsourced the work of printing to M/s KVR Infosys Pvt. Ltd. The manner and circumstances in which M/s Meritrac outsourced the work to M/s Multigraphics and M/s Multigraphics outsourced the work of printing to M/s KVR Infosys Pvt. Ltd. is also under investigation.

25. Investigation reveals that petitioner No. 2-Pardeep Kumar Katiyar is one of the employees of M/s KVR Infosys Pvt. Ltd., who was working in the said company as packing incharge. It also surfaced during investigation that petitioner No. 2 Pardeep Kumar was in touch with petitioner No. 1-Yatin Yadav. The printed question papers of J&KPSI exam were handed over to accused-petitioner No.1-Yatin Yadav by petitioner No. 2-accused Pardeep Kumar on 21.03.2022. Packaging of the OMR sheets and question paper was done under the supervision of accused Pardeep Kumar, the packing incharge. The said question paper of J&KPSI Set-A was concealed by accused-Pardeep Kumar, in his left shoe in the evening of 21.03.2022, while he was sitting on the chair along with Sh. Rajiv Gupta Cashier. CCTV footage installed in the 2nd floor of the printing press has been seized in the case in presence of independent witnesses and said footage reveals that on 21.03.2022 at about 1947 hours petitioner No. 2 Pardeep Kumar, the packing incharge concealed question paper in his left shoe and on the same day, he handed over the said question paper to petitioner No. 1-accused Yatin Yadav. According to the investigating agency, petitioner No. 1-accused Yatin Yadav is the Kingpin of the gang in Haryana. Accused-Anil Kumar, Bajinder Singh, Surinder Singh @ Commando, Asheesh Yadav and Ashok @ Pandit are his associates. The gang in Haryana arranged the question paper, while gang in Jammu led by accused-Ashwani Kumar arranged the candidates. Investigation reveals that question paper of JKPSI exam was leaked by petitioner No. 1-accused Yatin Yadav @ Nittu @ Guruji @ Ramu Sir with the connivance of petitioner No. 2, accused Pardeep Kumar of M/s KVR Infosys Pvt. Ltd. Petitioner No. 1 contacted accused Anil Kumar, Surinder Yadav and Bajinder Singh for arranging the candidates for sale of leaked question paper. Accused-Anil Kumar contacted his father-in-law accused Pawan Kumar, a CRPF Head

Constable posted at Gangyal Jammu and accused-Ashwani Kumar, Ex-CRPF Constable for this work. Accused-Ashwani Kumar further contacted other accused persons and asked them to solicit candidates for sale of leaked question papers. It is pertinent to mention that role ascribed to each petitioner or accused person, has been separately delineated in the charge sheet.

26. It needs a specific mention that it is own case of the petitioners that the investigating agency found two sets of Conspiracies. The only grievance projected by the petitioners is that, though the investigating agency has investigated the smaller conspiracy with respect to the petitioners, yet the larger conspiracy amongst officials of JKSSB, M/S Meritrac Company, the beneficiary candidates and other accused persons, is still underway, therefore, charge sheet presented against the petitioners cannot be termed as a complete charge sheet. However, a careful perusal of the charge sheet transpires that petitioners along with co-accused entered into a coordinated criminal conspiracy with respect to leakage of question papers only. The investigation with respect to allegation of irregularity in award of tender to M/s Meritrac, delegation of work of setting up of question paper by said company, outsourcing of printing by M/s Meritrac to M/s Multi Graphics against the terms and conditions of the agreement with JKSSB and further outsourcing of work by M/s Multi Graphics to M/s KVR Infosys Pvt. Ltd. is underway. Petitioners have nothing to do with this part of the transaction or conspiracy. In so far as leakage of question paper is concerned, the investigating agency has concluded that petitioners and co-accused have committed offences punishable under Sections 120-B read with 420, 411, 408 and 201 IPC. As a matter of fact, the investigating agency in the penultimate paragraph 22 of the charge sheet has prayed that cognizance of the aforesaid

offences and substantive offences thereof, may be taken against the accused persons and they may be tried as per law. The investigating agency in the ultimate paragraph 23 has submitted that investigation is underway to unearth larger conspiracy to trace proceeds of crime, to establish the role of “*other accused persons and suspects and other allegations leveled in the FIR*”. It is evident from the concluding part of the charge sheet that investigation is underway with respect to role of other accused persons and suspects and other allegations leveled in the FIR and those are qua the replacement of OMR sheets, award of contract to M/s Meritrac Services Pvt. Ltd. and concealment of proceeds of crime. Petitioner No.1-Yatin Yadav is, of course, primary culprit, in so far as leakage of question paper is concerned. In this view of the matter, **Avinash Jain** (*supra*) relied by learned senior counsel appearing for the petitioners is clearly distinguishable on facts and circumstances. In the said case, the charge sheet specifically recorded that further investigation with respect to the offences under the P.C. Act is pending and the court of competent jurisdiction before which charge sheet was filed, declined to take cognizance of the offences. Similarly, in **CBI vs Kapil Wadhwan** (*supra*) as per the charge sheet itself, further investigation with respect to ascertainment of roles of certain persons and entities, mentioned in the FIR and connected with the issues was still continuing. The charge sheet did not record that investigation into the offences *qua* the charge sheeted accused persons was complete, nor a request was made by the investigating agency that cognizance against them be taken. However, the charge sheet in the present case filed against the petitioners and the co-accused persons, as per the statement of the investigation agency, is complete so as to enable the trial court to decide whether to take or not to take cognizance of the offence. As a matter of fact, the learned Trial Court after satisfying itself, on the basis of the

report and the material filed along with the police report has already decided that case for taking cognizance has been made out and took cognizance of the offences against the petitioners and case is pending consideration for maintenance of charge. Power of the investigating agency is not inhibited by mere filing of the charge sheet to investigate into other aspects of the case. It is pertinent to mention that Ld. Delhi High Court in **Chitra Ramakrishna v. CBI**, reported as **2022 SCC OnLine Del 3124**, has held that charge sheet can be said to be complete when it enables the court whether to take or not take cognizance of the offences and if certain facets call for further investigation, it would not render such report other than a final report. Pertinently, this judgment of Ld. Delhi High Court came to be upheld by Hon'ble Supreme Court in **CBI v. Chitra Ramakrishna** as early as on 13.02.2023 in **SLP (CrI) No. 1550-1552 of 2023**.

27. Having regard to the aforesaid discussion, what comes to the fore is that a charge sheet can be said to be complete, if it enables the court to apply its mind and satisfy itself, whether on the basis of the charge sheet and the material filed along with the police report, envisaged under Section 173 of Cr.P.C., a case for taking cognizance is made out or not. It is the completion of investigation, relating to offences against the charge sheeted accused, which is material for the purpose of determining whether accused is entitled to the grant of statutory bail or not. The investigation and charge sheet with respect to coordinated conspiracy amongst the petitioners and co-accused, who have been charge sheeted, with respect to leakage of question papers is complete. It has nothing to do with other facet of the case regarding allegation of irregularity in award of contract by JKSSB to M/s Merittrac and delegation of work of setting up of question papers

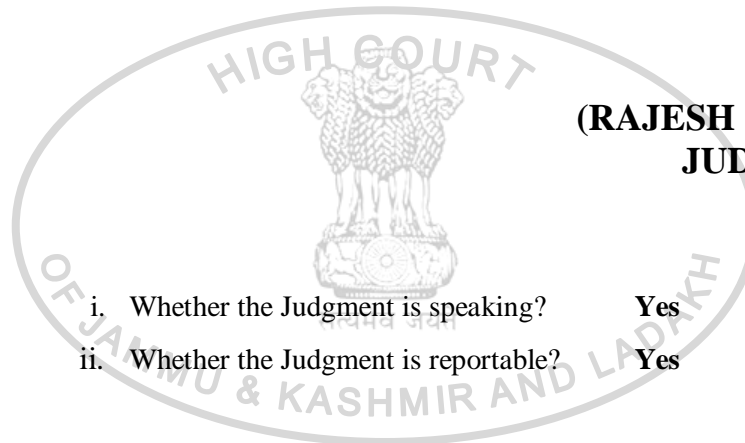
by the said company. Further investigation, if any, into this aspect of the case and further evidence, if any, collected by the investigating agency *qua* the said facet, will not make any difference in the present charge sheet against the petitioners. Since petitioners in the present case came to be arrested on 19.09.2022 and charge sheet was laid on 12.11.2022 i.e. within the statutory period of 60 days, therefore, benefit of “Statutory Bail” in terms of Section 167 (2) Cr.P.C. cannot be extended to them.

28. No other ground has been urged in the petition.

29. For what has been observed and discussed above, the present petition being devoid of merit is **dismissed**.

30. Before parting, however, it is made clear that nothing observed in this judgment shall be construed as an expression of opinion on the merits of the case.

Jammu:
14.07.2023
(Paramjeet)



(RAJESH SEKHRI)
JUDGE

- | | |
|---|------------|
| i. Whether the Judgment is speaking? | Yes |
| ii. Whether the Judgment is reportable? | Yes |